NEW YORK STATE | Department of Environmental Conservation

KATHY HOCHUL
Governor

SEAN MAHAR
Interim Commissioner

JAN 31 2025

**RE: Enforcement Discretion 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), Hydrofluorocarbon Standards and Reporting, that became effective on January 9, 2025.

The Department will exercise its authority regarding Section 494-1.4(f)(1) and delay the enforcement of the prohibition to "sell, distribute, offer for sale or distribution, make available for sale or distribution, purchase or receive for sale or distribution, or attempt to purchase or receive for sale or distribution in New York State" bulk regulated substances with a global warming potential (GWP100) greater than 2200 as incorporated by reference from Cal. Health & Safety Code Section 39735(b)(2). This enforcement discretion is being issued in order to allow for regulated entities to acquire regulated substances needed to service equipment while leak repairs required in the rule are being completed.

The supply of high global warming potential substances for servicing and repair of leaking equipment is an ongoing source of greenhouse gas emissions, per the New York State Climate Action Council Scoping Plan. In addition to the Sections 494-1.4 and 1.7 provisions to manage the supply of virgin bulk regulated substances, Sections 494-2.2 through 2.7 establish requirements for owners and operators of certain equipment to manage this ongoing leakage. As of January 9, 2025, owners and operators of equipment containing more than 50 pounds of refrigerant, including R-404a and R-507a, are required to repair leaks detected in the covered equipment, per Section 494-2.4, and may be required to retrofit or replace the equipment if the leakage persists, per Section 494-2.5. Additionally, the U.S. Environmental Protection Agency (USEPA) adopted regulations in 2024 requiring that only reclaimed refrigerant be used for servicing supermarket systems, refrigerated transport, and automatic ice machines starting in 2029 (see 40 CFR 84.112(e)).

**Enforcement Discretion:**

1. The Department will exercise its enforcement discretion authority regarding Section 494-1.4(f)(1) for 90 days from the effective date of the rule, or from January 9, 2025 to April 9, 2025.

2. The Department will further exercise its enforcement discretion authority regarding Section 494-1.4(f)(1) as it applies to the bulk regulated substances, R-404a and R-507a, through December 31, 2025.

3. The Department will also exercise its enforcement discretion authority regarding entities with pending applications for a Force Majeure variance per Section 494-1.8(b)(2) in cases of a force majeure event. In these cases, provided the applicant meets all requirements for an Application for a Variance, the requirements of any provision in Section 494-1.4 will not be enforced during the pendency of the approval and disapproval process in Section 494-1.8(d). Applicants must submit a variance application within 30 days of such force majeure event. Applicants must explain any force majeure event in detail in an Application for a Variance under Section 494-1.8, and when such non-compliant regulated substance or equipment was used or installed. The Department reserves the right to disapprove an Application for Variance, in which case the terms of this exercise of enforcement discretion would expire, and the Department may then take enforcement action. This enforcement discretion will expire either on December 31, 2027, or an amendment to Section 494-1.8 is promulgated, whichever is earlier.

All other provisions of Part 494 beyond what is specified in the Enforcement Discretion section above, items 1 through 3, remain in effect and will be enforced.

Thank you for your cooperation in this matter. Questions regarding this enforcement discretion or Part 494 should be directed to the Department's Office of Climate Change at climate.regs@dec.ny.gov.

Sincerely,

Thomas S. Berkman
Deputy Commissioner
& General Counsel