S T A T E O F N E W Y O R K

S. 6475--A A. 9276--A

S E N A T E - A S S E M B L Y

February 14, 2012

IN SENATE -- Introduced by Sens. GIANARIS, OPPENHEIMER, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. LAVINE -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to indoor air quality in ice skating rinks

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 13 of the public health law is amended by adding a new title 14 to read as follows:

TITLE 14

INDOOR AIR QUALITY IN ICE SKATING RINKS

SECTION 1389-HH. DEFINITIONS.
1389-II. CERTIFICATE OF ACCEPTABLE AIR QUALITY.
1389-JJ. MAINTENANCE OF ACCEPTABLE AIR QUALITY.
1389-KK. RULES AND REGULATIONS; RECORDKEEPING; PENALTIES.

S 1389-HH. DEFINITIONS. AS USED IN THIS TITLE: 1. "AIR QUALITY MEASURING DEVICE" MEANS PUMP AND COLORIMETRIC TUBE OR ELECTRONIC DIRECT READ GAS DETECTION EQUIPMENT, OR ANY SIMILAR EQUIPMENT APPROVED BY THE COMMISSIONER, UTILIZED FOR THE SAMPLING AND MEASUREMENT OF CARBON MONOXIDE AND NITROGEN DIOXIDE, WHICH EQUIPMENT SHALL BE CAPABLE OF MEASURING CARBON MONOXIDE AIR CONCENTRATIONS IN A RANGE FROM ZERO TO ONE HUNDRED FIFTY PARTS PER MILLION WITH A RESOLUTION OF ONE PARTS PER MILLION, OR MEASURING NITROGEN OXIDE AIR CONCENTRATIONS IN A RANGE FROM ZERO TO FIVE PARTS PER MILLION WITH A RESOLUTION OF ONE-TENTH PARTS PER MILLION.

2. "CORRECTION AIR LEVEL" MEANS A STANDARD OF AIR CONTAMINATION WHEN A SINGLE AIR SAMPLE DETECTS THE PRESENCE IN AN ICE ARENA OF CONCENTRATIONS OF MORE THAN THIRTY PARTS PER MILLION BUT LESS THAN ONE HUNDRED TWENTY-FIVE PARTS PER MILLION OF CARBON MONOXIDE OR MORE THAN FIVE-TENTHS PARTS PER MILLION BUT LESS THAN TWO PARTS PER MILLION OF NITROGEN DIOXIDE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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3. "NOTIFICATION AIR LEVEL" MEANS A STANDARD OF AIR CONTAMINATION WHEN A SINGLE AIR SAMPLE DETECTS THE PRESENCE IN AN ICE ARENA OF CONCENTRATIONS OF MORE THAN SIXTY PARTS PER MILLION OF CARBON MONOXIDE OR MORE THAN ONE PART PER MILLION OF NITROGEN DIOXIDE, OR WHEN SIX CONSECUTIVE SAMPLES DETECT THE PRESENCE IN AN ICE ARENA OF CONCENTRATIONS OF MORE THAN THIRTY PARTS PER MILLION OF CARBON MONOXIDE OR MORE THAN FIVE-TENTHS PARTS PER MILLION OF NITROGEN DIOXIDE.

4. "EVACUATION AIR LEVEL" MEANS A STANDARD OF AIR CONTAMINATION WHEN A SINGLE AIR SAMPLE DETECTS THE PRESENCE IN AN ICE ARENA OF CARBON MONOXIDE AT CONCENTRATIONS OF ONE HUNDRED TWENTY-FIVE OR MORE PARTS PER MILLION OR OF NITROGEN DIOXIDE AT CONCENTRATIONS OF TWO OR MORE PARTS PER MILLION.

5. "FOLLOW-UP AIR SAMPLE" MEANS AN AIR SAMPLE THAT IS TAKEN AS PART OF A CORRECTIVE ACTION PURSUANT TO THIS TITLE IN ORDER TO DETERMINE WHETHER THE LEVEL OF CARBON MONOXIDE OR NITROGEN DIOXIDE IN AN ICE ARENA HAS BEEN REDUCED TO A SAFE LEVEL FOLLOWING AN EVENT THAT CAUSED A CORRECTION AIR LEVEL, NOTIFICATION AIR LEVEL OR EVACUATION AIR LEVEL FOR EITHER OF THESE SUBSTANCES TO BE MET OR EXCEEDED.

6. "ICE ARENA" MEANS ANY BUILDING WHICH HAS A ROOF AND FULLY ENCLOSED SIDES AND WHICH CONTAINS AN ICE RINK.

7. "ICE EDGING EQUIPMENT" MEANS POWER EQUIPMENT USED TO MODIFY THE PERIMETER OF AN ICE SHEET.

8. "OFFICER" MEANS THE COMMISSIONER, THE HEALTH COMMISSIONER OF A CITY WITH A POPULATION OF OVER FIFTY THOUSAND, THE HEALTH COMMISSIONER OF A COUNTY OR PART-COUNTY HEALTH DISTRICT, THE STATE DISTRICT HEALTH OFFICER, IN WHOSE JURISDICTION AN ICE ARENA IS LOCATED, ANY COUNTY HEALTH DIRECTOR HAVING ALL THE POWERS AND DUTIES PRESCRIBED IN SECTION THREE HUNDRED FIFTY-TWO OF THIS CHAPTER, THE STATE DISTRICT SANITARY ENGINEER OR A GRADE ONE PUBLIC HEALTH ADMINISTRATOR QUALIFIED AND APPOINTED PURSUANT TO PART ELEVEN OF THE SANITARY CODE AND SERVING AS PRIMARY ADMINISTRATOR OF ALL HEALTH PROGRAMS IN A COUNTY OR PART-COUNTY HEALTH DISTRICT.

9. "OPERATOR" MEANS AN OWNER OR ANOTHER PERSON DESIGNATED BY AN OWNER TO BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATION OF AN ICE ARENA.

10. "OWNER" MEANS THE PERSON HAVING LEGAL TITLE TO THE PROPERTY OR BUILDING IN WHICH AN ICE ARENA IS LOCATED. FOR THE PURPOSES OF PUBLICLY-OWNED PROPERTY, "OWNER" MEANS THE CHIEF EXECUTIVE OFFICER OF THE PUBLIC ENTITY THAT OWNS, LEASES OR CONTROLS THE USE OF THE PROPERTY.

11. "RESURFACING MACHINE" MEANS AN INTERNAL COMBUSTION ENGINE-POWERED MACHINE THAT IS USED TO MODIFY THE SURFACE OF AN ICE RINK.

12. "RESURFACING EQUIPMENT" MEANS ONE OR MORE RESURFACING MACHINES AND/OR ICE EDGING EQUIPMENT.

S 1389-II. CERTIFICATE OF ACCEPTABLE AIR QUALITY. 1. NO PERSON SHALL OPERATE AN ICE ARENA IN WHICH A RESURFACING MACHINE IS USED UNLESS THE OFFICER HAS ISSUED THE OPERATOR A CERTIFICATE OF ACCEPTABLE AIR QUALITY FOR THE ICE ARENA. THE CERTIFICATE MUST BE DISPLAYED IN A CONSPICUOUS PLACE IN THE ICE ARENA.

2. THE OFFICER MAY SUSPEND, MODIFY OR REVOKE A CERTIFICATE OF ACCEPTABLE AIR QUALITY FOR CAUSE, OR FOR A VIOLATION OF THE PROVISIONS OF THIS TITLE OR ANY RULES OR REGULATIONS ADOPTED THERETO.

3. THE FEE FOR A CERTIFICATE SHALL BE TWO HUNDRED DOLLARS.

4. THE OFFICER MAY REQUIRE THE OPERATOR TO PERFORM ANY PRELIMINARY TESTS OF AIR QUALITY THAT HE OR SHE DETERMINES TO BE NECESSARY IN ORDER TO CHARACTERIZE THE POTENTIAL FOR EXPOSURE OF ICE ARENA OCCUPANTS TO CARBON MONOXIDE AND NITROGEN DIOXIDE.

S 1389-JJ. MAINTENANCE OF ACCEPTABLE AIR QUALITY. 1. ACCEPTABLE AIR QUALITY CONDITIONS SHALL BE MAINTAINED WITHIN AN ICE ARENA AT ALL TIMES.

2. IN ORDER TO DETERMINE AND MONITOR AIR QUALITY IN ACCORDANCE WITH THIS TITLE, THE OPERATOR SHALL EMPLOY ONE OR MORE AIR QUALITY MEASURING DEVICES ON A DAILY BASIS IN THE ICE ARENA. THE RESULTS OF THE AIR QUALITY SAMPLE SHALL BE RECORDED IN AN AIR QUALITY RECORD LOG IN ACCORDANCE WITH SECTION THIRTEEN HUNDRED EIGHTY-NINE-KK OF THIS TITLE. IF DEEMED NECESSARY OR APPROPRIATE, THE OFFICER MAY REQUIRE THE OPERATOR TO INSTALL ADDITIONAL DEVICES OR USE ANOTHER TYPE OF AIR QUALITY MEASURING DEVICE.

3. THE OFFICER AT ANY REASONABLE TIME MAY ENTER AN ICE ARENA AND CONDUCT AN ON-SITE INSPECTION OF AIR QUALITY, INCLUDING BUT NOT LIMITED TO AFTER HAVING RECEIVED A COMPLAINT OF ELEVATED LEVELS OF CARBON MONOXIDE OR NITROGEN DIOXIDE. FAILURE TO PERMIT SUCH ENTRY AND INSPECTION SHALL BE GROUNDS FOR THE IMMEDIATE REVOCATION OF THE CERTIFICATE OF AIR QUALITY.

4. IF AN AIR QUALITY SAMPLE DETECTS THE PRESENCE OF CARBON MONOXIDE OR NITROGEN DIOXIDE AT CONCENTRATIONS WITHIN THE CORRECTION AIR LEVEL STANDARD, THE OPERATOR SHALL IMMEDIATELY INCREASE THE VENTILATION RATE IN THE ICE ARENA THROUGH ANY APPROPRIATE AND SAFE MEANS, AND SHALL CONTINUE TO PROVIDE SUCH INCREASED VENTILATION UNTIL A FOLLOW-UP AIR SAMPLE DETERMINES THAT THE LEVELS OF CARBON MONOXIDE AND NITROGEN DIOXIDE ARE BELOW THE CORRECTION AIR LEVEL. SUCH FOLLOW-UP AIR SAMPLES SHALL BE TAKEN IN INTERVALS OF TWENTY MINUTES OR LESS AND THE RESULTS OF EACH SUCH SAMPLE SHALL BE RECORDED IN THE AIR QUALITY RECORD LOG.

5. IF AN AIR QUALITY SAMPLE OR SERIES OF SAMPLES DETECTS THE PRESENCE OF CARBON MONOXIDE OR NITROGEN DIOXIDE AT CONCENTRATIONS AT OR ABOVE THE NOTIFICATION AIR LEVEL STANDARD, THE OPERATOR SHALL IMMEDIATELY INCREASE THE VENTILATION RATE AS PROVIDED IN SUBDIVISION FOUR OF THIS SECTION, AND SHALL ADDITIONALLY:

(A) TAKE AT LEAST ONE OF THE FOLLOWING LONG-TERM CORRECTIVE MEASURES:

(I) MAKE VENTILATION SYSTEM IMPROVEMENTS TO INCREASE THE VENTILATION RATE ON A LONG-TERM BASIS;

(II) WARM UP RESURFACING EQUIPMENT OUTSIDE THE BUILDING OR IN A SEPARATE AREA WITH A LOCAL EXHAUST SYSTEM TO VENT EXHAUST OUTSIDE;

(III) RETUNE AND/OR REPAIR RESURFACING MACHINES IN ACCORDANCE WITH MANUFACTURER RECOMMENDATIONS TO REDUCE EMISSIONS;

(IV) REDUCE ICE EDGING TIME;

(V) REPLACE ICE EDGING EQUIPMENT WITH EQUIPMENT PRODUCING LOWER EMISSIONS;

(VI) INSTALL A VERTICAL EXHAUST PIPE THE TOP OF WHICH EXTENDS ABOVE THE HIGHEST POINT OF THE ICE RESURFACER;

(VII) INSTALL CATALYTIC CONVERTERS ON RESURFACING EQUIPMENT;

(VIII) INSTALL OXYGEN SENSORS ON RESURFACING EQUIPMENT TO REGULATE FUEL LEANNESS OR RICHNESS;

(IX) DECREASE RESURFACING SCHEDULES;

(X) CONVERT RESURFACING EQUIPMENT TO ELECTRIC POWER OR ACQUIRE REPLACEMENT ELECTRICALLY-POWERED RESURFACING EQUIPMENT; AND/OR

(XI) TAKE OTHER ACTIONS THAT ARE DEMONSTRATED TO REDUCE THE LEVEL OF EMISSIONS OF CARBON MONOXIDE OR NITROGEN DIOXIDE IN ICE ARENAS; AND

(B) NOTIFY THE OFFICER WITHIN SEVENTY-TWO HOURS OF THE DATE THE NOTIFICATION AIR LEVEL WAS DETECTED, THE RESULTS OF THE SAMPLE DETECTING SUCH LEVELS AND THE FOLLOW-UP SAMPLES, AND THE CORRECTIVE MEASURE OR MEASURES TAKEN.

6. (A) IF AN AIR QUALITY SAMPLE DETECTS THE PRESENCE OF CARBON MONOXIDE OR NITROGEN DIOXIDE AT CONCENTRATIONS AT OR ABOVE THE EVACUATION AIR LEVEL STANDARD, THE OPERATOR SHALL:

(I) IMMEDIATELY EVACUATE ALL OCCUPANTS FROM THE INTERIOR OF THE ICE ARENA;

(II) CONTACT LOCAL FIRE OR EMERGENCY MEDICAL PERSONNEL AS SOON AS POSSIBLE TO ASSIST IN EVACUATION AND HAZARD ASSESSMENT; AND

(III) NOTIFY THE OFFICER UPON COMPLETION OF THE EVACUATION.

(B) THE ICE ARENA SHALL NOT BE REOCCUPIED UNTIL AND UNLESS:

(I) THREE CONSECUTIVE AIR SAMPLES TAKEN WITHIN A PERIOD OF NOT MORE THAN THREE HOURS INDICATE THAT THE LEVELS OF CARBON MONOXIDE AND NITROGEN DIOXIDE HAVE BEEN REDUCED BELOW THE CORRECTION AIR LEVEL;

(II) SUCH ACCEPTABLE LEVELS OF CARBON MONOXIDE HAVE BEEN CONFIRMED BY ONE OR MORE INDEPENDENT MEASUREMENTS TAKEN BY THE LOCAL FIRE DEPARTMENT AND/OR THE OFFICER; AND

(III) APPROPRIATE LONG-TERM CORRECTIVE MEASURES AS SPECIFIED IN SUBDIVISION FIVE OF THIS SECTION HAVE BEEN TAKEN OR ARE INCLUDED IN A PLAN OF CORRECTIVE ACTION SUBMITTED TO AND APPROVED BY THE OFFICER.

S 1389-KK. RULES AND REGULATIONS; RECORDKEEPING; PENALTIES. 1. THE COMMISSIONER SHALL ADOPT ANY RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS TITLE. SUCH RULES AND REGULATIONS SHALL AUTHORIZE OFFICERS TO GRANT VARIANCES FROM THE REQUIREMENTS OF THIS TITLE AND SUCH RULES AND REGULATIONS WHEN STRICT COMPLIANCE WOULD RESULT IN HARDSHIP AND PROVIDED THAT PUBLIC HEALTH AND SAFETY WILL NOT BE ENDANGERED THEREBY. ANY VARIANCE MAY INCLUDE SUCH CONDITIONS AS THE OFFICER DEEMS APPROPRIATE.

2. EACH OPERATOR SHALL MAINTAIN AN AIR QUALITY RECORD LOG IN SUCH FORM AS THE COMMISSIONER SHALL PRESCRIBE, WHICH SHALL INCLUDE:

(I) INFORMATION ON ANY RESURFACING MACHINES AND OTHER RESURFACING EQUIPMENT USED IN THE ICE ARENA;

(II) INFORMATION ON ANY AIR QUALITY MEASURING DEVICES USED IN THE ICE ARENA, INCLUDING INFORMATION ON MAINTENANCE AND CALIBRATION OF SUCH DEVICES;

(III) THE RESULTS OF ALL AIR QUALITY SAMPLES AND FOLLOW-UP SAMPLES TAKEN PURSUANT TO THIS TITLE;

(IV) ANY LONG-TERM CORRECTIVE MEASURES TAKEN PURSUANT TO THIS TITLE;

(V) INFORMATION ON ANY EVACUATIONS UNDERTAKEN PURSUANT TO THIS TITLE; AND

(VI) ANY OTHER INFORMATION PRESCRIBED BY THE COMMISSIONER.

3. THE COMMISSIONER OR THE OFFICIAL MAY MAKE PROVISIONS FOR ALTERNATIVE MEANS OF PROVIDING ANY OF THE INFORMATION IN AN AIR QUALITY RECORD LOG ELECTRONICALLY.

4. THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY FOR A VIOLATION OF THIS ARTICLE IN AN AMOUNT NOT TO EXCEED THAT SET FORTH IN SUBDIVISION ONE OF SECTION TWELVE OF THIS CHAPTER. ANY OTHER OFFICER MAY IMPOSE A CIVIL PENALTY FOR A VIOLATION OF THIS ARTICLE IN AN AMOUNT NOT TO EXCEED THAT SET FORTH IN PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION THREE HUNDRED NINE OF THIS CHAPTER.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the commissioner of health shall be immediately authorized and directed to promulgate any rules and regulations necessary for timely implementation of this act, and the department of health and other state and local health officers shall be immediately authorized and directed to take any other actions necessary for implementation of this act on such date.