

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel
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NOV 03 2021

RE: Continuation of Enforcement Discretion under Subpart 226-1 (Solvent Cleaning Processes) until December 1, 2022

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 Subpart 226-1 (Subpart 226-1) concerning the regulation of solvent cleaning processes. The Department will exercise this authority regarding the provisions set forth below in lieu of full compliance with Subpart 226-1. This continues the enforcement discretion issued on August 6, 2020 for an additional 12 months, until December 1, 2022.

In 2019, the Department revised Subpart 226-1 to expand certain requirements to facilities that carry out solvent cleaning processes, including lowering the VOC content of cleaning solution for certain solvent cleaning facilities. These facilities were required to be in compliance with the new requirements by December 1, 2020.

In 2020, the Governor 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. Due to the COVID-19 emergency, industries that provided solvent cleaning process parts and services in New York informed the Department that production and distribution capacity has been impacted by the pandemic, including delays in the sourcing of equipment and machine parts necessary for owners and operators of solvent cleaning processes to comply with the December 1, 2020 compliance date.

To address the impacts caused by the COVID emergency, the Department issued an enforcement discretion letter on August 6, 2020, which provided owners and operators of facilities that carry out solvent cleaning processes an additional 12 months, until December 1, 2021, to comply with requirements under revised section 226-1.4(a)(4) that became effective on November 1, 2019.

Unfortunately, continuing impacts on New York businesses and the regulated community caused by the COVID-19 pandemic have once again necessitated the need for enforcement discretion. In particular, the industry that provides solvent cleaning process parts and services in New York informed the Department that continuing supply chain issues due to the pandemic have impacted its ability to obtain the parts and equipment necessary for owners and operators of solvent cleaning processes in New York to comply with Subpart 226-1. These supply chain issues have also caused a critical shortage of compliant low-VOC cleaning solutions, also necessary for owners

and operators of solvent cleaning processes in New York to comply with the current December 1, 2021 compliance date provided under the August 6, 2020 enforcement discretion letter.

Therefore, acknowledging the continuing impacts on New York businesses and the regulated community due to the pandemic, the Department is providing under this enforcement discretion to owners and operators of facilities that carry out solvent cleaning processes an additional 12 months, until December 1, 2022, to comply with requirements under revised section 226-1.4(a)(4) that became effective on November 1, 2019. Specifically, owners and operators conducting solvent cleaning using cold cleaning degreasing when the internal volume of the machine is greater than two gallons may continue to use a cleaning solution with a vapor pressure of 1.0 mm Hg, or less, at 20°C to demonstrate compliance with this subdivision until December 1, 2022. All other provisions of Subpart 226-1 remain in effect and will be enforced.

Thank you for your cooperation in this matter. Questions regarding this enforcement discretion should be directed to Khai Gibbs, Esq. of the Office of General Counsel at (518) 402-9185. Technical questions regarding compliance options under Subpart 226-1 should be directed to Mike Miliani of the Division of Air Resources at (518) 402-8403.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Berkman', with a long horizontal flourish extending to the right.

Thomas S. Berkman
Deputy Commissioner
and General Counsel

cc: Regional Directors
Regional Air Pollution Control Engineers
Regional ECO Cpt.

EMDS #661124v1