



REC Review

of Legislative & Regulatory Actions



The Navy Regional Environmental Coordination Office

October 2019

The *REC Review* publishes environmental and energy related developments for DoD/Navy leaders and installation staff. Covering 21 states, the *REC Review* gives early notice of legislative and regulatory activities relevant to DoD interests in Federal Regions 1 & 3 and Navy interests in Federal Regions 2, 4, & 5.

To find out more about the Regional Environmental Coordination (REC) Office and browse back issues of the *REC Review* visit <http://denix.osd.mil/rec/home/>. To receive a copy of this electronic publication, send a subscription request to NAVFACML_EV-dodregion3@navy.mil.



NAVFAC MIDLANT DoD REC Map

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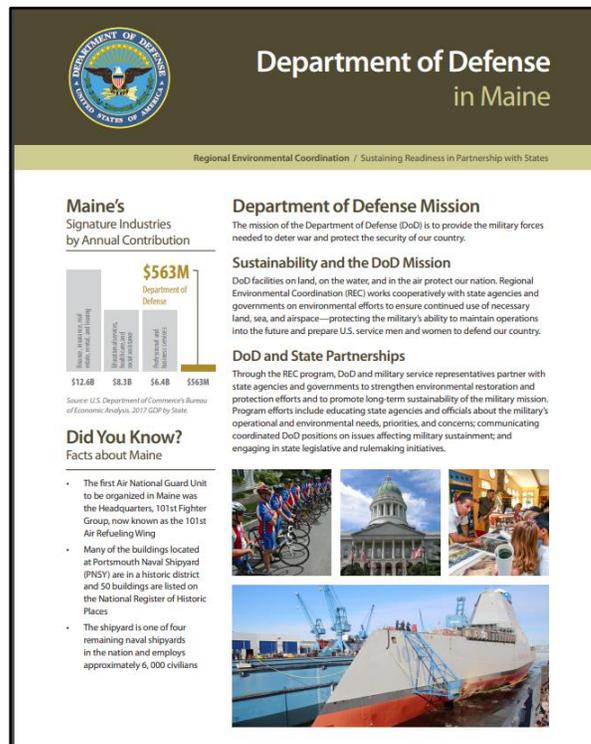
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SPOTLIGHT STORY

Updated DoD/REC State Brochures Released for EPA Regions I and III

Navy Region Mid-Atlantic's Regional Environmental Coordinator's office recently released and posted to DENIX new DoD state brochures for states comprising EPA Regions I and III. Each state brochure describes the DoD presence/foot print, economic impact, employment, etc. The DoD/REC state brochures are located at the following address:

<https://www.denix.osd.mil/rec/dodpresencebystate/>



Front cover of the FY18 Maine DoD REC Brochure

GENERAL INTEREST

Secretary of the Navy Environmental Awards – Call for packages are expected **Fall/Winter**

The annual Secretary of the Navy (SECNAV) Environmental Awards Program recognizes Navy and Marine Corps ships, installations, and people for outstanding performance in promoting environmental stewardship. Awards are presented for accomplishments in Natural Resources Conservation, Cultural Resources Management, Environmental Quality, Sustainability, Environmental Restoration, Environmental Excellence in Weapon System Acquisition, and Environmental Planning. By presenting awards, SECNAV recognizes organizations and people who have made significant contributions in environmental areas. Eligible winners at the SECNAV level of competition are submitted to compete in the Secretary of Defense (SECDEF) Environmental Awards competition.

<https://navysustainability.dodlive.mil/environment/awards/secnav-environmental-awards/>

OPNAVINST M-5090.1 Environmental Readiness Program Manual - **New Release**

Deputy Chief of Naval Operations for Fleet Readiness and Logistics, N4, Office of the Chief of Naval Operations, Vice Admiral Ricky L. Williamson, has announced the release of the new OPNAV INSTRUCTION M-5090.1E which cancels the previous OPNAVINST 5090.1D.

This manual implements the policy set forth in Chief of Naval Operations Instruction (OPNAVINST) 5090.1E, Environmental Readiness Program. It is issued under Secretary of the Navy Instruction (SECNAVINST) 5090.8A, Policy for Environmental Protection, Natural Resources and Cultural Resource Program, 30 January 2006. It contains the Navy's policy guidance for environmental readiness. It discusses requirements, delineates responsibilities, and issues policy guidance for the management of the environmental, natural and cultural resources for all Navy ships and shore activities. This manual is effective immediately, it is mandatory and applicable to all afloat and ashore Navy commands.

Important Update: Notices of Violation (NOVs) are now reported via email rather than Navy message (see paragraph 19-3.2.a of M-5090.1). The email address is NOV2@navy.mil and can be found by searching the Outlook global address book for the name NOV.

<https://www.secnav.navy.mil/doni/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-00%20General%20Admin%20and%20Management%20Support/5090.1E.pdf>

<https://www.secnav.navy.mil/doni/SECNAV%20Manuals1/5090.1.pdf>

FEDERAL NEWS

Notice: *With regard to any regulation or legislation, installation staff is requested to contact their respective component REC with information on mission or installation impacts, questions, or comments.*

Water

U.S. Army Repeal 2015 Rule Defining "Waters of the United States" EPA and the Army jointly conclude that multiple substantive and procedural errors warrant a repeal of the 2015 Rule. With this final repeal, the agencies will implement the pre-2015 regulations, which are currently in place in more than half of the states, informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice. The final rule takes effect 60 days after publication in the Federal Register. In December 2018, EPA and the Army proposed a new definition that would clearly define where federal jurisdiction begins and ends in accordance with the Clean Water Act and Supreme Court precedent. In the proposal, the agencies provide a clear definition of the difference between federally regulated waterways and those waters that rightfully remain solely under state authority.

<https://www.epa.gov/wotus-rule/step-two-revise>

AIR

Site Remediation Residual Risk and Technology Review EPA has conducted a residual risk and technology review of the Site Remediation National Emission Standards for Hazardous Air Pollutants (NESHAP).

EPA promulgated the final Site Remediation NESHAP at 40 CFR part 63, subpart GGGGG on October 8, 2003. The NESHAP applies to "remediation material." Site remediation means one or more activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material. Monitoring or measuring of contamination levels in media, whether by using wells, sampling, or other means, is not considered to be a site remediation.

The rule applies only to active remedial operations at sites that are major sources with affected facilities subject to another maximum achievable control technology (MACT) standard. The Site Remediation NESHAP applies to various types of affected sources including process vents, remediation material management units, and equipment leaks. The affected source for process vents is the entire group of process vents associated with the in-situ and ex-situ remediation processes used at the site. Examples of process vents for in-situ remediation processes include the discharge vents to the atmosphere used for SVE and underground bioremediation processes. Examples of process vents for ex-situ remediation processes include vents for thermal desorption, bioremediation, and stripping processes (air or steam stripping).

EPA is proposing that risks due to emissions of air toxics are acceptable and that no revision to the standards is required to provide an ample margin of safety to protect public health.

Based on the technology review, EPA is proposing to amend the requirements for leak detection and repair (LDAR). In addition, the EPA is proposing amendments to revise regulatory provisions pertaining to emissions during periods

of startup, shutdown and malfunction (SSM), including adding requirements for pressure relief devices; to add requirements for electronic submittal of semiannual reports and performance test results; to clarify provisions pertaining to open-ended valves and lines; and to make minor clarifications and corrections. The proposed revisions to the rule would increase the level of emissions control and environmental protection provided by the Site Remediation NESHAP.

EPA is also requesting comment on ways in which the Site Remediation NESHAP could be amended with respect to facilities currently exempt from the NESHAP because the facilities are under CERCLA or RCRA Corrective Action authority. EPA is seeking comment on how, if the exemption was removed, these formerly exempt sources would be able to implement the Site Remediation NESHAP efficiently and on how this could be reflected in the applicability, monitoring, recordkeeping, reporting, and compliance demonstration requirements. EPA asks whether the agency should provide look-up tables for commonly used remediation alternatives and associated compliant technologies. EPA does not intend to immediately finalize the proposed removal of this exemption but is using this opportunity to gather additional information in anticipation of addressing these issues later through a separate action.

Comments are due by 18 October 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-09-03/pdf/2019-17223.pdf>

Potential Approaches for Characterizing the Estimated Benefits of Reducing Fine Particulate Matter (PM_{2.5}) EPA has prepared a draft document titled “Potential Approaches for Characterizing the Estimated Benefits of Reducing PM_{2.5} at Low Concentrations.” EPA is requesting comment on proposed peer reviewers for an external peer review of this document.

A one-day panel meeting will be held October 21, 2019, in Research Triangle Park, North Carolina.

EPA uses evidence from long-term exposure cohort studies to estimate the number of PM_{2.5}-related premature deaths and morbidity effects in its air pollution benefits analyses. Generally, EPA quantifies effects for the full distribution of ambient PM_{2.5} concentrations, including at concentrations below the lowest measured levels (LML) of these studies; this reflects the current scientific evidence, which does not find a threshold in the concentration-response relationship. However, because of the absence of data at such low concentrations, there is greater uncertainty about the likelihood of health effects, including premature death.

EPA is developing and evaluating potential alternative approaches for estimating these effects. Potential approaches are described in the EPA draft report that will be made available at https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/PM_Uncertainty. This report details new techniques for deriving information regarding uncertainty at low PM_{2.5} concentrations using data available from the peer-reviewed published epidemiology literature.

<https://www.govinfo.gov/content/pkg/FR-2019-09-03/pdf/2019-18945.pdf>

Draft Review of the National Ambient Air Quality Standards for Particulate Matter EPA has posted and requests comments on the draft document titled, Policy Assessment for Review of the National Ambient Air Quality Standards for Particulate Matter, External Review Draft. This draft document was prepared as part of the current review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM).

When final, the policy assessment is intended to “bridge the gap” between the currently available scientific

information and the judgments required of the Administrator in determining whether to retain or revise the existing NAAQS for PM.

The assessment states a preliminary conclusion that the current annual and 24-hour primary PM2.5 standards do not provide adequate public health protection and recommends retaining the current primary PM10 standard.

<https://www.epa.gov/naaqs/particulate-matter-pm-air-quality-standard>
<https://www.epa.gov/naaqs/particulate-matter-pm-standards-policy-assessments-current-review-0>
https://www.epa.gov/sites/production/files/2019-09/documents/draft_policy_assessment_for_pm_naaqs_09-05-2019.pdf

Comments are due by 12 NOV 2019.

One National Program Rule on Federal Preemption of State Fuel Economy Standards Summary:

In advance of formal publication in the Federal Register, EPA and DOT, NHTSA, have released the text of a final rule "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program."

This rule is a partial finalization of a proposed rulemaking of August 24, 2018 that would amend (and weaken) the existing Corporate Average Fuel Economy (CAFE) and tailpipe carbon dioxide emissions standards for passenger cars and light trucks for model years from 2021 to 2026.

In this final rule:

- EPA is announcing its decision to withdraw the waiver it had previously provided to California for that State's GHG and Zero Emission Vehicle (ZEV) programs under section 209 of the Clean Air Act, and
- NHTSA is finalizing regulatory text implementing its statutory authority to set nationally applicable fuel economy standards and preempt State programs for fuel economy standards.

The rule preamble asserts that the Energy Policy and Conservation Act of 1975 (EPCA) federal preemption of state fuel economy standards (codified at 49 U.S.C. 32919) also effectively prevents states from adopting greenhouse gas tailpipe (grams CO2 per mile) emission standards because these are closely related to fuel economy.

- California's ability to enforce its Low Emission Vehicle program and other clean air standards to address harmful ozone-forming vehicle emissions is not affected by this action.

- NHTSA is also stating its conclusion that EPCA does not preempt all potential State or local regulation of greenhouse gas emissions from vehicles. For example a requirement with no bearing on fuel economy, such as a State regulation of vehicular refrigerant leakage, would not be preempted by EPCA.

EPCA, as amended by EISA, states that each model year corporate average fuel efficiency (CAFÉ) standard must be the maximum feasible that NHTSA believes the manufacturers can achieve 49 U.S.C. 32902(a).

The legal challenge does not address the parallel decision by the EPA to revoke the 2013 waiver California received under the Clean Air Act to set emissions standards including ZEV and GHG standards applicable to model years 2021 through 2025. That does not take effect until late November.

A fact sheet addressing the preemption authority is available at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/safer-affordable-fuel-efficient-safe-vehicles-proposed>, specifically <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P100V26M.pdf>.

REGION I



Note: The Connecticut Legislature convened on 9 JAN 2019 and adjourned on 5 JUN 2019.

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



Note: The Maine Legislature convened on 5 DEC 2018 and will adjourn on 15 MAY 2020.

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



Note: The Massachusetts Legislature convened on 2 JAN 2019 and will adjourn on 7 JAN 2021.

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



Note: The New Hampshire Legislature convened on 2 JAN 2019 and adjourned on 30 JUN 2019.

FINAL LEGISLATION

State Bill 257 an act prohibiting foams containing perfluoroalkyl (PFAS) chemicals for use in fighting fires. Effective 3 September 2019.

http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2019&id=1050&txtFormat=pdf&v=current



RHODE ISLAND

Note: The Rhode Island Legislature convened on 12 JAN 2019 and adjourned on 30 JUN 2019.

FINAL LEGISLATION

Control of Volatile Organic Compounds from Surface Coating Operations The Department of Environmental Management has adopted amendments to rules regarding revised and new volatile organic compound (VOC) content limitations for paper, film and foil coating, metal furniture coating, large appliance coating, miscellaneous metal and plastic parts coating, and flatwood paneling. Effective 14 August 2019.

https://services.statescape.com/ssu/Regs/ss_8586357229496048424.pdf



VERMONT

Note: The Vermont Legislature convened on 9 JAN 2019 and will adjourn on 15 MAY 2020.

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.

REGION II



NEW JERSEY

Note: The New Jersey Legislature convened on 9 JAN 2018 and will adjourn on 7 JAN 2020.

PROPOSED RULES

Revised General Permit for Emergency Generators Burning Distillate Fuels The Department of Environmental Protection has issued a revised General Permit GP-005A for emergency generators burning distillate fuels at minor facilities. The revised general permit updates the definition of "Emergency Generator" and the Facility specific requirements section (compliance plan) to include the operation of the emergency during construction, repair, and maintenance activities (CRM) and to delete the provisions that allows the use of any existing distillate fuel oil with sulfur content greater than 15 ppmw (parts per million by weight) contained in the fuel oil storage tank.

https://services.statescape.com/ssu/Regs/ss_8586327851732527366.pdf

<https://www.state.nj.us/dep/aqpp/gp.html>

Proposed General Permit for Temporary Equipment at Minor Air Facilities The Department of Environmental Protection has requested public input regarding a proposed general permit for temporary equipment at minor air facilities. https://services.statescape.com/ssu/Regs/ss_8586327848085670690.pdf
<https://www.state.nj.us/dep/aqpp/>



Note: The New York State Legislature convened on 9 JAN 2019 and will adjourn on 6 JAN 2021.

PROPOSED LEGISLATION

Senate Bill 6625 directs the commissioner to promulgate the first list of emerging contaminants within 30 days of enactment of this legislation. <https://www.nysenate.gov/legislation/bills/2019/s6625>

REGION III



Note: The Council of the District of Columbia convened 2 JAN 2019 and will adjourn on 31 DEC 2020.

PROPOSED RULES

Disposal Fee at Waste Transfer Stations The Department of Public Works has proposed rules regarding the refuse disposal fee at District of Columbia waste transfer stations. The transfer stations perform a pivotal role in ensuring that waste does not accumulate in the District and contribute to disease vectors. This rulemaking will ensure that the fees charged by the District more accurately reflect the cost to operate the facilities.

https://services.statescape.com/ssu/Regs/ss_8586347613970970896.pdf

FINAL RULES

Water and Sanitation Fees The Water and Sewer Authority has adopted amendments to rules regarding miscellaneous fees and charges, permit review fees, pretreatment fees, and new fees for: events and equipment; fats oil and grease (FOG) facility monthly fee and cross-connection/backflow prevention fees. Effective 19 August 2019. https://services.statescape.com/ssu/Regs/ss_8586583377829106224.htm



Note: The Delaware General Assembly convened on 8 JAN 2019 and will adjourn on 30 JUN 2020.

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



Note: The Maryland General Assembly convened on 9 JAN 2019 and adjourned on 10 APR 2019.

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.



Note: The Pennsylvania General Assembly convened on 1 JAN 2019 and will adjourn on 30 NOV 2020.

PROPOSED LEGISLATION

House Bill 1752 amends the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, further providing for powers and duties of the Department of Environmental Protection and for civil penalties.
<https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=H&billTyp=B&billNbr=1752&pn=2343>

PROPOSED RULES

Draft Guidance - Verification of Emergency Containment Structures for Aboveground Storage Tanks The Department of Environmental Protection has requested public input regarding a draft Technical Guidance Manual to assist tank owners and professional engineers when determining the adequacy of emergency containment structures and compliance with the technical regulations for aboveground storage tanks (ASTs).
https://services.statescape.com/ssu/Regs/ss_8586358844041918405.pdf
<http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=8043&DocName=263-0900-022.pdf>

Draft Guidance - Underground Storage Tank Operator Training The Department of Environmental Protection has requested public input regarding a draft Technical Guidance Manual for underground storage tank Class A and Class B operator training. https://services.statescape.com/ssu/Regs/ss_8586358842339359124.pdf
<http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=8111&DocName=263-2300-001.pdf>

Draft Guidance - Storage Tank Modification and Maintenance The Department of Environmental Protection has requested public input regarding a draft Technical Guidance Document for storage tank modification and maintenance issues. https://services.statescape.com/ssu/Regs/ss_8586358847049000853.pdf
<http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=7870&DocName=STORAGE%20TANK%20MODIFICATION%20AND%20MAINTENANCE%20ISSUES.PDF>



Note: The Virginia General Assembly convened on 9 JAN 2019 and adjourned on 9 MAR 2019.

FINAL RULES

Chlorophyll A Criteria For the Tidal James River The Department of Environmental Quality (DEQ) has adopted rules regarding Chlorophyll A Criteria for the Tidal James River. This regulation is not yet effective.
<http://register.dls.virginia.gov/vol28/iss01/v28i01.pdf#page=5>

Hazardous Waste Management Regulations The Waste Management Board has adopted exempt rules regarding hazardous waste management. Effective 23 August 2019.
https://services.statescape.com/RegsText/StaticDownloads/155368_271238.htm

OTHER OPPORTUNITIES

EPA and DEQ Conducting an MS4 Forum in Virginia: 21-23 October 2019

EPA Region III and DEQ are hosting a three-day MS4 Forum for Virginia permittees. The purpose of the forum is to:

- Provide updated guidance regarding compliance with the new Chesapeake Bay TMDL requirements of the MS4 General Permit;
- Provide training and compliance assistance to MS4 staff and inspectors, including both classroom sessions and a field session;
- Provide an opportunity for MS4 permittees to discuss their programs and insight on their successes and challenges in implementing the MS4 program.

There will be no registration fee, however, space will be limited to 150 participants. Registration will be initially limited to two (2) participants from each MS4, preferably managers, coordinators, staff, and/or inspectors. If MS4s would like to send a consultant/contractor, they would have to be "sponsored" by an MS4 and would take up one of that MS4's allotment.

Dates:

Mon, Oct 21, 2019, 12:00 PM –
Wed, Oct 23, 2019, 5:00 PM EDT

Location:

Virginia Public Safety Training Center
7093 Broad Neck Road
Hanover, VA 23069

<https://www.eventbrite.com/e/epa-region-iiivirginia-deq-ms4-forum-2019-tickets-71666543561>

UST New Regulation Training The DEQ is offering live webinar and classroom training this fall. Each training session will be three hours long and will review the new underground storage tank requirements that became effective in 2018 and the requirements that will become effective in 2021. Training will include topics such as spill, overfill, and sump testing requirements, walk-through inspections, release detection for emergency generator tanks, release detection equipment testing, and requirements for equipment repairs.

<https://www.deq.virginia.gov/Programs/LandProtectionRevitalization/PetroleumProgram/USTTechnicalRegulationInfo/USTRegulationTraining.aspx>



Note: The West Virginia Legislature convened on 10 MAR 2019 and adjourned on 30 JUN 2019.

No new environmental legislation or regulation of significant importance to DoD was identified during this reporting period.

REGION IV



Note: The North Carolina General Assembly convened on 16 JAN 2019 and will adjourn on 30 JUN 2020.

PROPOSED RULES

Classifications and Standards for the Protection of Surface Waters The Environmental Management Commission has proposed to amend several rules cited in 15A NCAC 02B .0100, 0200 and .0300. These proposed amendments comprise the state's Triennial Review of Surface Water Quality Standards mandated by the federal Clean Water Act and, additionally, the re-adoption of rules pursuant to G.S. §150B-21.3A.

https://services.statescape.com/ssu/Regs/ss_8586755349132210738.pdf

<https://deq.nc.gov/documents/15a-ncac-02b-0100%E2%88%920300-classifications-and-standards-protection-surface-waters>



KENTUCKY

Note: The Kentucky Legislature convened on 7 JAN 2019 and adjourned on 28 MAR 2019.

No new environmental legislation or regulation of significant importance to the Navy was identified during this reporting period.

REGION V



ILLINOIS

Note: The Illinois General Assembly convened on 9 JAN 2019 and will adjourn on 31 MAY 2020.

FINAL RULES

Boiler and Pressure Vessel Standards The Fire Prevention and Building Safety Commission has adopted an emergency rule regarding updated editions of certain boiler and pressure vessel standards. Effective 1 September 2019. https://services.statescape.com/ssu/Regs/ss_8586339811408669617.pdf
<http://iac.iga.in.gov/iac//20190904-IR-675190426ERA.xml.html>



INDIANA

Note: The Indiana General Assembly convened on 3 JAN 2019 and adjourned on 21 APR 2019.

No new environmental legislation or regulation of significant importance to the Navy was identified during this reporting period.



MICHIGAN

Note: The Michigan Legislature convened on 9 JAN 2019 and will adjourn on 31 DEC 2020.

PROPOSED LEGISLATION

House Bill 4842 would require a person requesting a permit or modification of permit that will increase emissions to attend a public hearing and respond to questions for large emission increases. <http://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2019-HIB-4842.pdf>

House Bill 4840 and 4845 would prohibit the issuance of a permit or permit modification that will result in emissions increase if the local municipality determines an adverse health effect.

<http://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2019-HIB-4840.pdf>

<http://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2019-HIB-4845.pdf>



Note: The Ohio General Assembly convened on 7 JAN 2019 and will adjourn on 31 DEC 2020.

No new environmental legislation or regulation of significant importance to the Navy was identified during this reporting period.



Note: The Wisconsin Legislature convened on 7 JAN 2019 and will adjourn on 4 JAN 2021.

PROPOSED REGULATIONS

New Drinking Water Maximum Contaminant Levels The Department of Natural Resources has proposed rulemaking to amend ch. NR 809, Wis. Adm. Code, to establish drinking water standards, referred to as Maximum Contaminant Levels (MCLs), for certain Per- and Polyfluoroalkyl substances (PFAS) including the contaminant compounds perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).

https://docs.legis.wisconsin.gov/code/register/2019/765A1/register/ss/ss_089_19/ss_089_19

PFAS in WPDES Permitting Program to Implement the New Water Quality Criteria The Department of Natural Resources has proposed rulemaking to create human health surface water quality criteria for perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA), as well as any other PFAS which the department determines may be harmful to human health in ch. NR 105, Wis. Adm. Code. The proposed criteria are expected to be numeric and may be expressed as a single number applicable to all waters of the state or may be expressed as different numbers that are applied to different surface water body types.

https://services.statescape.com/RegsText/StaticDownloads/158165_276128.pdf

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