New York Law Journal
SERVING THE BENCH AND BAR SINCE 1888
WWW.NYLJ.COM
An ALM Publication
VOLUME 258—NO. 18
THURSDAY, JULY 27, 2017

State Environmental Regulation

Expert Analysis

Agency Proposes New Regulation On Perc Use by Dry Cleaners

According to the New York State Department of Environmental Conservation (NYSDEC), there are about 2,000 dry cleaning facilities in New York state that use perchloroethylene ("perc") as the solvent in their dry cleaning machines. Most of these facilities are located within the New York City metropolitan area.

Twenty years ago, in 1997, the NYSDEC enacted a regulation aimed at minimizing the public's exposure to perc vapors by reducing and controlling releases of perc from dry cleaning establishments. The regulation deals with design and performance standards for dry cleaning machines, ventilation standards, operation and maintenance requirements, and operator training and certification. The regulation has deadlines for replacing older, outdated machines that are more pollution-prone with modern machines (so-called fourth generation machines) that employ vapor protection devices to prevent perc from migrating from the machines into adjacent spaces or the ambient air.

By **Charlotte A. Biblow**

Although the regulation encourages dry cleaners to switch to alternate solvents, the NYSDEC reports that about 70 percent of the dry cleaners located in the state still use perc as their solvent of choice. This is because perc has good cleaning properties, is nonflammable, and is cost effective.

Now, the NYSDEC is proposing to repeal the existing regulation, 6 NYCRR Part 232, and to replace it with a revised and retitled Part 232, Dry Cleaning Facilities (the proposal) that would govern facilities operating perc equipment or alternative solvent dry cleaning equipment. (These non-perc facilities currently are regulated under 6 NYCRR Part 212.)

A number of deadlines in the proposal are several years in the future, but dry cleaners in New York City and the rest of the state (other than those that use water-based cleaning processes or liquid carbon dioxide, which are exempt) will find that the proposal imposes significant financial and management costs on them. Given its implications for dry cleaners, and for manufacturers of dry cleaning equipment, landlords who lease property to dry cleaners, residents or tenants in those buildings, and workers at these facilities, attorneys who represent any of these parties should become familiar with the proposal's contents.

> One thing is certain: Expensive change is coming to the dry cleaning industry in New York.

General Provisions

The proposal is divided into three primary subparts, plus a severability section. The first subpart contains general provisions, including more than 70 important definitions. For

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example, the proposal defines "approved alternative solvent" as a solvent other than perc that is used as the primary solvent in a dry cleaning machine and has been approved for this use by the NYSDEC.

A dry cleaning facility that is located in a building with another commercial business but no residences is a "co-located commercial facility," while a dry cleaner in a building with a residence, with or without another commercial business, is a "co-located residential facility." This difference is important as the requirements for facilities in residential buildings are more stringent than for those located elsewhere.

The first subpart of the proposal contains definitions. For example, the definitions of first, second, third, and fourth generation dry cleaning machines are found in this part and reflect the development of this equipment over the years. First generation dry cleaning equipment consists of separate machines to clean and dry, and uses or reclaims perc. This type of equipment requires manual transfer from the one machine to the other. A second generation machine is a "dry-to-dry vented perc dry cleaning machine" not vented to a refrigerated condenser. These machines wash, extract, and dry in the same unit, introduce fresh air into the unit during the last step of drying, and exhaust to the outside air. A third generation machine is a "closed-loop" perc dry cleaning machine equipped with a refrigerated condenser that has an external door fan that vents to the outside air upon completion of the dry cleaning cycle and after the machine door is opened. A fourth generation machine is a non-vented, closed-loop perc dry cleaning machine with both a primary and secondary control system. The primary control is a refrigerated condenser and the secondary control is a carbon absorber. A fourth generation perc dry cleaning machine that complies with the proposal's testing requirements and design and performance standards is a "certified" dry cleaning machine.

Another important definition is "major dry cleaning facility." That is any dry cleaning facility that emits, or has the potential to emit, more than 10 tons per year of a hazardous air pollutant. Dry cleaners using perc are considered major dry cleaning facilities if their perc consumption is greater than 2,100 gallons per year.

Dry cleaners using alternative solvents classified as volatile organic compounds (VOCs) may be considered major dry cleaning facilities if their yearly solvent consumption exceeds 6,000 gallons. Facilities located in the New York City metropolitan area and parts of Orange County are considered major dry cleaning facilities if they emit or have the potential to emit more than 25 tons per year of VOCs; the threshold in other parts of the state is 50 tons per year of VOCs. Most alternative dry cleaning solvents approved for use in New York state are classified as VOCs (although decamethylcyclopentasiloxane—green earth—is not classified as a VOC).

The first subpart also discusses spill containment, solid and hazardous waste management, emergency response, and permitting requirements for all dry cleaning equipment. For example, dry cleaners that use perc must have an air facility permit or registration to be able to operate. Major dry cleaning facilities that use perc must have a Title V air permit.

It also contains new posting requirements for dry cleaners that use alternative dry cleaning solvents, in addition to the posting notice requirements already mandated for dry cleaners that use perc. The NYSDEC requires the notices to inform building tenants and customers of the dry cleaning solvents that dry cleaners use in their equipment.

Perc Equipment

The second subpart of the proposal applies to perc dry cleaning equipment.

Here, the proposal modifies the requirements for perc dry cleaning equipment to ensure they are consistent with the federal perc air emission standards for dry cleaning facilities, found at 40 CFR Part 63, Subpart M. This includes the federal ban on the operation of perc machines at co-located residential facilities by Dec. 21, 2020. The proposal allows NYSDEC to grant variances allowing the relocation of used, compliant, fourth generation perc dry cleaning machines that are less than 10 years old to new standalone locations under the same ownership. The Dec. 21, 2020 deadline, however, cannot be extended by a variance.

The proposal requires that third generation machines must be removed from service by Dec. 31,

2021. In addition, the proposal bans the installation of door fans control systems, even on fourth generation machines.

Alternative Equipment

The proposal's third subpart discusses alternative solvent dry cleaning equipment. It contains an approval process for alternative dry cleaning solvents.

The proposal prohibits, by Dec. 31, 2031, the operation of any alternative solvent transfer machine in which washing, washing with extraction, extraction, or drying is performed in a single machine that requires the transfer of articles from one machine to another to complete the dry cleaning process. This is to prevent the release of solvents during the transfer process.

In addition, this subpart discusses standards and specifications for the installation and operation of alternative solvent dry cleaning machines, operator leak inspection and self-monitoring requirements, operation and maintenance requirements, and record keeping requirements for these machines, as well as manufacturer equipment testing requirements. Among other things, operators of alternative solvent dry cleaning facilities will have to keep records of solvent purchases, leak inspections, emergency response and corrective action, and required operation and maintenance activities. These records have to be retained on-site for at least five years. Every alternative solvent facility also will have to retain, on-site, a copy of the design specifications and operating manual for each dry cleaning system and emission control device located at their facility.

Again recognizing the "economic impact" of the proposal on alternative solvent dry cleaners that have to relocate their businesses as a result of the proposal, the NYSDEC proposal allows used compliant alternative solvent dry cleaning machines that are less than 10 years old to be relocated from a permitted dry cleaning facility to any facility under the same ownership, if the facility meets all other applicable requirements and obtains a new or modified air permit.

According to the NYSDEC, the proposal is expected to impact owners or operators at 1,007 non-major, co-located facilities.

The Costs

According to the NYSDEC, the proposal is expected to impact owners or operators at 1,007 non-major, co-located facilities. These facilities will have to purchase a $400 air sampling pump and single use colorimetric sampling tubes, costing about $7 apiece, to conduct the required air testing. The NYSDEC also estimates that a new compliant fourth generation perc dry cleaning machine typically costs about $25,000 for a 25 pound machine and $90,000 for a 90 pound machine; these machines only are available by special order and require a 50 percent down payment. The NYSDEC also estimates that removing retired equipment will cost $1,000 to $7,000.

The NYSDEC estimates that a new compliant alternate solvent dry cleaning machine, without a $12,000 to $23,000 still to route vapors back into the machine, costs about $32,000 for a 25 pound machine and $100,000 for a 90 pound machine. The NYSDEC notes that the cost to install an alternative solvent dry cleaning machine in New York City will be higher due to the need for various city permits.

There also are financial and management costs to the proposal's new paperwork, record keeping, and reporting requirements for dry cleaning facility owners and dry cleaning equipment manufacturers and vendors.

With the July 7 deadline for comments on the proposal having passed, one can expect that the NYSDEC will finalize the proposal in short order. One thing is certain: Expensive change is coming to the dry cleaning industry in New York.