

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

In the Matter

- of the -

PROPOSED ADOPTION OF PART 597 OF
TITLE 6 OF THE OFFICIAL COMPILATION OF CODES,
RULES AND REGULATIONS OF THE STATE OF
NEW YORK.

HEARING REPORT

by

_____/s/_____
Molly T. McBride

_____/s/_____
Maria E. Villa

September 25, 2016

PROCEEDINGS

The New York State Department of Environmental Conservation ("Department" or "DEC") scheduled three public hearing sessions to provide an opportunity for comment on the Department's proposed rulemaking to classify PFOA acid, PFOS acid, PFOA salt, and PFOS salt as hazardous substances at the request of the New York State Department of Health ("DOH"). DEC filed a Notice of Emergency Adoption and Proposed Rule Making with New York State Department of State on April 25, 2016 to amend 6 NYCRR Part 597, Hazardous Substances Identification, Release Prohibition, and Release Reporting. Effective April 25, 2016, this emergency rule adds perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) to the list of hazardous substances in 6 NYCRR Section 597.3 (Section 597.3). This rule also provides time for facilities storing fire-fighting foam containing one or more of these newly listed hazardous substances to properly dispose of it, and makes a correction to the tables of hazardous substances in Part 597 by providing units for reportable quantities. This proposal also corrects the labels of hazardous substances by providing units for reportable quantities. The temporary emergency rule went into effect April 25, 2016 while the State finalized the proposed amendments to 6 NYCRR Part 597-1, hazardous substances identification, release prohibition and release reporting.

The industrial uses and the physical-chemical properties of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt are similar. These substances have been widely used in applications such as fire-fighting foam, stain-resistant carpet, and semiconductor coatings, among other things. DEC has concluded that these substances meet the definition of a hazardous substance, adopted the emergency rule in April 2016, and proceeded with the proposed rule. This is based upon the conclusion of the DOH that the combined weight of evidence from human and experimental animal studies indicates that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of or otherwise managed. NYS DOH scientists have concluded that it is essential to list these chemicals as hazardous substances. See the Regulatory Impact Statement for

additional information, including NYS DOH's letter requesting that these chemicals be added to the list of hazardous substances in Section 597.3.

Once substances are determined to be hazardous substances, DEC regulates their handling and storage and has authority to remediate sites contaminated with them. The Chemical Bulk Storage regulations (6 NYCRR parts 596-599) provide standards for the proper handling and storage of bulk quantities of hazardous substances to prevent spills and releases to the environment, prohibit the release of hazardous substances to the environment (subdivision 597.4(a)), and require the reporting of certain releases of hazardous substances to DEC. Consequently, listing the substances will benefit the environment by limiting exposure and providing the legal mechanisms to clean up the substances. Certain facilities that store hazardous substances must apply to DEC for a registration certificates to operate.

A new provision, paragraph 597.4(a)(3), will allow entities with fire-fighting foam the time necessary to determine whether stored foam contains one or more of these hazardous substances. If the stored foam contains one of these substances, the facility would be required to arrange for the proper disposal of the foam by April 25, 2017. Replacement foam may not contain a hazardous substance at a concentration that would result in the release of more than the reportable quantity (one pound) when used as a fire-fighting foam.

Under Environmental Conservation Law ("ECL") article 8 (State Environmental Quality Review Act), the Department issued a negative declaration for each regulation, and no environmental impact statement was required.

In May 2016, notice of the hearings was published six times as a legal notice in the following newspapers: The Daily Record, Daily News, Newsday, Rochester Democrat and Chronicle, Times Union, and the Daily Gazette. A notice of hearing was also published in the Department's electronic Environmental Notice Bulletin on May 11, 2016. A notice of emergency rulemaking for adoption of an amendment to 6 NYCRR part 597 was published in the New York State Register on February 17, 2016, and in the Environmental Notice Bulletin on February 24, 2016. Notice of regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and job impact statement was published in the State Register on February 24, 2016.

The deadline for written comments, as stated in the notices of hearing and notices of rulemaking, was July 8, 2016.

The hearings on the proposed amendments took place in three sessions: June 27, 2016 at the Empire State Plaza, meeting room 6, Albany, New York, before Molly T. McBride, Administrative Law Judge ("ALJ"); June 28, 2016 at the RIT Inn and Conference Center, Rochester New York, before ALJ McBride; and June 30, 2016 at Nassau Community College, Garden City, New York, before ALJ Maria E. Villa. A public information session was held by DEC staff immediately prior to each of the three hearings.

Albany Hearing

Approximately 30 persons attended the June 27, 2016 hearing. Three persons spoke. The commenters all spoke in favor of the rulemaking. A representative of the group Environmental Advocates, Elizabeth Moran, commended the Department on the regulations, noting that exposure to PFOA and PFOS has been linked to serious health issues. She also noted that DEC and DOH have more work to do to make sure unregulated chemicals become regulated and are kept out of the environment.

Jennifer Plouffe, a resident of Hoosick Falls, noted that adding PFOA and PFOS to the list of regulated chemicals is a step in the right direction. Remediation is also necessary for contaminated sites. She also stated that there is a need to act proactively, rather than waiting for a crisis to occur. Ms. Plouffe called for hearings to find out why the State and local governments took "close to 18 months" to let people know about the contamination.

Desiray Rice, the third and final speaker, a Hoosick Falls resident, read a letter from Constance Plouffe, another town resident. She questioned why it took the United States Environmental Protection Agency (EPA) and DEC so long to act. PFOA has been left behind in soil and groundwater even though it is no longer used in manufacturing. She asked that the potential health risks of the chemicals being used now be examined. She would like companies and manufacturers of PFOA to be required to test water, soil and air near the factories in locations with populations below 10,000 people. She also demands that hearings be held to find out why notice to the public took over a year.

Garden City

Seven persons attended the hearing held at 2:00 p.m. on Thursday, June 30, 2016 at Nassau Community College in Garden City, New York. An information session was held before the hearing commenced.

One person, Owen W. Magee, offered a statement on the record. Mr. Magee is the Hazardous Materials Team Coordinator for the Levittown and Hicksville Fire Departments. Mr. Magee has been in the fire service for 59 years, and has been on the Hazmat Team as a leader for 35 years.

Mr. Magee emphasized that the Fire Departments do not use foam for training exercises, because the foam is too expensive. Instead, the Fire Departments use training foam, or Class A foam, which he indicated was environmentally safe. Mr. Magee went on to state that he had surveyed the fire departments in Nassau County, and to his knowledge, none of these departments have any foam in above-ground or underground tanks. Whatever foam is used is stored in five gallon containers that are on the apparatus, and nothing is kept on the ground. Mr. Magee said that he had contacted National Foam, and had obtained the material safety data sheets for Universal Gold, the foam the Fire Departments use. He indicated that he did not see any chemicals listed there that would be covered by the rule, although he noted that some of the material may be proprietary. He also contacted another foam manufacturer who indicated that "we would have to pour 120,000 gallons of it on the ground" to be subject to the rule (Hearing Transcript at 8). He concluded that the foams that are currently in use by the Fire Departments are safe to use, and reiterated that the foams used for training are Class A biodegradable foam, or a soap suds mix.

Mr. Magee stated that he was going to look into the other foams that other departments are using, and make sure that those departments are aware of the situation, so that they will check with the manufacturers to ensure that the foam in use is safe. If not, he will call attention to the fact that those departments will have to purge themselves of the foam by April 2017. Mr. Magee went on to note that "all bets are off when we use this foam on a toxic substance . . . but DEC is always notified anyway and the appropriate clean-up measures are taken." Hearing Transcript at 9. He observed that at the

significant incidents in the last several years, major efforts were undertaken to get clean-up personnel on-site quickly and recover as much of the runoff as possible. He concluded that he had never heard anything regarding any permanent damage as a result of those more significant incidents.

Rochester

A hearing was held on June 28, 2016 at 2:00 p.m. in Rochester, New York. Approximately 8 people attended the hearing and there were no speakers. The record was held open until approximately 2:16 p.m. to allow for late arrivals; no one appeared to make a comment on the record.