PFAS/Delaware Riverkeeper Network Safe Drinking Water Act Petition: Pennsylvania Court Addresses Request to Dismiss

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The Commonwealth Court of Pennsylvania ("Court") issued a July 26th Memorandum and Order ("MAO") addressing the Pennsylvania Department of Environmental Protection ("DEP") and Environmental Quality Board's ("EQB") request to dismiss an action filed by the Delaware Riverkeeper Network ("Riverkeeper"). See *Delaware Riverkeeper Network et al. v. Pennsylvania Department of Environmental Protection,* No. 285 M.D. 2019.

Riverkeeper filed the action in the Commonwealth Court of Pennsylvania against DEP and EQB seeking adoption of a Safe Drinking Water Act ("SDWA") standard regarding per- and polyfluoroalkyl substances ("PFAS").

Riverkeeper argued that the EQB had accepted a Petition in 2017 requesting that DEP adopt a SDWA maximum contaminant level ("MCL") for Perfluorooctanoic acid. DEP allegedly failed to respond to the required mandate for rulemaking. As a result, Riverkeeper initiated the above referenced action.

DEP and EQB are stated to have responded with a pleading titled:

. . . Application for Release in the Nature of a Motion to Dismiss for Mootness (Application) and the Answer filed by Delaware Riverkeeper Network, and the Delaware Riverkeeper, Maya Van Rossum.

DEP and EQB argued in support of the Motion that DEP had responded to Riverkeeper's rulemaking Petition by recommending a MCL of four Perfluorooctanoic acid. Such recommendation is stated to have been accepted by the EQB.

Riverkeeper argued that DEP's response had not resolved the controversy. The remaining controversy was alleged to be DEP's "delayed" response. The organization argued that a Declaratory Order from the Court would still:

. . . meaningful clarify what Respondents are required to do.

The Court rejects DEP's and EQB's Motion to Dismiss, concluding that:

. . . the question of whether its response was appropriate remains outstanding.

The Court therefore concludes that the matter is not moot and denies the Motion.

A copy of the Riverkeeper news release, which provides a link to the Court's MAO, can be downloaded here.