

## New Hoosick Falls Law: Was it Necessary?

On Thursday, July 21, 2016, New York State Governor Andrew Cuomo signed legislation modifying the statute of limitations for personal injury claims arising from exposure to hazardous substances<sup>1</sup>. Commonly known as the “Hoosick Falls” legislation, this new law allows the three year statute of limitations period for personal injury actions to commence when a hazardous exposure site has been given federal or state Superfund designation.

In January, the Hoosick Falls Saint-Gobain Performance Plastics site was classified as a state Superfund site after Perfluorooctanoic acid (PFOA) was found in the village’s water supply.<sup>2</sup> This water contamination crisis prompted the New York State Assembly to pass the Hoosick Falls legislation, A9568A, on May 24, 2016. An identical bill, S6824A, was passed by the New York State Senate on June 16, 2016. Now signed, this legislation resets the statute of limitations commencement to the January Superfund designation and gives Hoosick Falls residents three years to bring claims against the polluter. There is potential for the commencement date to be extended even further if the Saint-Gobain site becomes a federal Superfund site. The new legislation may be read to reset the statute of limitations commencement date to the most recent site designation if it becomes both a state and federally designated site.

The New York State Assembly, in its Memorandum in Support of Legislation, asserted that “[i]n many cases, the statute of limitations to bring personal injury action has long since run before any contamination was ever discovered. This bill seeks to address this inequity and give those who have been sickened legal recourse to be made whole.”<sup>3</sup> The memorandum attempts to justify this new legislation by providing Hoosick Falls residents legal recourse for unknown claims when the statute of limitations has expired. While this current legislation, in its best intentions, attempts to provide remedies to those who have no timely claim, many Hoosick Falls’ residents already have timely legal recourse under existing state or federal law. This prompts several questions as to the necessity and applicability of the new Superfund designation legislation.

### **The State of the Law Prior to the Hoosick Falls Bill**

Under New York State’s existing statute of limitations law, NY CPLR § 214-c, exposure claims must be filed within three years of discovery of the injury or within three years of when the injury should have reasonably been discovered.<sup>4</sup> Under this law, many Hoosick Falls residents’ claims would likely fall outside the applicable statute of limitations period, because they did not know the cause of their illnesses. However, existing law provided an exception where “technical, scientific or medical knowledge and information” was insufficient to discover the cause of the injury. Under these circumstances, if the cause of the harm is discovered within five years of the injury, plaintiffs are granted an additional year to file a claim against the polluter.<sup>5</sup> This exception arguably would save many of the Hoosick Falls claims. But even if this state statute were to be inapplicable, federal law would have provided appropriate legal recourse.

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<sup>1</sup> N.Y. CPLR 214-(f), An Act to amend the civil practice law and rules, in relation to the tolling of the statute of limitations relating to personal injury cause by contact with or exposure to any substance or combination of substances found within an area designated as a Superfund site. A9568A, signed July 21, 2016.

<sup>2</sup> Governor Cuomo Announces Immediate State Action Plan to Address Contamination in Hoosick Falls, Jan. 27, 2016, <https://www.governor.ny.gov/news/governor-cuomo-announces-immediate-state-action-plan-address-contamination-hoosick-falls>.

<sup>3</sup> N.Y. State Assembly, Memorandum in Support of Legislation, Bill No. A9568A, (2016).

<sup>4</sup> N.Y. CPLR 214-c(2)

<sup>5</sup> N.Y. CPLR 214-c(4)

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) modifies states' statute of limitation periods for individuals exposed to hazardous waste from facilities.<sup>6</sup> CERCLA § 309, 42 U.S.C. § 9658, preempts state law for hazardous exposure injuries by deferring the statute of limitations commencement date. Most importantly, 42 U.S.C. § 9658 modifies the commencement date meaning to “. . . the date the plaintiff knew or reasonably should have known that the personal injury . . . [was] caused or contributed to by the hazardous substance or pollutant or contaminant concerned.”<sup>7</sup> Under CERCLA, the statute of limitations commencement date for the residents of Hoosick Falls would not begin until the plaintiffs knew or reasonably should have known that their injury was caused by the PFOA contamination in the village's water.<sup>8</sup> This greatly extends the time residents have to file personal injury claims, even without the new legislation.

Key elements of CERCLA 42 U.S.C. § 9658:

- Provides for an exception to state law personal injury claims arising from exposure to hazardous substances, pollutants or contaminants, released into the environment from a facility.
- Resets the commencement date for such injuries to be the later of the state or federally required commencement date.
- Modifies the commencement of the statute of limitations period to the date the plaintiff knew or reasonable should have known the personal injury was caused by the hazardous exposure.

### **Comparison of the Hoosick Falls Law to CERCLA**

The Hoosick Falls law and CERCLA arise from the same justification: to provide a fair timeframe for legal recourse from latent injuries caused by unknown exposure to hazardous substances<sup>9</sup>. Even so, the two laws have key differences.

- The Hoosick Falls law extends the statute of limitations commencement to the Superfund designation date regardless of plaintiff's knowledge of injury or cause.
- CERCLA triggers the statute of limitations commencement based on a knowledge standard that is specific to each individual plaintiff. Then, the federal law applies the state statute of limitations period.
- The Hoosick Falls law indefinitely tolls the statute of limitations commencement date until Superfund designation. This designation could be years after the plaintiff knows of his or her injury and its cause. With this, the Hoosick Falls law allows for the revival of otherwise time-barred claims.

So, why was the Hoosick Falls law necessary? Most, if not all, Hoosick Falls plaintiffs would have legal recourse under 42 U.S.C. § 9658. The only residents falling outside the purview of the federal law would be claimants who knew the cause of their injury, hazardous exposure from the PFOA, but did not sue within the necessary statute of limitations. The Hoosick Falls legislation now allows these exact time-barred plaintiffs to revive such claims after Superfund designation, completely defeating the purpose of having any statute of limitations period for such claims.

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<sup>6</sup> Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9658.

<sup>7</sup> Id.

<sup>8</sup> As construed by the Second Circuit, a plaintiff would have a year after ascertaining the cause of his or her injury. *Freier v. Westinghouse Elec. Corp.*, 303 F.3d 176 (2d Cir. 2002).

<sup>9</sup> H.R. Conf. Rep. No. 99-962 (1986) stating “[i]n the case of long-latency disease, such as cancer, a party may be barred from bringing his lawsuit if the statute of limitations begins to run at the time of the first injury rather than from the time when the party ‘discovers’ that his injury was caused by the hazardous substance . . .”

## Superfund Designation Under the Hoosick Falls Law

Apart from the fact that the Hoosick Falls law was probably unnecessary to preserve the claims of Hoosick Falls residents or other similarly situated plaintiffs, the law lacks clarity as to what it means for an area to be “designated as a Superfund site,” as stated in the legislation. As it relates to “designation” under the federal Superfund law (CERCLA), it is worth noting that CERCLA does not use the term “Superfund site”; indeed, it rarely uses the word “site” at all. CERCLA liability arises from “releases” or “threatened release” from “facilities.” “Facility” itself is broadly defined to include a variety of listed things or places, plus “any site or area where a hazardous substance has ... come to be located.” Being “designated” as a Superfund site for purposes of the Hoosick Falls law may have been intended to mean listed on the National Priorities List (“NPL”) compiled by EPA pursuant to CERCLA § 105, but that section refers to a list of “national priorities among the known releases or threatened releases throughout the United States.” The statute does not refer to “sites,” nor is liability dependent upon a release being on the NPL. So it is unclear what constitutes being “designated as a Superfund site” under federal law.

As it relates to designation under the New York Environmental Conservation Law, the statute most probably refers to listing on the New York State Registry of Inactive Hazardous Waste Disposal Sites created pursuant to ECL § 27-1305, though the Hoosick Falls law actually refers to ECL § 27-1303 which requires counties to identify “suspected inactive hazardous waste disposal sites” and report them to the DEC. Assuming listing on the registry is what is meant by designation, other questions of interpretation may arise. For example, sites placed on the registry are classified into one of five classifications, only two of which refer to contamination at the site posing a significant threat to public health and the environment. If a site is placed in one of the other three classifications when it is listed on the registry, does it still constitute designation as a state Superfund site for purposes of the statute of limitations? Likewise, a site might be identified by the DEC as a suspected site requiring more investigation before formal classification on the registry. Will that be counted as being “designated” so as to start the limitations period running?

## Conclusion

The Hoosick Falls legislation appears to have been adopted to address a perceived problem that actually did not exist, as CPLR 214-c(4) and CERCLA § 309 were already available to postpone the accrual date of a plaintiff’s personal injury cause of action until he or she discovered the cause of their injury. The ambiguities in the statute as to what constitutes designation as a Superfund site are likely to cause mischief, resulting in unnecessary litigation. In any event, plaintiffs now have an additional basis to avoid dismissal on the basis of the statute of limitations, and a possibility that already time-barred claims will be revived.

For more information, please contact: [Thomas R. Smith](#), [Richard L. Weber](#), any of the [attorneys](#) in our [Toxic Tort and Environmental Litigation Practice](#), or the attorney in the firm with whom you are regularly in contact.



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