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

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2009-2010 Regular Sessions

I N S E N A T E

March 31, 2009

Introduced by Sens. THOMPSON, OPPENHEIMER, PARKER, PERKINS, SCHNEIDERMAN, STEWART-COUSINS -- (at request of the Department of Environmental Conservation) -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the agriculture and markets law, in relation to phosphorus in household cleansing products and lawn fertilizer

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

Section 1. Subdivision 2 of section 35-0105 of the environmental conservation law, as amended by chapter 341 of the laws of 1975, is amended to read as follows:

2. [No household cleansing product shall be distributed, sold, offered or exposed for sale in this state after December 31, 1971, which shall contain a phosphorus compound in excess of eight and seven-tenths percent by weight expressed as phosphorus.] A. (1) No household cleansing product, except those used in dishwashers, food and beverage processing equipment, and dairy equipment, shall be distributed, sold, offered or exposed for sale in this state [on or after June 1, 1973,] which [shall contain] CONTAINS a phosphorus compound other than such trace [or incidental] concentrations as may be authorized by the commissioner by regulation.

(2) NO HOUSEHOLD CLEANSING PRODUCT USED IN DISHWASHERS SHALL BE DISTRIBUTED, SOLD, OFFERED OR EXPOSED FOR SALE IN THIS STATE WHICH

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

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CONTAINS A PHOSPHORUS COMPOUND IN EXCESS OF FIVE-TENTHS PERCENT BY WEIGHT EXPRESSED AS PHOSPHORUS.

(3) NO HOUSEHOLD CLEANSING PRODUCT USED IN FOOD AND BEVERAGE PROCESSING EQUIPMENT AND DAIRY EQUIPMENT SHALL BE DISTRIBUTED, SOLD, OFFERED OR EXPOSED FOR SALE IN THIS STATE WHICH CONTAINS A PHOSPHORUS COMPOUND IN EXCESS OF EIGHT AND SEVEN-TENTHS PERCENT BY WEIGHT EXPRESSED AS PHOSPHORUS.

B. No owner, occupant, or person in control of a commercial establishment shall possess or use or authorize any other person by way of service contract or other arrangement to possess or use in this state any household cleansing product except those used in dishwashers, food and beverage processing equipment, and dairy equipment, on or after January 1, 1976 which shall contain a phosphorus compound other than in such trace or incidental concentrations as may be authorized by the commissioner by regulation.

S 2. Paragraph b of subdivision 2 of section 35-0105 of the environmental conservation law, as amended by section one of this act, is amended to read as follows:

b. No owner, occupant, or person in control of a commercial establishment shall possess or use or authorize any other person by way of service contract or other arrangement to possess or use in this state any household cleansing product [except those used in dishwashers, food and beverage processing equipment, and dairy equipment, on or after January 1, 1976] which [shall contain] CONTAINS a phosphorus compound [other than in such trace or incidental concentrations as may be authorized by the commissioner by regulation] IN EXCESS OF THE AMOUNT ALLOWED FOR SUCH PRODUCT UNDER PARAGRAPH A OF THIS SUBDIVISION.

S 3. Article 17 of the environmental conservation law is amended by adding a new title 21 to read as follows:

TITLE 21
NUTRIENT RUNOFF

SECTION 17-2101. DEFINITIONS.
17-2103. SALE OR USE OF PHOSPHORUS FERTILIZER RESTRICTED.
17-2105. LOCAL FERTILIZER REGULATION.

S 17-2101. DEFINITIONS.

AS USED IN THIS TITLE:

1. "COMPOST" MEANS THE BIOLOGICALLY STABLE HUMUS-LIKE MATERIAL DERIVED FROM COMPOSTING OR THE AEROBIC, THERMOPHILIC DECOMPOSITION OF ORGANIC MATTER.

2. "FERTILIZER" MEANS THE SAME AS "SPECIALTY FERTILIZER" AS DEFINED IN SECTION ONE HUNDRED FORTY-THREE OF THE AGRICULTURE AND MARKETS LAW.

3. "LAWN" OR "NON-AGRICULTURAL TURF" MEANS ANY NON-CROP LAND AREA THAT IS COVERED BY ANY GRASS SPECIES. LAWN OR NON-AGRICULTURAL TURF DOES NOT MEAN FLOWER OR VEGETABLE GARDENS, PASTURE, HAYLAND, TREES, SHRUBS, TURF GROWN ON TURF FARMS, OR ANY FORM OF AGRICULTURAL PRODUCTION.

4. "PHOSPHORUS FERTILIZER" MEANS FERTILIZER IN WHICH THE AVAILABLE PHOSPHATE (P205) CONTENT IS GREATER THAN 0.67 PERCENT BY WEIGHT, EXCLUDING COMPOST.

S 17-2103. SALE OR USE OF PHOSPHORUS FERTILIZER RESTRICTED.

1. NO PERSON SHALL APPLY OR AUTHORIZE ANY PERSON BY WAY OF SERVICE CONTRACT OR OTHER ARRANGEMENT TO APPLY IN THIS STATE ANY PHOSPHORUS FERTILIZER ON LAWN OR NON-AGRICULTURAL TURF, EXCEPT WHEN:

(A) A SOIL TEST INDICATES THAT ADDITIONAL PHOSPHORUS IS NEEDED FOR GROWTH OF THAT LAWN OR NON-AGRICULTURAL TURF; OR

(B) THE PHOSPHORUS FERTILIZER IS USED FOR NEWLY ESTABLISHED LAWN OR NON-AGRICULTURAL TURF DURING THE FIRST GROWING SEASON.

2. ANY RETAILER SELLING OR OFFERING FOR SALE PHOSPHORUS FERTILIZER FOR USE ON LAWN OR NON-AGRICULTURAL TURF SHALL COMPLY WITH THE RETAIL SALE REQUIREMENTS IN SECTION ONE HUNDRED FORTY-SIX-G OF THE AGRICULTURE AND MARKETS LAW RELATED TO DISPLAY OF PHOSPHORUS FERTILIZER AND THE POSTING OF EDUCATIONAL SIGNS.

3. NO PERSON SHALL APPLY FERTILIZER TO:

(A) LAWN OR NON-AGRICULTURAL TURF BETWEEN DECEMBER FIRST AND APRIL FIRST, ANNUALLY;

(B) ANY IMPERVIOUS SURFACE INCLUDING PARKING LOTS, ROADWAYS, AND SIDEWALKS. IF SUCH APPLICATION OCCURS, THE FERTILIZER MUST BE IMMEDIATELY CONTAINED AND EITHER LEGALLY APPLIED TO LAWN OR NON-AGRICULTURAL TURF OR PLACED IN AN APPROPRIATE CONTAINER; OR

(C) ANY LAWN OR NON-AGRICULTURAL TURF ON ANY REAL PROPERTY WITHIN TWENTY FEET OF ANY SURFACE WATER, EXCEPT THAT THIS RESTRICTION SHALL NOT APPLY WHERE A CONTINUOUS NATURAL VEGETATIVE BUFFER, AT LEAST TEN FEET WIDE, SEPARATES AN AREA OF LAWN OR NON-AGRICULTURAL TURF AND SURFACE WATER, AND EXCEPT THAT, WHERE A SPREADER GUARD, DEFLECTOR SHIELD OR DROP SPREADER IS USED TO APPLY FERTILIZER, SUCH APPLICATION MAY NOT OCCUR WITHIN THREE FEET OF ANY SURFACE WATER. THIS PARAGRAPH SHALL NOT APPLY TO AN APPLICATION OF FERTILIZER FOR NEWLY ESTABLISHED LAWN OR NON-AGRICULTURAL TURF DURING THE FIRST GROWING SEASON.

4. NOTHING IN THIS TITLE SHALL IMPAIR OR SUPERSEDE THE AUTHORITY OF THE COMMISSIONER OF AGRICULTURE AND MARKETS PURSUANT TO ARTICLES TEN AND TWENTY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW.

S 17-2105. LOCAL FERTILIZER REGULATION.

A LOCAL GOVERNMENT MAY ENACT MORE STRINGENT STANDARDS FOR THE APPLICATION OF FERTILIZER FOR LAWN AND NON-AGRICULTURAL TURF THAN ESTABLISHED IN THIS TITLE, PROVIDED, HOWEVER, THAT ANY LOCAL GOVERNMENT THAT ENACTS SUCH STANDARDS AFTER JANUARY 1, 2011 MUST DEMONSTRATE TO THE DEPARTMENT PRIOR TO ENACTMENT THAT ADDITIONAL OR MORE STRINGENT STANDARDS ARE NECESSARY TO ADDRESS LOCAL WATER QUALITY CONDITIONS.

S 4. The environmental conservation law is amended by adding a new section 71-1945 to read as follows:

S 71-1945. ENFORCEMENT OF TITLE 21 OF ARTICLE 17.

1. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY PERSON WHO VIOLATES ANY PROVISION OF TITLE 21 OF ARTICLE 17 OF THIS CHAPTER OR ANY RULE, REGULATION OR ORDER ISSUED THEREUNDER SHALL BE LIABLE TO THE PEOPLE OF THE STATE FOR A CIVIL PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION, AND NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION, TO BE ASSESSED BY THE COMMISSIONER AFTER A HEARING OR OPPORTUNITY TO BE HEARD.

2. ANY OWNER OR OWNER'S AGENT, OR OCCUPANT OF A HOUSEHOLD WHO VIOLATES ANY PROVISION OF TITLE 21 OF ARTICLE 17 OF THIS CHAPTER OR ANY RULE, REGULATION OR ORDER ISSUED THEREUNDER SHALL, FOR A FIRST VIOLATION BE ISSUED A WRITTEN WARNING AND BE PROVIDED EDUCATIONAL MATERIALS. UPON A SECOND VIOLATION, THE OWNER OR OWNER'S AGENT, OR OCCUPANT OF A HOUSEHOLD SHALL BE LIABLE TO THE PEOPLE OF THE STATE FOR A CIVIL PENALTY NOT TO EXCEED ONE HUNDRED DOLLARS, AND FOR ANY SUBSEQUENT VIOLATIONS SHALL BE LIABLE TO THE PEOPLE OF THE STATE FOR A CIVIL PENALTY NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS. NO OWNER OR OWNER'S AGENT OF A HOUSEHOLD SHALL BE HELD LIABLE FOR ANY VIOLATION BY AN OCCUPANT. SUCH PENALTIES MAY BE ASSESSED BY THE COMMISSIONER AFTER A HEARING OR OPPORTUNITY TO BE HEARD.

S 5. The title heading of title 19 of article 71 of the environmental conservation law, as amended by chapter 400 of the laws of 1973, is amended to read as follows:

ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH [19] 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS

S 6. The agriculture and markets law is amended by adding a new section 146-g to read as follows:

S 146-G. RETAIL SALE. ANY RETAILER WHO SELLS OR OFFERS FOR SALE TO CONSUMERS SPECIALTY FERTILIZER IN WHICH THE AVAILABLE PHOSPHATE (P205) CONTENT IS GREATER THAN 0.67 PERCENT, SHALL:

(A) DISPLAY SUCH PHOSPHORUS-CONTAINING SPECIALTY FERTILIZER SEPARATELY FROM NON-PHOSPHORUS SPECIALTY FERTILIZER; AND

(B) POST IN THE LOCATION WHERE PHOSPHORUS-CONTAINING SPECIALTY FERTILIZER IS DISPLAYED A CLEARLY VISIBLE SIGN WHICH IS AT LEAST EIGHT AND ONE-HALF INCHES BY ELEVEN INCHES IN SIZE AND STATES THAT:

"PHOSPHORUS RUNOFF POSES A THREAT TO WATER QUALITY. THEREFORE, UNDER NEW YORK LAW, PHOSPHORUS-CONTAINING FERTILIZER MAY ONLY BE APPLIED TO LAWN OR NON-AGRICULTURAL TURF WHEN:

(1) A SOIL TEST INDICATES THAT ADDITIONAL PHOSPHORUS IS NEEDED FOR GROWTH OF THAT LAWN OR NON-AGRICULTURAL TURF; OR

(2) THE FERTILIZER IS USED FOR NEWLY ESTABLISHED LAWN OR NON-AGRICULTURAL TURF DURING THE FIRST GROWING SEASON."

S 7. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that:

1. retailers shall have sixty days from the effective date of this act to sell through product subject to subdivision 2 of section 35-0105 of the environmental conservation law as amended by section one of this act which is held in inventory on the effective date;

2. sections three, four, five and six of this act shall take effect January 1, 2012;

3. persons may continue to use phosphorus fertilizer on lawn and non-agricultural turf after January 1, 2012, if the fertilizer was purchased prior to such effective date; and

4. section two of this act shall take effect July 1, 2013.