November 12, 2020
Honorable Andrew M. Cuomo
Executive Chamber
Capitol Building
Albany, N.Y. 12224

RE: S.7880B (Breslin)/A.9952B (McDonald)

Dear Governor Cuomo:

We urge you to sign S.7880B/A.9952B, to prohibit the burning of toxic firefighting foam at the Norlite Incinerator in Cohoes, NY. This would protect New Yorkers living, working, and recreating in close proximity to the facility, which is located in a state-designated environmental justice area.

The Department of Defense (DOD), the nation’s largest user of firefighting foam containing PFAS, facilitated contracts to burn millions of gallons of the unused aqueous film forming foam (AFFF) chemicals in incinerators across the country. However, DOD failed to conduct any environmental review before approving the incineration of its stockpiles of the toxic “forever chemicals.” This decision placed the burden of pollution and harm to public health on incinerator communities, including one city in New York’s Capital Region, Cohoes.

There is no evidence that burning this toxic material is safe. Only a handful of hazardous waste incinerators in the country burn AFFF, and there is no proof that any of these incinerators completely destroy all the foam’s harmful chemical components. As stated in a July 2019 EPA technical brief, “Incomplete destruction of PFAS compounds can result in the formation of smaller PFAS products, or products of incomplete combustion, which may not have been researched and thus could be a potential chemical of concern. The effectiveness of incineration to destroy PFAS compounds and the tendency for formation of fluorinated or mixed halogenated organic byproducts is not well understood.”

In a time when most non-urgent legislative priorities have been set aside, rightfully so, to focus on emergency pandemic response and racial and criminal justice reform, New Yorkers have identified this issue as one that cannot and should not be sidelined. Soon after the legislature’s unanimous passing of S.7880B/A.9952B, the City of Cohoes imposed a one-year moratorium on incineration of AFFF. On June 18, 2020, the DEC announced new actions to further restrict the incineration of firefighting foam containing PFAS compounds at the Norlite facility. This seems like a reasonable, proactive step in the right direction, given that the DEC was specifically created by the legislature to
manage and regulate this type of industry. DEC’s announcement that the agency will become more directly involved in supervising operations at the facility could imply that a bill addressing these problems would be unnecessary and even potentially redundant. On the contrary, this bill is immensely important, because based on its actions (and inaction) thus far, the DEC has failed to handle this situation appropriately on numerous levels. Examples of this include:

- For two years, the clandestine arrangement between DOD and Norlite continued without public knowledge. The inner-workings of the covert deal only became apparent in February 2020, as the result of a Freedom of Information request filed by environmental activists. Had this Freedom of Information request not been filed, citizens would likely still have no knowledge of this insidious operation.

- Norlite burned 2 million pounds of AFFF before conducting any stack tests or environmental monitoring to ensure that incineration was actually destroying these toxic chemicals. This occurred under the watchful eye of a full-time DEC monitor on site at the facility.

- DEC says there is a "national knowledge-gap regarding the potential for thermal destruction of PFAS compounds" and it will collaborate with the Trump EPA to try to figure out how to do a test burn to burn toxic firefighting foam at incinerators. DEC said the test burning would not be conducted at Norlite, but has not explicitly ruled out that burning of AFFF could be allowed at Norlite in the future if found to be safe by Trump’s anti-environment EPA.

Regulatory action by DEC is not enough to protect residents in Cohoes from the burning of toxic firefighting foam. We urge you to sign this bill for the following reasons:

- Harmful perfluorinated compounds like PFOA and PFOS, the same chemicals that poisoned Hoosick Falls and Newburgh, are key ingredients in AFFF. New York state should take every measure and precaution to avoid further tragic public health crises that have occurred in our state as the result of these chemicals.

- New York cannot put its fate in the hands of the federal government, especially a compromised Trump EPA, to assess these issues appropriately. The collaborative feasibility studies conducted by the EPA in other states will likely take years to plan, facilitate, and complete, and are presumably not seen as a current priority. If and when testing is conducted, it is possible that findings presented by the EPA unscrupulously deem the burning of toxic firefighting foam through incineration as safe and effective. This could prompt DEC to allow burning of AFFF at Norlite in the future, especially considering the fact that the DEC itself has stockpiles of the chemicals. New York needs to protect its residents now, rather than wait years for a verdict from the EPA that is
potentially questionable. This bill would provide such protection, permanently, and rule out the risk of DEC allowing the burning of this toxic material in Cohoes in years to come.

- Norlite, which is not considered a hazardous waste facility, has had a poor history of complying with operating permits for decades, long before it ever received AFFF.\(^1\) This bill is narrowed in scope to focus on the city of Cohoes, as opposed to the whole state. This will provide permanent protection for an already vulnerable community that has clearly expressed it wants these operations to cease permanently.

The DEC has had many opportunities to show leadership on this issue, and has failed to do so. The best way to ensure true, meaningful protection is through the initiative of the NYS legislature that has recognized their obligation to “right” a long term public “wrong.” We encourage you, Governor Cuomo, in this historic moment to join the legislature in bringing long overdue protection to the City of Cohoes.

Sincerely,

Elizabeth Ahearn
Conservation Associate, Sierra Club Atlantic Chapter
Lifelong Cohoes resident

Roger Downs,
Conservation Director, Sierra Club Atlantic Chapter

\(^1\) https://www.dec.ny.gov/docs/regions_pdf/norliteorder.pdf.pdf