

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

In the Matter

- of the -

PROPOSED REVISIONS TO PART 215 (OPEN BURNING),
PART 191 (FOREST FIRE PREVENTION) AND
PART 621 OF TITLE 6 OF THE OFFICIAL COMPILATION
OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

Hearing Report

- by -

/s/

Kevin J. Casutto
Administrative Law Judge

/s/

P. Nicholas Garlick
Administrative Law Judge

/s/

Molly T. McBride
Administrative Law Judge

/s/

Maria E. Villa
Administrative Law Judge

/s/

Richard A. Sherman
Administrative Law Judge

September 16, 2008

PROCEEDINGS

Background

The New York State Department of Environmental Conservation ("Department" or "DEC") scheduled hearings to receive public comment on the proposed revisions to Part 215 (Open Burning), Part 191 (Forest Fire Prevention), and Part 621 (Uniform Procedures) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

The purpose of the rulemaking is to extend a ban on open burning to all household waste and most agricultural wastes, and eliminate permit requirements for types of open burning that will be allowed. Open burning is currently only banned in cities, villages and in towns with a population greater than 20,000. In addition, the revised rule will limit agricultural burning to naturally grown products such as vines, branches, leaves and stubble. The revised rule will also specifically allow such things as fire training, small cooking and camp fires, and ceremonial fires. Finally, the revisions to Parts 215, 191, and 621 will eliminate the need for permits to conduct open burning that is allowed by Part 215.

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 April 28, 2008, ALJ Maria E. Villa was assigned to conduct the hearings in Cortlandville, Staatsburg, Saranac Lake, and Watertown. On May 12, 2008, ALJ Molly T. McBride was assigned to conduct the morning session for the hearing scheduled in Albany on Wednesday, June 25, 2008, as well as the hearing in Batavia scheduled for Wednesday, July 2, 2008. On May 12, 2008, ALJ Kevin J. Casutto was assigned to conduct the evening session in Albany.

Prior to the hearings, the DAR staff provided the ALJs with a copy of the Department's notice of proposed rulemaking and proof of publication of this notice. This notice appeared in the May 7, 2008 editions of the *State Register*, *Environmental Notice Bulletin*, *Adirondack Daily Enterprise*, *Albany Times Union*, *Binghamton Press*, *Buffalo Evening News*, *Glens Falls Post Star*, *Middletown Times Herald*, *New York Post*, *Newsday*, *Poughkeepsie Journal*, *Utica Observer-Dispatch*, *Salamanca Press*, *Watertown Daily Times*, *Rochester Democrat & Chronicle*, and the *Syracuse Post-Standard*.

Subsequent to the publication of notice of the first seven hearing sessions, the DAR added four additional hearing sessions. These sessions took place on:

Monday, August 4, 2008 from 5 to 8 p.m. at Herkimer County Community College. ALJ P. Nicholas Garlick was assigned to this hearing.

Tuesday, August 5, 2008 from 5 to 8 p.m. at the State University of New York at Canton. ALJ Richard A. Sherman was assigned to this hearing.

Wednesday, August 6, 2008 from 5 to 8 p.m. at Jamestown Community College, at the North Campus in Dunkirk, New York. ALJ Molly McBride was assigned to this hearing.

Thursday, August 7, 2008 from 5 to 8 p.m. at the Allegheny County Office Building, in Belmont, New York. ALJ Molly McBride was assigned to this hearing.

Notice of these additional hearing sessions appeared in the same publications noted above, except for the *Salamanca Press*, on July 2, 2008.

The Department accepted written comments on this rulemaking until 5:00 p.m. on Thursday, August 14, 2008.

Public Hearings

Cortlandville

Approximately 30 persons attended this hearing session, on Monday evening, June 23, 2008 at the Cortlandville Fire House on Route 13 in Cortland. Nineteen persons spoke, and most of the speakers opposed the measure.

Greg LaBarge, an Environmental Engineer with the Division of Air Resources, Central Office, spoke on behalf of Department Staff with respect to the proposed revisions to Part 215. Lieutenant Tim Taylor discussed the proposed revisions to Part 191. A question and answer session was held after public comments were received.

Skip Jensen, of the Farm Bureau, offered a statement in opposition, citing the increased costs that would be imposed on farmers if the regulations were adopted. Several speakers raised questions about the definitions sections of the regulations, and asserted that a number of those definitions should be clarified or narrowed. The reasons for opposition included the costs of disposal of brush and limbs, as well as a concern that piles of

diseased vegetation could increase the likelihood of insect damage to existing growth. With respect to enforcement, a number of speakers pointed out the difficulties experienced by local fire departments in enforcing bans on burning or attempting to address open burning complaints. The speakers supporting the measure described the adverse health effects of open burning, as well as the environmental consequences such as the contribution to global warming.

Staatsburg

Approximately 30 persons attended this hearing session, on Tuesday evening, June 24, 2008 at the Norrie Point State Park. Twenty-three persons spoke.

At the commencement of the hearing, William Janeway, the Region 3 Regional Director, welcomed the attendees and introduced Department Staff. Robert Stanton, P.E., offered an opening statement for Department Staff. Captain Dan Walsh, Regional Captain for Region 3, discussed the proposed revisions to Part 191. A question and answer session was held following the public comments.

Most of the speakers opposed the measure, citing the impracticality of disposing of brush and vegetation in a manner other than open burning. One speaker, Raymond Oberly, noted that he did not see an exception in the regulations for private outdoor smokehouses. Several speakers noted that the costs of hiring a chipper to dispose of vegetation would be prohibitive, and that any exemption for agriculture should take into account landowners with extensive property, or small farming operations, such as herb farms. Many speakers argued that the materials to be banned should be those that emit toxics, and that brush should be exempt, particularly given the difficulties in transporting brush and disposing of it off-site. The speakers in support cited health and environmental concerns.

Albany

Two hearing sessions, one in the morning and one in the evening, were held on Wednesday, June 25, 2008 in Albany at the Department's Central Offices, 625 Broadway, Room 129.

Approximately 30 people attended the morning session of the hearing in Albany and twelve people spoke. Before the comments were taken, Robert Stanton for the Department's Division of Air Resources and Lt. Joseph Zeglen, DEC Forest Ranger, summarized the proposed regulations. The speakers were divided in their opinions about the proposed regulations, with some supporting them and

others speaking against the regulations. Those in favor of the proposed regulations agreed that open burning presents a health risk and some told of their own personal experiences with the harmful effects of open burning. Those who opposed the regulations noted that the regulations could be modified to allow the burning of natural materials which do not emit the high levels of dioxin that plastics and other materials have. Some opposing the regulations noted that there will be expense involved for both homeowners and farmers as well as municipalities who will have to dispose of trash that can no longer be burned. Department Staff remained after the hearing for a question and answer session for those in attendance.

Approximately 20 persons attended the evening hearing session, on June 25, 2008 at the Department's Central Office, 625, Broadway, Albany, NY 12233. Robert Stanton, P.E., offered an opening statement for Department Staff. Forest Ranger Major Joe Zeglen discussed the proposed revisions to Part 191. David Shaw, Director of the Department's Division of Air Resources, was present to observe the proceedings. A question and answer session was held following the public comments.

Eleven members of the public offered statements on the rulemaking. Five people spoke in unreserved favor of the rulemaking, four people opposed some aspects of the proposed rulemaking, but supported other aspects, and three people spoke in opposition to the rule. Those in favor of the rulemaking cited a U.S. Environmental Protection Agency statistic that burn barrels are the leading source of dioxin in the air; that open burning takes many hours and people do not always monitor the burning until completed; that burning of personal papers should not be banned as it preserves personal privacy; and that some people who engage in open burning abuse the system and burn commercial wastes in addition to brush and yardwaste.

Several speakers noted that in many rural areas of the State, it is impractical to dispose of brush and yardwaste in a manner other than open burning, due to unavailability of municipal pick-up services, transfer stations or transfer station privileges.

Those supporting the rule in part, argued that materials to be banned should be limited to those that emit toxics, but that brush and yardwaste should be exempt, particularly given the difficulties and expense in transporting such materials and disposing of them off-site.

No speaker opposed a ban on burning non-organic, toxic wastes, such as plastics.

Saranac Lake

Approximately thirty persons attended this hearing session, on Thursday evening, June 26, 2008 at the Harrietstown Hall in Saranac Lake. Nineteen persons spoke. A question and answer session was held as part of the proceedings.

Greg LaBarge gave the opening statement on behalf of Department Staff. Captain John Streiff discussed the proposed revisions to Part 191.

Those who spoke generally opposed the draft regulations, citing the costs of disposal and questioning the need for additional regulation. Greg Wallace, the Town Supervisor for the Town of Long Lake, expressed concern about the application of the regulation to municipal controlled burning sites. Some speakers noted that if burning were discontinued, it was likely that there would be more illegal dumping of waste. Other speakers contended that if brush were not burned, and instead allowed to accumulate in piles, there was a far greater likelihood of fires. Speakers in support pointed to the health effects of open burning, including the effects on dairy cattle from deposition of toxics onto vegetation.

Watertown

Approximately 30 persons attended this hearing session, on Monday evening, June 30, 2008, at the Dulles State Office Building in Watertown. Fifteen persons spoke. Following the receipt of public comments, a question and answer session was held.

Thomas Morgan, an environmental engineer with the Department's Division of Air Resources, gave Department Staff's opening statement about the proposed revisions, and also gave a slide presentation. Forest Ranger Captain Drew Cavanagh, of the Division of Forest Protection, gave a short statement regarding the revisions to Part 191.

Nearly all of the speakers supported the proposal, citing health concerns, particularly as a result of the toxics emitted by burning plastics. Several speakers stated that they agreed with the proposed regulation insofar as it banned the burning of plastics, but felt that burning vegetation should continue to be allowed. Jay Canzonier, of the Farm Bureau, offered a statement in opposition that was similar to the statements offered at the other hearing sessions by this organization.

One speaker, Randy Vass, raised a concern about the increased additional waste which would be sent to landfills. Mr. Vaas indicated that he supported the proposed regulations, but that he believed that the burden on landfills and therefore on taxpayers

had not been carefully considered. Mr. Vaas also questioned whether companies that manufacture explosives, such as Noble St. Lawrence Explosives, would now be obliged to treat as hazardous waste explosives that presently are being lawfully burned on the company's premises. Finally, Mr. Vaas stated that he believed that wood burning appliances should also be regulated.

Batavia

The Batavia hearing had approximately 65 people in attendance. The hearing was held on the campus of Genesee Community College. Thomas Marriott, Regional Air Pollution Control Engineer with the Department's Region 8 office, summarized the proposed Part 215 regulation and Lt. Joseph Shafer, Supervising Forest Ranger for Region 8, summarized the proposed Part 191 regulation.

20 people spoke against the proposed regulations and five spoke in favor. Those opposed to the regulations noted the cost involved in taking trash to the landfill or transfer station if it can no longer be burned. Some noted the large amount of waste created on a farm. These speakers discussed the high cost of disposing of the waste in ways other than burning, i.e. transporting to a landfill or transfer station, chipping, composting, and said the cost will be prohibitive. Many speakers complained about the burdensome regulations that they already live under and question the DEC's authority to write laws when they are not elected officials. Those in favor of the regulations told stories of the harmful effects burning has had on them and/or family members. One gentleman spoke of problems that he has encountered when he asked neighbors to stop the burning because of its harmful effects on his children. One audience member suggested that he move if he does not like the open burning that takes place near his house.

Department Staff remained after the hearing to answer questions from the public about the proposed regulations.

Herkimer

Approximately five people attended this hearing session, on the evening of August 4, 2008, at the Robert McLaughlin College Center, Hummel Corporate Center, Herkimer.

Greg LaBarge gave the opening statement on behalf of Department Staff. Lt. Douglas Riedman discussed the proposed revisions to Part 191.

Three members of the public spoke. William Farber, President of the Adirondack Association of Towns and Villages, stated that while his organization agreed that the burning of synthetics and plastics was a problem that needed to be addressed, other aspects of the proposed rulemaking were problematic. Harry Furguson stated that he thought the new rule was not necessary and that it was difficult to get DEC to respond to problems now. Carl F. Wenner also spoke against the proposed rule.

Canton

Approximately thirty persons attended this hearing session, held on Tuesday evening, August 5, 2008 at the Richard W. Miller Campus Center, State University of New York, Canton. Seventeen persons offered comments on the proposed regulations.

Thomas Morgan, an environmental engineer with the Department's Division of Air Resources, gave Department Staff's opening statement on the proposed revisions. Mr. Morgan also gave a slide presentation during a question and answer session held immediately prior to the hearing.

Nine speakers favored the proposed regulations, some with reservations. These speakers often cited the adverse health effects of open burning, including adverse effects on crops and dairy cattle from the deposition of toxics released during burning. Several speakers who favored the regulations nevertheless questioned whether the ban on burning brush and other vegetative matter was necessary. Along with her comments, Ms. Luke Dailey presented a petition which she stated was signed by 529 persons who generally support the proposed regulations.

Eight speakers opposed the regulations, citing a variety of reasons, including the cost of other forms of disposal, the increased use of and need for landfills, and the potential increase in illegal dumping. Several speakers, argued for more strict enforcement of existing restrictions on open burning. Along with his comments, Mr. Dan Honahan presented a petition which he stated was signed by 709 persons who oppose the proposed regulations.

Dunkirk

The Dunkirk hearing was held on August 6, 2008 at the Jamestown Community College Training Center, Dunkirk, New York. An informational session was held immediately prior to the legislative hearing. Larry Sitzman, Regional Air Pollution

Control Engineer from the Department's Region 9 office conducted the information session. A power point presentation was given outlining the proposed regulations and the Department's goals in revising the regulations. The public's questions were addressed during this session. At 5:00 p.m. the legislative hearing began with Mr. Sitzman giving a brief overview of the proposed Part 215 regulations. The proposed part 191 regulations would not be applicable in the Dunkirk area and Department Staff did not address them at the hearing. Twelve persons spoke at the legislative hearing, nine in favor, two opposed and one speaker who had questions about the regulations. Those opposed to the proposed regulations questioned the added cost to homeowners and farmers if they can no longer burn their trash. Some questioned whether local landfills could support the additional trash intake. One speaker noted that he can not dispose of pesticide and fertilizer bags at his local landfills and questioned what he is supposed to do with them if he can not burn them. As at previous hearings, some questioned why they could not continue to burn yard waste. The speakers talked about invasive plants that threaten crops that are regularly collected on farms and need to be disposed of, as well as natural materials that wash up on their lakefront properties. The speakers stated that they have regularly burned the natural materials once or twice a year in the past. They questioned how they would transport such materials to a landfill if they can no longer burn them. Department Staff indicated to the audience that they may revise the proposed regulations to allow the burning of natural materials.

Belmont

The Belmont hearing was held on August 7, 2008 at the Allegany County Office Building, Belmont, New York. As with the Dunkirk hearing, an informational session was held before the legislative hearing. The crowd numbered approximately 60 people and 28 people spoke. Department Staff first summarized the proposed regulations and then public comments were taken. Two people spoke in favor of the proposed regulations and two people spoke in favor of portions of the regulations and in opposition to portions of the regulations. The remaining speakers opposed the regulations. Local government resolutions opposing the proposed regulations were presented as well as letters from local elected officials who were not attendance who opposed the proposed regulations. Similar arguments made at prior hearings were made again at the Belmont hearing: costs to homeowners and farmers, hardship on farmers, costs to local municipalities and infringement on rights of citizens on their private property.