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

1972

2009-2010 Regular Sessions

I N A S S E M B L Y

January 14, 2009

Introduced by M. of A. ENGLEBRIGHT, V. LOPEZ, SCHIMEL -- Multi-Sponsored by -- M. of A. CARROZZA, COLTON, DINOWITZ, MAYERSOHN, PAULIN -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to pesticide safety

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

Section 1. Section 33-0101 of the environmental conservation law is amended by adding a new subdivision 50 to read as follows:

50. "CONTAMINATION" MEANS THE PRESENCE OF A PESTICIDE OR PESTICIDES, IN OR ON AREAS OTHER THAN THE TARGET AREA.

S 2. Article 33 of the environmental conservation law is amended by adding a new title 14 to read as follows:

TITLE 14
PESTICIDE SAFETY

SECTION 33-1401. NOTIFICATION OF LOCAL FIRE DEPARTMENTS, EMERGENCY RESPONSE PERSONNEL AND HEALTH OFFICIALS; EVACUATION PLANS.
33-1403. RESPONSIBILITY FOR PESTICIDE RELEASES.
33-1405. PESTICIDE STORAGE AND INVENTORY REQUIREMENTS FOR CERTIFIED APPLICATORS.
33-1407. PESTICIDE STORAGE AND INVENTORY REQUIREMENTS FOR REGISTERED PESTICIDE BUSINESSES AND AGENCIES.
33-1409. PESTICIDE STORAGE AND INVENTORY REQUIREMENTS FOR COMMERCIAL PERMIT HOLDERS.

S 33-1401. NOTIFICATION OF LOCAL FIRE DEPARTMENTS, EMERGENCY RESPONSE PERSONNEL AND HEALTH OFFICIALS; EVACUATION PLANS.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL CERTIFIED APPLICATORS, REGISTERED PESTICIDE BUSINESSES OR AGENCIES AND COMMERCIAL PERMIT HOLDERS SHALL:

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

LBD04901-01-9

1. ANNUALLY NOTIFY THE LOCAL FIRE DEPARTMENT AND EMERGENCY RESPONSE PERSONNEL OF THE PRODUCT AND CHEMICAL NAMES, REGISTRATION NUMBERS, TYPES, QUANTITIES AND LOCATION OF ALL PESTICIDES STORED;

2. PROVIDE THE LOCAL FIRE DEPARTMENTS, EMERGENCY RESPONSE PERSONNEL AND LOCAL HOSPITALS WITH THEIR EMERGENCY RESPONSE PLAN, INCLUDING IDENTIFICATION AND LOCATION OF RESIDENTIAL AREAS, SCHOOLS, HOSPITALS, NURSING HOMES AND OTHER SIMILAR FACILITIES WITHIN ONE MILE OF THE STORAGE SITE FOR NOTIFICATION AND EVACUATION PURPOSES; AND

3. MAINTAIN A CURRENT INVENTORY OF THE PESTICIDES IN STORAGE. A COPY OF SUCH INVENTORY SHALL BE KEPT AT A LOCATION WHICH IS ACCESSIBLE AND REMOVED FROM THE STORAGE AREA. IN THE EVENT OF A FIRE, SPILL OR OTHER EMERGENCY INVOLVING THE PESTICIDE STORAGE AREA, THE CURRENT INVENTORY SHALL BE AVAILABLE TO ALL FIRE, EMERGENCY RESPONSE AND HEALTH PERSONNEL.

S 33-1403. RESPONSIBILITY FOR PESTICIDE RELEASES.

1. ANY FIRE, EXPLOSION, CASUALTY OR ANY OTHER UNEXPECTED EVENT OR CIRCUMSTANCE THAT RESULTS IN THE RELEASE OF ANY PESTICIDE, SUCH PESTICIDE OR PESTICIDE CONTAMINATED MEDIA SHALL BE IMMEDIATELY CONTAINED OR CONTROLLED IN A MANNER AS TO PREVENT ANY FURTHER MOVEMENT OF THE PESTICIDE OR PESTICIDE CONTAMINATED MEDIA.

2. RESPONSIBILITY FOR CONTROL OR CONTAINMENT OF PESTICIDES PURSUANT TO THIS SECTION SHALL BE THE JOINT AND SEVERAL RESPONSIBILITY OF:

A. THE OWNER OF THE PREMISES UPON WHICH THE PESTICIDE IS LOCATED;

B. THE PERSON RESPONSIBLE FOR THE PRESENCE OF THE PESTICIDE ON THE PREMISES; AND

C. ANY PERSON RESPONSIBLE FOR THE PESTICIDE RELEASE.

3. EACH OF THE PERSONS DESIGNATED IN PARAGRAPHS A, B AND C OF SUBDIVISION TWO OF THIS SECTION SHALL BE RESPONSIBLE FOR THE IMMEDIATE NOTIFICATION OF THE DEPARTMENT UPON THE OCCURRENCE OF A PESTICIDE RELEASE AS DESCRIBED IN THIS SECTION.

S 33-1405. PESTICIDE STORAGE AND INVENTORY REQUIREMENTS FOR CERTIFIED APPLICATORS.

PESTICIDES SHALL BE STORED AND HANDLED BY PESTICIDE APPLICATORS PURSUANT TO THE FOLLOWING REQUIREMENTS:

1. ALL PESTICIDE STORAGE AREAS SHALL:

A. BE STRUCTURALLY SEGREGATED FROM RESIDENTIAL, OFFICE AND GENERAL WORK AREAS; LIVESTOCK QUARTERS; FOOD, FEED OR SEED STORAGE AREAS; AND WATER SUPPLY SOURCES;

B. BE LOCKED AND PROMINENTLY POSTED WITH PESTICIDE STORAGE WARNING SIGNS;

C. HAVE ADEQUATE VAPOR VENTING CAPABILITY;

D. HAVE A CONTINUOUS RAISED BERM ON ALL SIDES OF THE FLOOR, WITH THE BERM AND FLOOR SEALED TO CREATE A CONTINUOUS IMPERVIOUS SURFACE; AND

E. CONTAIN SPILL CONTAINMENT MATERIALS AND FIRE EXTINGUISHERS APPROPRIATE FOR THE PESTICIDE STORED, WHICH ARE CONVENIENTLY ACCESSIBLE IN THE STORAGE AREA;

F. HAVE A WATER SUPPLY FOR EMERGENCY WASH OR EYEWASH AND FOR ROUTINE WASH-UP LOCATED CONVENIENTLY TO THE PESTICIDE STORAGE AREA. A QUANTITY OF WATER SUFFICIENT FOR AN INITIAL EMERGENCY WASH WITHIN OR IMMEDIATELY ADJOINING THE PESTICIDE STORAGE AREA SHALL BE REQUIRED; AND

G. HAVE A FIRST AID KIT WITH APPROPRIATE EQUIPMENT FOR INITIAL RESPONSE TO PESTICIDE POISONING WHICH IS READILY AVAILABLE, BUT NOT LOCATED WITHIN THE PESTICIDE STORAGE AREA.

2. STORED PESTICIDES SHALL BE SEGREGATED BY PESTICIDAL FUNCTION AND HAZARD CLASS; KEPT TIGHTLY SEALED AND PERIODICALLY INSPECTED FOR LEAKAGE, RUSTING OR OTHER DEFECTS; KEPT IN THE MANUFACTURER'S ORIGINAL CONTAINER WITH LABELS CLEAN AND CLEARLY READABLE; AND IF STORED IN SUCH

CONTAINER OTHER THAN THE MANUFACTURER'S ORIGINAL CONTAINER AS AUTHORIZED BY THE DEPARTMENT, APPROPRIATELY IDENTIFIED AND LABELED.

3. AREAS WHERE PESTICIDES ARE MIXED, PESTICIDE CONTAINERS RINSED, AND APPLICATION EQUIPMENT LOADED OR CLEANED, SHALL BE APPROPRIATELY BERMED, WITH IMPERMEABLE FLOORS. THE PESTICIDE CONTAINER RINSEATE SHALL BE CONTAINED AND REUSED FOR FUTURE MIXING WITH THE SAME CONCENTRATES. WATER SOURCES USED FOR PESTICIDE MIXING AND PESTICIDE CONTAINER AND APPLICATION EQUIPMENT CLEANING SHALL HAVE BACKFLOW PREVENTION DEVICES.

4. PESTICIDES STORED IN BULK CONTAINERS SHALL HAVE LOCKED INLET AND OUTLET CONTROLS; AND HAVE A CONTAINMENT SYSTEM TO COLLECT PRECIPITATION SURFACE RUN-ON OR SPILLS WITH AT LEAST TWENTY-FIVE PERCENT OF THE STORED CAPABILITY OF THE STORAGE SYSTEM.

5. APPROPRIATE PERSONAL PROTECTIVE EQUIPMENT, INCLUDING RESPIRATORS, GLOVES, APRONS AND BOOTS, AND ANY OTHER REQUIREMENTS SPECIFIED ON THE LABELS OF THE PESTICIDE PRODUCTS STORED, SHALL BE READILY AVAILABLE AND STORED OUTSIDE OF THE PESTICIDE STORAGE AREA.

6. THE LOCAL FIRE DEPARTMENT SHALL BE NOTIFIED ANNUALLY OF THE TYPES, QUANTITIES AND LOCATION OF PESTICIDES STORED IN THE PESTICIDE STORAGE AREA. A BASIC FIRE RESPONSE PLAN SHOULD BE PREPARED AND SUBMITTED TO THE FIRE DEPARTMENT ANNUALLY.

S 33-1407. PESTICIDE STORAGE AND INVENTORY REQUIREMENTS FOR REGISTERED PESTICIDE BUSINESSES AND AGENCIES.

IN ADDITION TO THE OTHER REQUIREMENTS CONTAINED IN THIS ARTICLE, PESTICIDE BUSINESSES AND AGENCIES SHALL MEET THE FOLLOWING REQUIREMENTS:

1. ALL PESTICIDE STORAGE AREAS SHALL:

A. HAVE A SEPARATE LOCKED ENTRYWAY WITH CONTROLLED ACCESS AND A WARNING SIGN DESCRIBING PESTICIDE STORAGE HAZARDS, AND WINDOWS WHICH PREVENT ACCESS;

B. HAVE A CONTAINMENT SYSTEM COMPOSED OF EITHER A BERMED FLOOR WHICH WILL CONTAIN AT LEAST TWENTY-FIVE PERCENT OF THE TOTAL STORED LIQUID VOLUME OR A SLOPED FLOOR WITH SUMP CONTAINMENT WITH THE SAME VOLUME;

C. HAVE A VENTILATION SYSTEM SUFFICIENT TO PREVENT ACCUMULATION OF VAPORS AND A HEATING/COOLING SYSTEM WHICH WILL PREVENT FREEZING OR OVERHEATING OF PESTICIDES; AND

D. IF THE PESTICIDE STORAGE FACILITY CONTAINS FLAMMABLE AND COMBUSTIBLE LIQUIDS, SHALL HAVE NON-SPARKING ELECTRICAL FIXTURES AND APPLICATIONS, APPROVED FOR USE IN SUCH FACILITIES.

2. IF PESTICIDES ARE IN CONTAINERS HOLDING FROM FIFTY-FIVE TO ONE THOUSAND GALLONS, OR IN PORTABLE STORAGE UNITS, ALL SUCH CONTAINERS SHALL:

A. HAVE INLET AND OUTLET LOCKS WHICH REMAIN LOCKED WHEN THE CONTAINER IS NOT IN USE;

B. BE STORED ON A BERMED, IMPERMEABLE PAD OR FLOOR WHICH IS CAPABLE OF CONTAINING AT LEAST ONE HUNDRED PERCENT OF THE TOTAL CONTAINER VOLUME OR A SLOPED FLOOR WITH SUMP CONTAINMENT CAPABLE OF HOLDING THE SAME VOLUME. IF THE CONTAINERS ARE NOT PROTECTED FROM PRECIPITATION OR SURFACE RUN-ON, AT LEAST ONE HUNDRED TWENTY-FIVE PERCENT OF THE TOTAL CONTAINER VOLUME;

C. BE STORED IN A FENCED OR WALLED AREA WHICH CAN BE LOCKED WHEN NOT IN USE; AND

D. BE ROUTINELY INSPECTED AND TESTED, TO ENSURE THAT THE SYSTEMS ARE FUNCTIONING PROPERLY.

3. PESTICIDE PRODUCTS SHALL BE STORED IN A MANNER WHICH SEPARATES INCOMPATIBLE MATERIALS, AND FLAMMABLE AND COMBUSTIBLE LIQUIDS; HERBICIDES FROM INSECTICIDES AND FUNGICIDES; AND POTENTIALLY REACTIVE MATERI-

ALS FROM OTHER MATERIALS BY A PHYSICAL BARRIER, SUCH AS A DIKE, BERM OR WALL.

4. PESTICIDES SHALL BE STORED ON IMPERMEABLE SHELVES, RACKS OR PALLETS, WITH ADEQUATE AISLE SPACING AND PESTICIDE LABELS VISIBLE FROM THE AISLES; AND COMPLY WITH ALL STORAGE REQUIREMENTS FOR COMBUSTIBLE, FLAMMABLE OR IGNITABLE MATERIALS.

5. THE OWNER OR THE OWNER'S AGENT OF THE PESTICIDE STORAGE FACILITY SHALL PROVIDE THE FOLLOWING SAFETY AND EMERGENCY EQUIPMENT, PROCEDURES, INFORMATION AND TRAINING FOR ALL PERSONNEL HAVING ACCESS TO THE PESTICIDE STORAGE AREA OR HANDLING AND MIXING PESTICIDES:

A. APPROPRIATE PERSONAL PROTECTIVE EQUIPMENT, INCLUDING RESPIRATORS, GLOVES, APRONS AND BOOTS, AND ANY OTHER REQUIREMENTS SPECIFIED ON THE LABELS OF THE PESTICIDE PRODUCTS STORED, SHALL BE READILY AVAILABLE AND STORED OUTSIDE OF THE PESTICIDE STORAGE AREA;

B. AN EMERGENCY RESPONSE PLAN WITH WHICH ALL EMPLOYEES OR PERSONS HAVING ACCESS TO THE PESTICIDE STORAGE AREA ARE FAMILIAR; AND

C. TRAINING IN THE PROPER PESTICIDE USE TECHNIQUES AND REQUIREMENTS; THE PROPER USE OF ALL PERSONAL PROTECTIVE EQUIPMENT AND FIRST AID EQUIPMENT; AND IN SPILL PREVENTION AND RESPONSE FOR CONTAINMENT AND CLEANUP OF PESTICIDES.

6. PESTICIDE MIXING, PESTICIDE CONTAINER CLEANING AND APPLICATION EQUIPMENT LOADING AND CLEANING AREAS SHALL:

A. HAVE VENTILATION HOODS, FANS OR OTHER VAPOR REMOVAL EQUIPMENT, IF LOCATED INDOORS;

B. HAVE A SEPARATE, SECURE SECTION WITHIN THE GENERAL PESTICIDE STORAGE AREA FOR EMPTY CONTAINER STORAGE; AND

C. COLLECT AND STORE ABOVE GROUND, ALL CONTAINER AND SPRAY EQUIPMENT RINSEATES. ALL RINSEATES SHALL BE APPROPRIATELY RECYCLED OR REUSED FOR FUTURE MIXING OF THE SAME PESTICIDE.

S 33-1409. PESTICIDE STORAGE AND INVENTORY REQUIREMENTS FOR COMMERCIAL PERMIT HOLDERS.

IN ADDITION TO THE REQUIREMENTS CONTAINED IN THIS ARTICLE, THE FOLLOWING REQUIREMENTS SHALL APPLY TO COMMERCIAL PERMIT HOLDERS:

1. AT THE DISCRETION OF THE LOCAL FIRE AND HEALTH DEPARTMENTS, PESTICIDE STORAGE AREAS SHALL BE SEPARATE BUILDINGS OR ALTERNATIVELY, THE PESTICIDE STORAGE AREA SHALL BE SEPARATED FROM THE REMAINDER OF THE BUILDING BY FIRE RESISTANT WALLS AND DOORS, IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE STATE FIRE ADMINISTRATOR, WHICH TO THE EXTENT PRACTICABLE SHALL BE CONSISTENT WITH THE STANDARDS CONTAINED IN THE MOST RECENT NATIONAL FIRE PROTECTION ASSOCIATION-30 FLAMMABLE AND COMBUSTIBLE LIQUIDS CODE.

2. THE PESTICIDE STORAGE AREA SHALL HAVE A PERIMETER FENCE WITH LOCKED GATE.

3. THE PESTICIDE STORAGE BUILDING SHALL BE CLEARLY POSTED ON ALL EXTERIOR SIDES WITH WARNING SIGNS DESCRIBING PESTICIDE STORAGE HAZARDS.

4. IN SITUATIONS WHERE ADJACENT PROPERTIES ARE RESIDENTIAL, THE STORAGE OF PESTICIDES SHOULD BE AT LEAST FIFTY FEET FROM ANY ADJACENT PROPERTY LINES.

5. AISLE SPACING AND CONTAINER PILE VOLUMES SHOULD MEET THE MOST RECENT NATIONAL FIRE PROTECTION ASSOCIATION-30 FLAMMABLE AND COMBUSTIBLE LIQUIDS CODE, DEPENDING ON THE TYPE OF COMBUSTIBLE, FLAMMABLE OR IGNITABLE MATERIALS BEING STORED.

S 3. This act shall take effect on the sixtieth day after it shall have become a law.