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

3398

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the application of pesticides by certified pesticide applicators; and to repeal section 33-0301 of such law relating to declaration of policy and purpose

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

Section 1. Subdivision 10 of section 33-0101 of the environmental conservation law, as added by chapter 685 of the laws of 1978 and as renumbered by chapter 612 of the laws of 1983, is amended to read as follows:

10. "Certified PESTICIDE applicator" means any individual who is certified to use [or supervise the use of] any pesticide in any category of use covered by his OR HER certification.

S 2. Subdivision 41 of section 33-0101 of the environmental conservation law, as added by chapter 612 of the laws of 1983, is amended to read as follows:

41. "Residential application" shall mean the application of general use pesticides by ground equipment [on property owned or leased by the applicator, excluding any establishment selling or processing food and any residential structure other than] ONLY FOR OUTDOOR APPLICATIONS ON THE PREMISES OF A SINGLE FAMILY RESIDENCE IN WHICH THE APPLICATOR RESIDES OR ONLY WITHIN the specific dwelling unit in which the applicator resides.

S 3. Section 33-0101 of the environmental conservation law is amended by adding three new subdivisions 50, 51 and 52 to read as follows:

50. "UNDER THE DIRECT SUPERVISION OF A CERTIFIED PESTICIDE APPLICATOR" SHALL MEAN THE ACT OR PROCESS WHEREBY THE USE OF A PESTICIDE, UNLESS OTHERWISE PRESCRIBED BY ITS LABELING, IS MADE BY A COMPETENT PERSON ACTING UNDER THE INSTRUCTIONS AND CONTROL OF A CERTIFIED PESTICIDE

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

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APPLICATOR WHO IS RESPONSIBLE FOR THE ACTIONS OF THAT PERSON AND WHO IS AVAILABLE AT THE TIME AND PLACE THE PESTICIDE IS APPLIED.

51. "INTEGRATED PEST MANAGEMENT" AND "(IPM)" MEAN A DECISION-MAKING PROCESS FOR PEST CONTROL THAT UTILIZES REGULAR MONITORING TO DETERMINE IF AND WHEN CONTROLS ARE NEEDED; EMPLOYS PHYSICAL, MECHANICAL, CULTURAL, BIOLOGICAL AND EDUCATIONAL TACTICS TO CONTROL CONDITIONS THAT PROMOTE PEST INFESTATIONS AND TO KEEP PEST POPULATIONS AT TOLERABLE DAMAGE OR ANNOYANCE LEVELS; AND ONLY AS A LAST RESORT, UTILIZES LEAST-TOXIC PESTICIDE CONTROLS. THE OVERALL GOAL OF IPM IS TO ELIMINATE THE UNNECESSARY USE OF PESTICIDES AND REDUCE THE USE OF ALL PESTICIDES.

52. "PESTICIDE USE" MEANS MIXING, LOADING, HANDLING, APPLYING, TRANSPORTING, DISPOSING AND STORING OF PESTICIDES, AND CLEANING AND DISPOSAL OF PESTICIDE CONTAINERS.

S 4. Section 33-0301 of the environmental conservation law is REPEALED and a new section 33-0301 is added to read as follows:

S 33-0301. DECLARATION OF POLICY AND PURPOSE.

THE POLICY AND PURPOSES OF THIS ARTICLE ARE AS FOLLOWS:

1. TO PROVIDE FOR THE PROPER, SAFE AND EFFICIENT USE OF PESTICIDES AND FOR PROTECTION OF THE PUBLIC HEALTH AND SAFETY.

2. TO PROTECT THE ENVIRONMENT FROM ENVIRONMENTALLY HARMFUL PESTICIDES BY PROHIBITING, REGULATING OR CONTROLLING USES OF SUCH PESTICIDES.

3. TO ASSURE WORKERS OF SAFE WORKING CONDITIONS WHERE PESTICIDES ARE PRESENT.

4. TO PERMIT APPLICATIONS OF PESTICIDES BY COMPETENT AND RESPONSIBLE CERTIFIED PESTICIDE APPLICATORS UNDER STRICT CONTROL BY THE DEPARTMENT.

5. TO ASSURE USERS THAT PESTICIDES ARE PROPERLY REGISTERED AND LABELED, AND THAT PESTICIDES ARE APPROPRIATE FOR THE USE DESIGNATED BY THE LABEL, BY THIS ARTICLE, OR BY REGULATIONS PROMULGATED BY THE DEPARTMENT.

6. TO ENCOURAGE THE DEVELOPMENT AND IMPLEMENTATION OF INTEGRATED PEST MANAGEMENT SYSTEMS FOR AGRICULTURAL, NON-AGRICULTURAL AND URBAN SETTINGS, STRESSING APPLICATION OF BIOLOGICAL, MECHANICAL, CULTURAL AND OTHER NON-CHEMICAL PEST CONTROL TECHNIQUES, AND WHEN NECESSARY, TO USE SELECTIVE PESTICIDES WHICH OFFER THE LEAST POSSIBLE HARM, TO NON-TARGET ORGANISMS AND THE ENVIRONMENT, TO ACHIEVE ACCEPTABLE LEVELS OF CONTROL.

S 5. Subdivision 3 of section 33-0901 of the environmental conservation law is amended to read as follows:

3. SALE OF A RESTRICTED USE PESTICIDE SHALL ONLY BE MADE TO A CERTIFIED APPLICATOR, THE HOLDER OF A NON-CANCELED PURCHASE PERMIT HOLDER OR TO THE HOLDER OF A COMMERCIAL PERMIT. Upon the sale by a commercial permit holder of a restricted use pesticide to a purchase permit holder, the commercial permit holder shall cancel the PURCHASE permit in a manner to be prescribed by the commissioner.

S 6. Subdivisions 1 and 2 of section 33-0905 of the environmental conservation law, as amended by chapter 612 of the laws of 1983, are amended to read as follows:

1. Any person who engages in the commercial or private application of pesticides or the sale of restricted use pesticides shall be certified by the commissioner except as provided in subdivision two of this section. No certification shall be valid unless the certified person also holds a valid CERTIFICATION identification card issued by the commissioner.

2. The provisions of this article relating to registration and certification shall not apply to:

a. residential application of pesticides as defined in this article; or

b. [private application of a general use pesticide as defined in this article] AN INDIVIDUAL WORKING UNDER THE DIRECT SUPERVISION OF A PERSON CERTIFIED IN THE PRIVATE APPLICATION OF PESTICIDES.

S 7. Section 33-0905 of the environmental conservation law is amended by adding a new subdivision 2-a to read as follows:

2-A. TRAINING PROGRAMS FOR PERSONS SEEKING PESTICIDE APPLICATOR CERTIFICATION AND RECERTIFICATION SHALL BE CONDUCTED BY OR ON BEHALF OF THE DEPARTMENT.

A. TRAINING PROGRAMS FOR PERSONS SEEKING PESTICIDE APPLICATOR CERTIFICATION SHALL, AT A MINIMUM, INCLUDE TOPICS SUCH AS HAZARDS OF AND PRECAUTIONS AND PROTECTIONS NECESSARY FOR PROPER PESTICIDE USE; INTEGRATED PEST MANAGEMENT TECHNIQUES FOR ALL CATEGORIES OF PRIVATE AND COMMERCIAL PESTICIDE APPLICATOR CERTIFICATION AND UNDERSTANDING OF IDENTIFYING AND CHOOSING LEAST-TOXIC CONTROL ALTERNATIVES; PESTICIDE LABEL COMPREHENSION; PROPER PESTICIDE USE TECHNIQUES AND REQUIREMENTS; GROUNDWATER PROTECTION; UNDERSTANDING, AVOIDING AND MINIMIZING PESTICIDE DRIFT AND OTHER NON-TARGET IMPACTS TO HUMANS AND NATURAL RESOURCES; CURRENT STATE AND FEDERAL LAWS AND REGULATIONS GOVERNING THE USE OF PESTICIDES; IDENTIFICATION AND LIFE CYCLE INFORMATION OF PESTS; AND OCCUPATIONAL SAFETY. TRAINING PROGRAMS SHALL INCLUDE HANDS-ON DEMONSTRATIONS AND ACTIVITIES TO ENSURE THAT APPLICATORS ARE CAPABLE OF PROPERLY USING PESTICIDES AND CALIBRATING AND USING APPLICATION EQUIPMENT.

B. TRAINING PROGRAMS FOR PERSONS SEEKING RECERTIFICATION SHALL INCLUDE TOPICS IDENTIFIED IN PARAGRAPH A OF THIS SUBDIVISION, AND CURRENT INFORMATION RELATING TO THESE TOPICS, NEW INTEGRATED PEST MANAGEMENT APPROACHES AND TECHNIQUES, MORE EFFICIENT AND EFFECTIVE APPLICATION EQUIPMENT, WORKER PROTECTION AND SAFETY, HUMAN AND NATURAL RESOURCE PROTECTION, AND NEW PERSONAL PROTECTION EQUIPMENT.

C. TRAINING PROGRAMS SHALL BE CONDUCTED BY PERSONS WHO ARE CERTIFIED AS TRAINERS BY THE DEPARTMENT. PERSONS CONDUCTING PESTICIDE APPLICATOR CERTIFICATION OR RECERTIFICATION TRAINING PROGRAMS SHALL, AT A MINIMUM, SATISFY THE DEPARTMENT AS TO THEIR KNOWLEDGE OF ALL OF THE INFORMATION AND TOPICS REQUIRED FOR TRAINING PROGRAMS FOR PESTICIDE APPLICATORS.

S 8. Subdivision 3 of section 33-0905 of the environmental conservation law, as amended by chapter 612 of the laws of 1983, paragraph d as amended and paragraph f as added by section 1 of part U of chapter 59 of the laws of 2004, paragraph e as added by section 1 of part F of chapter 686 of the laws of 2003, paragraph g as added by chapter 732 of the laws of 2005, is amended to read as follows:

3. a. Application for pesticide applicator certification shall be made to the commissioner. The application shall be on a form prescribed by the commissioner and shall be accompanied by the fee or fees [provided] AND OTHER INFORMATION REQUIRED in section 33-0911.

b. An applicant for certification shall satisfy the commissioner as to [his] THE APPLICANT'S VERIFIABLE knowledge and experience concerning the proper use [and application] of pesticides [and], pesticide application equipment, AND PEST MANAGEMENT PRACTICES, IN EACH CATEGORY OF CERTIFICATION SOUGHT, through ON-THE-JOB EXPERIENCE, TRAINING AND examination prior to initial certification. Recertification shall be by training[, workbook, or] AND examination [as required by the commissioner].

c. Upon certification, the commissioner shall certify the applicant for the appropriate category OR CATEGORIES of certification and shall issue a certification identification card to the applicant ONLY FOR THE CATEGORY OR CATEGORIES OF CERTIFICATION IN WHICH THE APPLICANT IS ELIGIBLE. The certification may restrict the applicant to the use of a certain type or types of equipment or materials.

d. [Except as provided in paragraphs e and f of this subdivision, pesticide] PESTICIDE applicator [certifications] CARDS shall be valid for three years [after] BY which TIME every applicator shall recertify [according to the requirements then in effect. Certification identification cards shall be valid for three years.

e. Private applicator certifications shall be valid for five years after which every such applicator shall recertify according to the requirements then in effect. Private applicator certification identification cards shall be valid for five years.

f. Pesticide applicator certification for a commercial pesticide applicator with only subcategory 3A-ornamentals, shade trees and turf or only subcategory 3B-turf shall be valid for one year after which every applicator shall recertify according to the requirements then in effect. Certification identification cards for a commercial pesticide applicator with only subcategory 3A-ornamentals, shade trees and turf or only subcategory 3B-turf shall be valid for one year.

g.] BY MEETING THE FOLLOWING REQUIREMENTS:

(I) ACQUIRE A MINIMUM OF EIGHTEEN TRAINING CREDIT HOURS FOR RECERTIFICATION, WITH A MINIMUM OF FOUR TRAINING CREDITS ACQUIRED ANNUALLY; AND

(II) SUCCESSFULLY PASSING A RECERTIFICATION EXAMINATION CONDUCTED BY THE DEPARTMENT.

E. THE DEPARTMENT SHALL REVIEW AND EVALUATE ALL PESTICIDE APPLICATOR CERTIFICATION AND RECERTIFICATION TRAINING MANUALS AND EXAMINATIONS AT LEAST ONCE EVERY FIVE YEARS, INCLUDING AN EVALUATION OF THE TRAINING INFORMATION REQUIRED, AND THE NUMBER AND TYPE OF QUESTIONS NECESSARY TO TEST APPLICANTS IN ALL REQUIRED AREAS OF KNOWLEDGE AND SKILLS.

F. The commissioner is authorized to provide all examinations, training materials, applications, and any other forms or written materials necessary for a private and/or commercial applicator certification in Spanish for applicants whose primary language is Spanish and for other languages if the commissioner deems it necessary. The commissioner may require applicants for registration of pesticides to make available pesticide label information and instructions in Spanish and other languages, when necessary, for applicators certified in Spanish or other languages.

S 9. Subdivisions 2 and 3 of section 33-0907 of the environmental conservation law, as added by chapter 612 of the laws of 1983, are amended to read as follows:

2. Applications for pesticide business or agency registration shall be made to the commissioner. The application shall be on a form prescribed by the commissioner and shall provide such information as the commissioner shall require. EVERY PESTICIDE BUSINESS SHALL PROVIDE PROOF OF CURRENT LIABILITY INSURANCE WHICH DOES NOT CONTAIN ANY PROVISIONS WHICH PREVENT PAYMENT OF CLAIMS FOR ENVIRONMENTAL OR HEALTH DAMAGES, OTHERWISE KNOWN AS POLLUTION EXCLUSION CLAUSES.

3. An [applicant] APPLICATION for pesticide business or agency registration shall [satisfy standards, as determined by the commissioner to be appropriate, with respect to knowledge and experience concerning the proper use and application of pesticides and pesticide equipment] BE MADE BY OR ON BEHALF OF AN INDIVIDUAL WHO IS A CERTIFIED PESTICIDE APPLICATOR IN EACH CATEGORY OF PESTICIDE APPLICATION CONDUCTED BY THE BUSINESS OR AGENCY, OR WHO EMPLOYS INDIVIDUALS WHO ARE CERTIFIED PESTICIDE APPLICATORS IN EACH CATEGORY OF PESTICIDE APPLICATION CONDUCTED BY THE BUSINESS OR AGENCY.

S 10. Subdivisions 1 and 2 of section 33-0911 of the environmental conservation law, subdivision 1 as amended by section 6 of part B of

chapter 82 of the laws of 2002 and subdivision 2 as amended by section 2 of part U of chapter 59 of the laws of 2004, are amended to read as follows:

1. Every applicant for pesticide applicator certification shall pay [an examination] A fee of fifty dollars for [each examination] THE CORE EXAMINATION, EACH CATEGORY OR SUB-CATEGORY EXAMINATION OR RECERTIFICATION EXAMINATION TAKEN.

2. [a. Except as provided in paragraph b of this subdivision, fees] FEES for pesticide applicator certification IDENTIFICATION CARDS shall be [two] THREE hundred [twenty-five] SEVENTY-FIVE dollars for [commercial pesticide applicator certification in one] EACH individual category[, seventy-five dollars for each additional category and seventy-five dollars for each additional] OR sub-category chosen. [For private applicators a fee of twenty-five dollars for the initial certified private applicator and five dollars for subsequent applicators on the same farm or business shall be charged at the time of initial certification, renewal of certification or recertification.

b. Fees for pesticide applicator certification for a commercial pesticide applicator with only subcategory 3A-ornamentals, shade trees and turf or only subcategory 3B-turf shall be one hundred dollars.]

S 11. Subdivision 1 and paragraph b of subdivision 2 of section 33-1205 of the environmental conservation law, as added by chapter 279 of the laws of 1996, are amended to read as follows:

1. All commercial applicators shall maintain pesticide use records for each pesticide application containing the following:

a. EPA registration number;

b. product name;

c. quantity of each pesticide used;

d. date applied;

e. location of application by address (including five-digit zip code).

Such records shall be maintained for a period of not less than [three] THIRTY years IN A MANNER AND FORM SPECIFIED BY THE DEPARTMENT. All commercial applicators shall file, at least annually, a report or reports containing such information with the department on computer diskette or in printed form on or before February first for the prior calendar year. All commercial applicators shall also maintain corresponding records of the dosage rates, methods of application and target organisms for each pesticide application. These records shall be maintained on an annual basis and retained for a period of not less than [three] THIRTY years IN A MANNER AND FORM SPECIFIED BY THE DEPARTMENT and shall be available for inspection upon request by the department.

b. All private applicators shall maintain[, at a minimum,] PESTICIDE USE records of [the restricted pesticides purchased, crop treated by such, method of] EACH PESTICIDE application[, and date of application or applications] CONTAINING THE FOLLOWING INFORMATION:

(I) EPA REGISTRATION NUMBER;

(II) PRODUCT NAME;

(III) QUANTITY OF EACH PESTICIDE USED;

(IV) DATE APPLIED;

(V) LOCATION OF APPLICATION BY ADDRESS (INCLUDING FIVE-DIGIT ZIP CODE);

(VI) CROP OR SITE TREATED; AND

(VII) METHOD OF APPLICATION.

SUCH RECORDS SHALL BE MAINTAINED FOR A PERIOD OF NOT LESS THAN THIRTY YEARS IN A MANNER AND FORM SPECIFIED BY THE DEPARTMENT. ALL PRIVATE APPLICATORS SHALL FILE, AT LEAST ANNUALLY, A REPORT OR REPORTS CONTAIN-

ING THE INFORMATION SPECIFIED IN SUBPARAGRAPHS (I), (II), (III), (IV), AND (VI) OF THIS PARAGRAPH, WITH THE DEPARTMENT ON COMPUTER DISKETTE OR IN PRINTED FORM ON OR BEFORE FEBRUARY FIRST FOR THE PRIOR CALENDAR YEAR. ALL PRIVATE APPLICATORS SHALL ALSO MAINTAIN CORRESPONDING RECORDS OF THE DOSAGE RATES, METHODS OF APPLICATION, CROP TREATED AND TARGET ORGANISM FOR EACH PESTICIDE APPLICATION. This information shall be maintained on an annual basis and retained for a minimum of [three] THIRTY years IN A MANNER AND FORM SPECIFIED BY THE DEPARTMENT, and shall be available for inspection upon request by the department.

S 12. Subdivision 8 of section 33-1301 of the environmental conservation law, as amended by chapter 685 of the laws of 1978, is amended to read as follows:

8. For any person to engage in THE COMMERCIAL application of pesticides without a pesticide applicator [certificate registration] CERTIFICATION IDENTIFICATION CARD issued by the commissioner; OR TO ENGAGE IN THE PRIVATE APPLICATION OF PESTICIDES WITHOUT A PESTICIDE APPLICATOR CERTIFICATION IDENTIFICATION CARD ISSUED BY THE COMMISSIONER, except while working under the direct supervision of [a certified applicator] AN INDIVIDUAL CERTIFIED IN THE PRIVATE APPLICATION OF PESTICIDES.

S 13. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.