



TOWN OF ANDOVER

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To: Board of Health

From: Thomas Carbone
Director of Public Health

Date: October 2, 2024

Re: PFAS Regulatory Research

Since July of this year, we have received email correspondence, either addressed to the Board of Health, or copied to the Board, regarding PFAS concerns around the expansion of the Gillette facility at 30 Burt Road. I have merged all of those emails into a single 10 page document for the Board's convenience, and it is located separately in your meeting packet.

Municipal staff have invested multiple hours in reviewing the concerns, as well as the town's regulatory authority in the matter. The following is a summary of our finding:

1. The facility has received an updated Air Permit from the Massachusetts Department of Environmental Protection (MDEP); that permit does not regulate PFAS in any way.
2. Gillette reports that the PFAS material that they are using is currently unregulated by the state and federal authorities, and any release would be as part of a Volatile Organic Compound (VOC) release that is permitted under the MDEP air permit. It does not, for example, include any of the six PFAS chemicals subject to drinking water standards by the MDEP or the PFAS chemicals which will be regulated by the federal Environmental Protection Agency under revised water standards.
3. Should the particular PFAS compound become regulated by the state or federal government, the company would be required to amend its air permit to gain compliance with those new regulations.
4. The material identified as PFAS does not enter the wastewater system at all; any material determined as waste is transported off site as hazardous waste, a process regulated by MDEP.
5. Exterior storm water systems will not receive the PFAS compound in question. If an accidental release occurs outside, the area would be addressed under the MDEP's Waste Site Cleanup Regulations (310 CMR 40.0000), a framework that has existed for over 35 years.
6. MDEP currently regulates some PFAS materials in drinking and wastewater; it is expected that the number of compounds regulated will expand should the scientific process show a need for regulation. The Gillette site is not located in a drinking water protection area.

7. To our knowledge, no other community in Massachusetts is regulating PFAS in any way. During one conversation that I had with the Massachusetts Association of Health Boards (MAHB), it was suggested that Oak Bluffs and Nantucket were regulating PFAS, but further research brought clarity that those Boards of Health were concerned with protecting their sole-source drinking water aquifers from PFAS contamination. In the end, neither Board is regulating PFAS locally.
8. In Oak Bluffs, the Planning Board made a decision that prohibited the installation of an athletic turf field; that decision was overturned by the Land Court, which ruled that the Planning Board lacked authority to regulate PFAS in this manner.
9. I have seen one legal opinion from a municipal counsel suggesting that state and federal regulations preempt local regulation of PFAS in this manner. Our Town Counsel concurs based upon his reading of *Town of Wendell v. Attorney General*, 394 Mass. 518 (1985), a case where both a local bylaw and Board of Health regulation attempting to regulate pesticides was preempted by state and federal laws governing the use of pesticides.
10. Requesting that a peer review of an issue requires a regulatory framework to compare the operations with; we have no local regulatory framework to review compliance for.
11. Other Chemical Regulatory Frameworks at this Site:
 - a. Any release of a chemical that exceeds a regulatory reporting limit is addressed through MDEP's Waste Site Cleanup Regulations, and the Health Division receives notification of that release. When the release is an acute release, we often respond with the Fire Department to assist in ensuring chemical containment. The last such response occurred in 2008, and involved a leaking fuel tank on a truck on the property.
 - b. The EPCRA Tier II Reporting framework is a federal program requiring certain businesses to file a chemical inventory with local emergency responders. This is intended to inform first responders as to the hazardous materials that they may be exposed to during a response there. Gillette routinely files such a report.
 - c. Andover Fire Rescue is currently awaiting the submittal of a third-party review concerning chemical transport, storage, and use on the site. This review will inform the building permit review as well as Fire Rescue's permitting for hazardous materials and flammables.