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

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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:

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

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

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

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

B. IS INTENDED TO PROTECT INANIMATE OBJECTS, INDUSTRIAL PROCESSES OR 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.

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

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

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

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

(2) AN AGRICULTURAL FUNGICIDE PRODUCT; OR

(3) AN AQUATIC HERBICIDE PRODUCT.

51. "BIOPESTICIDE" SHALL MEAN PESTICIDES DERIVED FROM NATURAL MATERIALS, SUCH AS ANIMALS, PLANTS, BACTERIA AND MINERALS; AND INCLUDE THE FOLLOWING TYPES:

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

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

52. "LEAST-TOXIC PESTICIDES" SHALL MEAN:

A. BORIC ACID AND DISODIUM TETRAHYDRATE;

B. SILICA GELS;

C. DIATOMACEOUS EARTH;

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) PESTICIDES THAT MAY OTHERWISE LAWFULLY BE USED FOR THE PURPOSE OF MAINTAINING A SAFE DRINKING WATER SUPPLY AT DRINKING WATER TREATMENT PLANTS, WASTEWATER TREATMENT PLANTS, RESERVOIRS, AND RELATED COLLECTION, DISTRIBUTION AND TREATMENT FACILITIES;
(2) ANTI-MICROBIAL PESTICIDES;
(3) BIOPESTICIDES;
(4) LEAST TOXIC PESTICIDES;
(5) PESTICIDES CLASSIFIED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS EXEMPT MATERIALS UNDER 40 CFR 152.25; AND
(6) PESTICIDES USED TO RESPOND TO A PUBLIC HEALTH EMERGENCY OR IMMINENT STRUCTURAL HAZARD.

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

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

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