

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1550

In the Matter

- of the -

PROPOSED AMENDMENTS TO
TITLE 6 OF THE
OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS
OF THE STATE OF NEW YORK
PART 239 (PORTABLE FUEL CONTAINER SPILLAGE CONTROL)
AND
PART 200 (GENERAL PROVISIONS)

Hearing Report

-by -

/s/

Maria E. Villa
Administrative Law Judge

/s/

P. Nicholas Garlick
Administrative Law Judge

December 8, 2008

PROCEEDINGS

Background

The New York State Department of Environmental Conservation ("Department" or "DEC") scheduled public comment hearings on the proposed revisions to Part 239 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), Portable Fuel Container Spillage Control and revisions to 6 NYCRR Part 200, General Provisions and revisions to the State Implementation Plan (SIP).

The Department proposes to amend Part 239, Portable Fuel Container Spillage Control and Part 200, General Provisions to require portable fuel containers, which are distributed in the State of New York, to comply with the federal standard described in 40 CFR Part 59. The proposed amendments outline a different compliance test procedure which will maintain lower volatile organic compound (VOC) emissions while allowing manufacturers more flexibility in the design of containers. Compliance with the proposed regulations will reduce VOC emissions, which are a precursor to the formation of ground level ozone. The Department is also proposing to revise the SIP by incorporating Part 239 and related revisions to Part 200.

DEC's Division of Air Resources ("DAR") requested that the Department's Office of Hearings and Mediation Services ("OHMS") assign administrative law judges ("ALJs") to conduct the legislative hearing sessions and to provide a report summarizing the comments.

On October 16, 2008, ALJ P. Nicholas Garlick was assigned to conduct the December 1, 2008 hearing in Albany and the December 4, 2008 hearing in Avon. ALJ Maria E. Villa was assigned to the hearing in Long Island City on December 3, 2008.

Prior to the hearings, the DAR staff provided each ALJ with a copy of the Department's notices of proposed rulemaking and proof of publication of these notices. The notice for Part 200 appeared in the October 29, 2008 editions of the *State Register*, *Environmental Notice Bulletin*, *Albany Times Union*, *Buffalo Evening News*, *Glens Falls Post Star*, *New York Post*, *Newsday*, *Rochester Democrat & Chronicle*, and the *Syracuse Post-Standard*. The notice for Part 239 appeared in the October 22, 2008 editions of the *State Register*, *Environmental Notice Bulletin*, *Albany Times Union*, *Buffalo Evening News*, *Glens Falls Post Star*, *New York Post*, *Newsday*, *Rochester Democrat & Chronicle*, and the *Syracuse Post-Standard*.

The Department accepted written comments on this rulemaking until Thursday, December 11, 2008.

Public Hearings

Albany Hearing

Only members of DEC Staff, the ALJ and the stenographer attended the Albany Hearing. After a brief opening statement by the ALJ, DEC Staff members Steven Yarrington and Ona Papageorgiou read prepared statements.

Long Island City Hearing

Only members of DEC Staff, the ALJ and the stenographer attended the Long Island City Hearing. After a brief opening statement by the ALJ, DEC Staff member Kamal K. Malhotra, P.E. read a prepared statement.

Avon Hearing

Only members of DEC Staff, the ALJ and the stenographer attended the Avon Hearing. After a brief opening statement by the ALJ, DEC Staff member Thomas Marriott read a prepared statement.