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

4921

2013-2014 Regular Sessions

I N S E N A T E

May 1, 2013

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to the protection of public health from exposure to radon in natural gas

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

Section 1. This act shall be known as the "protection of public health from exposure to radon in natural gas act".

S 2. The public health law is amended by adding a new article 35-B to read as follows:

ARTICLE 35-B

RADON

SECTION 3560. PROTECTION FROM RADON.

3561. LOCAL DISTRIBUTION REQUIREMENTS.

S 3560. PROTECTION FROM RADON. 1. IT IS THE RESPONSIBILITY OF THE DEPARTMENT, ACTING THROUGH ITS BUREAU OF ENVIRONMENTAL RADIATION PROTECTION, TO MINIMIZE, THROUGH THE APPLICATION OF THE ALARA (AS LOW AS REASONABLY ACHIEVABLE) PRINCIPLE, THE RISK TO MEMBERS OF THE PUBLIC POSED BY EXPOSURE TO RADON AND ITS RADIOACTIVE PROGENY. TO ACHIEVE THIS GOAL, THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION MAY CALL FOR THE ASSISTANCE OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE NEW YORK STATE PUBLIC UTILITIES COMMISSION AS NECESSARY TO SUPPORT PERMITTING, MONITORING, COMPLIANCE AUDITING AND ENFORCEMENT ACTION AS DIRECTED BY THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION.

2. IN ORDER TO ACHIEVE THE GOALS ESTABLISHED IN THIS SECTION, THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION SHALL REQUIRE EACH LOCAL GAS DISTRIBUTION ENTITY SELLING OR OTHERWISE PROVIDING GAS TO CUSTOMERS IN NEW YORK TO ESTABLISH A PROGRAM TO CONTINUOUSLY MONITOR THE LEVEL OF RADON AND ITS RADIOACTIVE PROGENY, MEASURED AS GROSS ALPHA ACTIVITY, IN THE NATURAL GAS DELIVERED TO THE LOCAL DISTRIBUTION ENTITY AT EACH CITY

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

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GATE CONNECTION, REPORTING SUCH LEVELS THROUGH A PUBLICLY-ACCESSIBLE WEBSITE ON A REAL TIME BASIS.

3. THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION SHALL ESTABLISH A COMPLIANCE ASSURANCE SYSTEM TO MONITOR THE LEVELS OF RADON AND ITS PROGENY AT EACH CITY GATE LOCATION, THROUGH BOTH THE REAL TIME ONLINE MONITORING SYSTEM REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS SECTION AND A PERIODIC PHYSICAL INSPECTION AND MEASUREMENT PROGRAM TO BE IMPLEMENTED BY THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION AT THE VARIOUS CITY GATES WHERE NATURAL GAS IS DELIVERED TO A LOCAL DISTRIBUTION ENTITY. THIS PROGRAM SHALL BE DESIGNED SO THAT EACH CITY GATE IS INSPECTED AND SAMPLED AT LEAST ONCE PER YEAR BY THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION.

4. THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION SHALL ESTABLISH A PROGRAM TO ENFORCE THE REQUIREMENTS OF THIS ARTICLE. AS PART OF THIS ENFORCEMENT PROGRAM, WHENEVER THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION DETERMINES THAT A LOCAL DISTRIBUTION ENTITY IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE, IT SHALL ISSUE AN ORDER REQUIRING SUCH LOCAL DISTRIBUTION ENTITY TO COMPLY AND SHALL DIRECT THAT THE FLOW OF NATURAL GAS AT ANY CITY GATE THAT IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE BE SHUT OFF UNTIL A LOCAL DISTRIBUTION ENTITY BRINGS THAT CITY GATE BACK INTO COMPLIANCE WITH THIS ARTICLE. IN ADDITION, THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION MAY IMPOSE A FINE OF UP TO $25,000.00 PER DAY PER CITY GATE ON THE LOCAL DISTRIBUTION ENTITY UNTIL THE RADON AND ITS PROGENY LEVELS AT EACH CITY GATE THAT IS OUT OF COMPLIANCE HAVE BEEN BROUGHT BACK INTO COMPLIANCE WITH THIS ARTICLE. THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION MAY COMMENCE A CIVIL ACTION WHENEVER A LOCAL DISTRIBUTION ENTITY FAILS TO COMPLY WITH AN ORDER ISSUED BY THE BUREAU UNDER THIS ARTICLE.

5. ANY PERSON MAY COMMENCE A CIVIL ACTION AGAINST:

(A) ANY LOCAL DISTRIBUTION ENTITY THAT IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE, AND

(B) AGAINST THE BUREAU OF ENVIRONMENTAL RADIATION PROTECTION IF IT FAILS TO ENFORCE THE REQUIREMENTS OF THIS ARTICLE, PROVIDED THAT THE BUREAU HAS RECEIVED NOTICE OF THE INTENT TO COMMENCE SUCH CIVIL ACTION AND HAS FAILED WITHIN THIRTY DAYS OF RECEIVING SUCH NOTICE TO TAKE ENFORCEMENT ACTION AGAINST A LOCAL DISTRIBUTION ENTITY THAT IS NOT IN COMPLIANCE WITH THIS ARTICLE.

THE COURT IN SUCH ACTION SHALL HAVE JURISDICTION TO ISSUE AN INJUNCTION OR OTHER ORDER COMPELLING COMPLIANCE AND SHALL ENTER AN ORDER REQUIRING THE LOCAL DISTRIBUTION ENTITY AND/OR THE BUREAU TO PAY THE REASONABLE LEGAL FEES AND EXPENSES INCURRED BY THE INDIVIDUAL OR ORGANIZATION THAT COMMENCED THE CIVIL ACTION.

S 3561. LOCAL DISTRIBUTION REQUIREMENTS. 1. EACH LOCAL DISTRIBUTION ENTITY SHALL ESTABLISH AND IMPLEMENT A RADON MITIGATION RESPONSE PROGRAM AS FOLLOWS:

(A) IF THE LEVEL OF RADON AND ITS RADIOACTIVE PROGENY MONITORED AT ANY CITY GATE EQUALS OR EXCEEDS 4.0 PICOCURIES PER LITER OF AIR AVERAGED OVER ANY ONE HOUR PERIOD, THE LOCAL DISTRIBUTION ENTITY SHALL SHUT OFF THE ACCEPTANCE OF NATURAL GAS UNTIL SUCH LEVEL IS REDUCED TO LESS THAN 4.0 PICOCURIES PER LITER OF AIR FOR AT LEAST SIX HOURS; OR

(B) IF THE LEVEL OF RADON AND ITS RADIOACTIVE PROGENY MONITORED AT ANY CITY GATE EQUALS OR EXCEEDS 2.0 PICOCURIES PER LITER OF AIR BUT IS LESS THAN 4.0 PICOCURIES PER LITER OF AIR AVERAGED OVER ANY TWENTY-FOUR HOUR PERIOD, THE LOCAL DISTRIBUTION ENTITY SHALL IMPLEMENT A MITIGATION PROGRAM TO REDUCE SUCH LEVEL TO LESS THAN 2.0 PICOCURIES PER LITER OF AIR FOR AT LEAST A SEVEN DAY PERIOD; OR

(C) IF THE LEVEL OF RADON AND ITS RADIOACTIVE PROGENY MONITORED AT ANY CITY GATE EQUALS OR EXCEEDS 1.0 PICOCURIES PER LITER OF AIR BUT IS LESS THAN 2.0 PICOCURIES PER LITER OF AIR AVERAGED OVER ANY SEVEN DAY PERIOD, THE LOCAL DISTRIBUTION ENTITY SHALL IMPLEMENT A MITIGATION PROGRAM TO REDUCE SUCH LEVEL TO LESS THAN 1.0 PICOCURIE PER LITER OF AIR FOR AT LEAST A THIRTY DAY PERIOD.

2. LOCAL GAS DISTRIBUTION ENTITIES ARE PROHIBITED FROM BUILDING NEW OR ADDITIONAL STORAGE FACILITIES TO MITIGATE RADON LEVELS.

3. IT IS UNLAWFUL FOR ANY LOCAL DISTRIBUTION ENTITY TO PASS HARMFUL EFFECTS OF MITIGATION TO OTHER REGIONS IN THE STATE.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the commissioner of health is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date.