

2299

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. ENGLEBRIGHT, SCHIMEL -- Multi-Sponsored by -- M. of A. McENENY -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the use of certain highly toxic pesticides

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

1 Section 1. Legislative findings and intent. The legislature finds and  
2 declares that it is the policy of the state to prevent unnecessary  
3 endangerment of human health and environmental quality. The use of  
4 pesticides exposes people and our natural resources to many highly toxic  
5 chemicals with known serious, deleterious effects on the health of  
6 humans and the environment. The risks posed by the use of the most high-  
7 ly toxic chemicals outweigh the limited benefits derived. Furthermore,  
8 the use of highly toxic pesticides is unwarranted because more benign  
9 alternatives exist, including less toxic or nontoxic chemicals as well  
10 as the employment of alternative effective pest control methods that do  
11 not rely on the use of chemical pesticides. Such alternative pest  
12 control methods use physical, mechanical, cultural, biological and  
13 educational tactics to control conditions that promote pest infestations  
14 and that inhibit pest populations to tolerable levels of damage and  
15 annoyance. In order to protect public health and the environment, it is  
16 the intent of the legislature to prevent unwarranted exposure to the  
17 most highly toxic pesticides by prohibiting their use.

18 S 2. Section 33-0101 of the environmental conservation law is amended  
19 by adding three new subdivisions 50, 51 and 52 to read as follows:

20 50. "ANTI-MICROBIAL PESTICIDE" SHALL MEAN A PESTICIDE THAT:

21 A. IS INTENDED TO DISINFECT, SANITIZE, REDUCE, OR MITIGATE GROWTH OR  
22 DEVELOPMENT OF MICROBIOLOGICAL ORGANISMS;

23 B. IS INTENDED TO PROTECT INANIMATE OBJECTS, INDUSTRIAL PROCESSES OR  
24 SYSTEMS, SURFACES, WATER, OR OTHER CHEMICAL SUBSTANCES FROM CONTAM-

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

LBD02810-01-9

1 INATION, FOULING OR DETERIORATION CAUSED BY BACTERIA, VIRUSES, FUNGI,  
2 PROTOZOA, ALGAE OR SLIME; OR

3 C. IN THE INTENDED USE IS EXEMPT FROM, OR OTHERWISE NOT SUBJECT TO, A  
4 TOLERANCE UNDER APPROPRIATE PROVISIONS OF FEDERAL LAW;

5 D. "ANTI-MICROBIAL PESTICIDE" SHALL NOT INCLUDE:

6 (1) A WOOD PRESERVATIVE OR ANTI-FOULING PAINT PRODUCT FOR WHICH A  
7 CLAIM OF PESTICIDAL ACTIVITY IS MADE;

8 (2) AN AGRICULTURAL FUNGICIDE PRODUCT; OR

9 (3) AN AQUATIC HERBICIDE PRODUCT.

10 51. "BIOPESTICIDE" SHALL MEAN PESTICIDES DERIVED FROM NATURAL MATERI-  
11 ALS, SUCH AS ANIMALS, PLANTS, BACTERIA AND MINERALS; AND INCLUDE THE  
12 FOLLOWING TYPES:

13 A. MICROBIAL PESTICIDES CONTAINING A MICROORGANISM (E.G., A BACTERIUM,  
14 FUNGUS, VIRUS OR PROTOZOAN) AS THE ACTIVE INGREDIENT; OR

15 B. BIOCHEMICAL PESTICIDES DERIVED FROM NATURALLY OCCURRING SUBSTANCES  
16 THAT CONTROL PESTS BY NONTOXIC MECHANISMS.

17 52. "LEAST-TOXIC PESTICIDES" SHALL MEAN:

18 A. BORIC ACID AND DISODIUM TETRAHYDRATE;

19 B. SILICA GELS;

20 C. DIATOMACEOUS EARTH;

21 D. NONVOLATILE INSECT AND RODENT BAITS IN TAMPER RESISTANT CONTAINERS;  
22 OR

23 E. BOTANICAL PESTICIDES, EXCLUDING SYNTHETIC PYRETHROIDS WITHOUT TOXIC  
24 SYNERGISTS.

25 S 3. Section 33-1301 of the environmental conservation law is amended  
26 by adding a new subdivision 12 to read as follows:

27 12. A. FOR ANY PERSON TO USE THE FOLLOWING PESTICIDES, EXCEPT AS  
28 PROVIDED FOR IN PARAGRAPH B OF THIS SUBDIVISION:

29 (1) ANY PESTICIDE THAT IS CLASSIFIED AS A KNOWN, PROBABLE, OR LIKELY  
30 HUMAN CARCINOGEN BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY;

31 (2) ANY PESTICIDE THAT IS CLASSIFIED AS CATEGORY I OR II ACCORDING TO  
32 THE PRODUCT ACUTE TOXICITY CLASSIFICATION OF THE UNITED STATES ENVIRON-  
33 MENTAL PROTECTION AGENCY FOR EITHER ORAL, DERMAL OR INHALATION TOXICITY;

34 (3) ANY PESTICIDE WHICH THE COMMISSIONER DETERMINES, IN CONSULTATION  
35 WITH THE COMMISSIONER OF HEALTH, IS A LIKELY ENDOCRINE DISRUPTER  
36 (INCLUDING, BUT NOT LIMITED TO, ESTROGEN MIMICRY OR ANDROGEN INHIBI-  
37 TION), IMMUNOTOXIN OR CHRONIC NEUROTOXIN, AS SUCH INFORMATION BECOMES  
38 AVAILABLE;

39 (4) ANY PESTICIDE WHICH THE COMMISSIONER DETERMINES, IN CONSULTATION  
40 WITH THE COMMISSIONER OF HEALTH, IS LIKELY TO IMPAIR AND DISRUPT HUMAN  
41 REPRODUCTION AND DEVELOPMENT;

42 (5) ANY PESTICIDE THAT HAS USE RESTRICTION IMPOSED BY EITHER THE  
43 COMMISSIONER OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY DUE TO  
44 THE FOLLOWING ENVIRONMENTAL HAZARDS: GROUNDWATER CONTAMINATION, WILDLIFE  
45 KILLS OR THREATS TO ENDANGERED SPECIES;

46 (6) ANY PESTICIDE FOR WHICH THERE IS A SPECIFIC, OUTSTANDING REQUEST  
47 FROM THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FOR HEALTH AND  
48 ENVIRONMENTAL STUDIES FOR THE PURPOSE OF REGISTRATION OR REREGISTRATION;

49 (7) ANY PESTICIDE WHICH CONTAINS AN INERT INGREDIENT WHICH WAS SUBJECT  
50 TO A PESTICIDE REGISTRATION CANCELLATION OR SUSPENSION BY THE UNITED  
51 STATES ENVIRONMENTAL PROTECTION AGENCY; AND

52 (8) ANY PESTICIDE CONTAINING THE ACTIVE INGREDIENT 4-AMINO PYRIDINE,  
53 INCLUDING BUT NOT LIMITED TO AVITROL, EXCEPT WHEN USED IN THE PRODUCTION  
54 OF AN AGRICULTURAL COMMODITY OR ON AGRICULTURAL LANDS.

55 B. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH A OF THIS SUBDIVISION,  
56 IT SHALL BE LAWFUL TO APPLY:

1 (1) PESTICIDES THAT MAY OTHERWISE LAWFULLY BE USED FOR THE PURPOSE OF  
2 MAINTAINING A SAFE DRINKING WATER SUPPLY AT DRINKING WATER TREATMENT  
3 PLANTS, WASTEWATER TREATMENT PLANTS, RESERVOIRS, AND RELATED COLLECTION,  
4 DISTRIBUTION AND TREATMENT FACILITIES;

5 (2) ANTI-MICROBIAL PESTICIDES;

6 (3) BIOPESTICIDES;

7 (4) LEAST TOXIC PESTICIDES;

8 (5) PESTICIDES CLASSIFIED BY THE UNITED STATES ENVIRONMENTAL  
9 PROTECTION AGENCY AS EXEMPT MATERIALS UNDER 40 CFR 152.25; AND

10 (6) PESTICIDES USED TO RESPOND TO A PUBLIC HEALTH EMERGENCY OR IMMI-  
11 NENT STRUCTURAL HAZARD.

12 S 4. Section 33-1503 of the environmental conservation law is amended  
13 by adding a new subdivision 5 to read as follows:

14 5. THE COMMISSIONER SHALL DEVELOP AND IMPLEMENT A PROGRAM TO RESTRICT  
15 THE AVAILABILITY OF PESTICIDES PROHIBITED UNDER SUBDIVISION TWELVE OF  
16 SECTION 33-1301 OF THIS ARTICLE THROUGH THE PESTICIDE REGISTRATION  
17 PROGRAM UNDER TITLE SEVEN OF THIS ARTICLE, AND SHALL IMPLEMENT A PROGRAM  
18 TO INFORM COMMERCIAL AND PRIVATE APPLICATORS, MANUFACTURERS, WHOLESALE  
19 AND RETAIL SELLERS, AND THE PUBLIC OF THE PROHIBITIONS ON SUCH PESTI-  
20 CIDES.

21 S 5. This act shall take effect immediately, except that sections one,  
22 two and three of this act shall take effect on the one hundred twentieth  
23 day after it shall have become a law.