

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter

- of the -

PROPOSED AMENDMENTS TO PART 375 OF
TITLE 6 OF THE NEW YORK COMPILATION OF CODES,
RULES AND REGULATIONS - THE STATE SUPERFUND
PROGRAM, THE BROWNFIELD CLEANUP PROGRAM, THE ENVIRONMENTAL
RESTORATION PROGRAM and the SOIL CLEAN-UP OBJECTIVES

HEARING REPORT

- by -

_____/s/_____
Helene G. Goldberger
Administrative Law Judge

August 16, 2006

PROCEEDINGS

Background

The New York State Department of Environmental Conservation (DEC or Department) in collaboration with the New York State Department of Health (DOH) has been working on draft regulations to amend Part 375 of Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) for approximately two years. These regulations are being promulgated pursuant to the Brownfield Clean-Up and Superfund Refinancing legislation that was enacted in 2003 (L. 2003, c. 1), and amended in 2004 (L. 2004, c. 577). See, Environmental Conservation Law (ECL) § 27-1401, *et seq.*

On November 16, 2005, the Department issued a first set of the regulations and public comments were received through March 27, 2006. Public meetings were held in various locations throughout the state in November and December of 2005 and three legislative hearings were held in March 2006. See, Hearing Report, April 19, 2006, <http://www.dec.state.ny.us/website/ohms/decis/part375hr.html>. In response to those comments, DEC has revised the regulations and is holding a second comment period that will end on August 25, 2006.

Notice of Public Hearing

The Department provided public notice of this legislative hearing by publishing notices in the July 12, 2006 on-line *Environmental Notice Bulletin*, and the July 12, 2006 edition of the *Albany Times Union*. In addition to this legislative session, two public meetings have been held in Buffalo and New York City, on July 18 and 19, 2006, respectively. This hearing was intended to receive comments on draft subparts 375-1 through 375-4 and subpart 375-6. A separate hearing is scheduled to receive comments on new subpart 375-5 (Remediation Stipulation Program) on August 31, 2006 in Albany.

During the August 15, 2006 legislative hearing, Laura Haight of the New York Public Interest Research Group inquired as to whether the Department had decided to extend the written public comment period in response to a request to do so. Dale Desnoyers, Division Director of the Division of Environmental Remediation, replied that the Department was currently considering that request.

Public Hearing

At the August 15, 2006 hearing in Albany, DEC staff was represented by James Harrington, P.E., Chief of the Training and Technical Support Section, Bureau of Technical Assistance, Division of Environmental Remediation. Approximately twenty-five people were in attendance at this hearing and in addition to Mr. Harrington, only one individual spoke.

Department representative James Harrington spoke first to provide a summary of the proposed amendments. Engineer Harrington stated that the revisions are intended to clarify and reorganize the current regulations, to have them conform with statutory changes and respond to issues raised in the public comment period by members of the public. In addition, Mr. Harrington explained that the regulations separate out the soil cleanup objective tables into a new subpart 375-6 and include an additional description of their use in response to received comments. He summarized the specific amendments as follows:

Subpart 375-1: General Remedial Program Requirements. This subpart identifies those requirements which are common to each of the remedial programs. It incorporates the statutory changes that were made prior to the previous Part 375 rulemaking and makes adjustments based on the experience of those implementing the program to make the program more efficient.

Subpart 375-2: Inactive Hazardous Waste Disposal Site Remedial Program (State Superfund Program). The changes to this subpart are intended to make this program more consistent with the other remedial programs.

Subpart 375-3: Brownfield Cleanup Program. This subpart incorporates the changes in the law that created the program.

Subpart 375-4: Environmental Restoration Program. As with the other revisions, changes to this section incorporate legislative changes and make the program more consistent with the other remedial programs. There are also changes in structure and organization.

Subpart 375-6: Soil Cleanup Objectives. This subpart contains the objectives applicable to the remedial programs set forth in the other subparts. It sets forth the procedures for development of soil cleanup objectives for compounds not included in the soil cleanup objective tables.

At the conclusion of Mr. Harrington's remarks, ALJ Goldberger called Mr. John Schnebly, the only person present who requested an opportunity to speak. Mr. Schnebly is the Chairman and Chief Executive Officer of Energy *Independence* Co., LLC. Mr. Schnebly explained that his company is seeking to site several plants in the Capital Region that will reprocess certain wastes to create an alternative supply of energy. Mr. Schnebly identified several brownfields as potential locations for his company. However, he criticized the pace of the development of New York's brownfield program and concluded by stating that unless the program was finalized shortly his company would look outside the state to site its facilities.

After making his comments, Mr. Schnebly asked whether he could ask questions regarding the proposed regulations. The ALJ explained that the hearing was intended only to take comments but he and others could informally meet with Department staff after the hearing.

After confirming that no others wished to speak, the ALJ adjourned the hearing at 1:30 p.m.

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