RE: Enforcement Discretion under Part 494 (Hydrofluorocarbon Standards and Reporting)

To Whom It May Concern:

This is to advise you that, subject to the terms set forth in this letter, the New York State Department of Environmental Conservation (Department) will exercise its authority to utilize enforcement discretion with respect to certain provisions of 6 NYCRR Part 494 (Part 494) concerning the regulation of hydrofluorocarbons (HFCs). The Department will exercise this authority as set forth below in lieu of full compliance with Part 494.

The Department adopted Part 494, effective October 24, 2020, to mitigate the major sources of HFCs in the State of New York. Among other things, Part 494 prohibits the sale, offer for sale, installation, use, and entry into commerce in the State of certain high-Global Warming Potential (GWP) substances in specific end-uses. Those end use categories include aerosol propellants, air conditioning, refrigeration, and foam. Each end use has a specific prohibition date. The prohibition date for all end uses in the foam category is January 1, 2021. 6 NYCRR § 494.4(d).

On March 7, 2020, Governor Cuomo issued Executive Order 202 declaring a disaster emergency for the entire State of New York, along with several subsequent Executive Orders to address the COVID-19 emergency. The commercial refrigeration sector supply chain has been adversely impacted by COVID-19-related delays and winter storms in the southern United States. In particular, the Department has been informed that COVID-19 and the referenced winter storms have disrupted the ability to obtain low-GWP polyurethane foam blowing agents and polyols. As a result, regulated entities report that they will not be able to comply with the prohibitions related to the Rigid Polyurethane Commercial Refrigeration and Sandwich Panels end use in the foam category. See 6 NYCRR § 494.4(d)(8).

Acknowledging the impact on the actions and operations of New York State business entities and the regulated community due to the COVID-19 emergency and the above-referenced winter storms, the Department will temporarily not apply the prohibitions set forth in Part 494 to the Rigid Polyurethane Commercial Refrigeration and Sandwich Panels end use in the foam category. Specifically, the prohibitions set forth in Part 494 will not apply to the Rigid Polyurethane Commercial Refrigeration and Sandwich Panels end use in the foam category in section 494.4(d)(8) until July 1, 2021. All other provisions of Part 494 remain in effect and will be enforced. Starting July 1, 2021 all provisions of Part 494, including the application of the prohibitions in Part 494 to the Rigid Polyurethane Commercial Refrigeration and Sandwich Panels end use in the foam category, will be in effect and enforced.
Thank you for your cooperation in this matter. Questions regarding this enforcement discretion should be directed to Kara Paulsen, Esq. of the Office of General Counsel at (518) 402-9185. Technical questions regarding compliance under Part 494 should be directed to Suzanne Hagell of the Office of Climate Change at (518) 402-8448.

Sincerely,

[Signature]

Thomas S. Berkman
Deputy Commissioner &
General Counsel

cc: Regional Directors