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

4344

2009-2010 Regular Sessions

I N S E N A T E

April 22, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to restricting the use of chlorinated solvents in this state

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

Section 1. The legislature finds and declares that:

(a) Virtually all chlorinated organic compounds that have been studied exhibit at least one of a wide range of serious toxic effects such as endocrine dysfunction, developmental impairment, birth defects, reproductive dysfunction and infertility, hormonal disruption, immunosuppression, and cancer, often at extremely low doses.

(b) Stratospheric ozone depletion caused in part by the use of chlorinated compounds including chlorinated solvents is expected to cause millions of additional cases of human skin cancer, cataracts and immune suppression, as well as major effects on aquatic and terrestrial food chains.

(c) The use of chlorinated solvents such as methylene chloride, trichloroethylene and perchloroethylene in industrial and manufacturing processes has been recognized as posing significant workplace hazards.

(d) The weight of scientific evidence indicates that exposure to all organochlorines should be presumed to pose a health risk, and therefore policies to protect public health should be directed toward eventually achieving no exposure to chlorinated organic chemicals as a class rather than focusing on a series of individual chemicals.

(e) Numerous public health and environmental organizations including the American Public Health Association and the International Joint Commission have recommended that the only feasible and prudent approach to eliminating the release and discharge of chlorinated organic chemicals and consequent exposure is to avoid the use of chlorine and its compounds in manufacturing processes.

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

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(f) The implementation of such a goal should proceed with priority being given to industry sectors causing severe organochlorine pollution.

(g) Chlorinated solvents have been identified in numerous hazardous waste sites in the state and are considered major contributors to the toxic contamination of many of the state's public and private drinking water sources.

(h) Alternative processes and substitute chemicals already exist for most uses of chlorinated solvents.

S 2. The environmental conservation law is amended by adding a new article 48 to read as follows:

ARTICLE 48
CHLORINATED SOLVENTS

SECTION 48-0101. DEFINITION.
48-0103. RESTRICTIONS ON THE USE, MANUFACTURE OR SALE OF CHLORINATED SOLVENTS.
48-0105. SAFE ALTERNATIVES POLICY.
48-0107. SURCHARGE IMPOSED.
48-0109. REVOLVING LOAN PROGRAM.
48-0111. CHLORINATED SOLVENT PHASE-OUT REVOLVING LOAN ACCOUNT.

S 48-0101. DEFINITION.

AS USED IN THIS ARTICLE, "CHLORINATED SOLVENT" MEANS THE FOLLOWING CHLORINE-BASED CHEMICALS: METHYLENE CHLORIDE, PERCHLOROETHYLENE, TRICHLOROETHYLENE AND METHYL CHLOROFORM.

S 48-0103. RESTRICTIONS ON THE USE, MANUFACTURE OR SALE OF CHLORINATED SOLVENTS.

1. EXCEPT AS PROVIDED UNDER SUBDIVISION TWO OR THREE OF THIS SECTION:

(A) ON AND AFTER JANUARY FIRST, TWO THOUSAND TWELVE, NO PERSON IN THE STATE SHALL MANUFACTURE, USE OR SELL ANY AMOUNT OF CHLORINATED SOLVENT FOR THE FOLLOWING PURPOSES: METAL CLEANING OPERATIONS, PAINT REMOVERS, INDUSTRIAL SOLVENTS, FOAM BLOWING, PAINTS AND COATINGS, AEROSOLS, SYNTHETIC PESTICIDES, AND FOOD PROCESSING;

(B) ON AND AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, NO PERSON IN THE STATE SHALL MANUFACTURE, USE OR SELL ANY AMOUNT OF CHLORINATED SOLVENT FOR THE FOLLOWING PURPOSES: DRY CLEANING AND TEXTILE PROCESSING;

(C) ON AND AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN, NO PERSON IN THE STATE SHALL MANUFACTURE, USE OR SELL ANY AMOUNT OF CHLORINATED SOLVENT FOR ANY PURPOSE INCLUDING CHEMICAL PROCESSING, ELECTRONICS, FILM PROCESSING AND FIBERS.

ALL PRODUCERS, USERS OR SELLERS OF CHLORINATED SOLVENTS OR PRODUCTS CONTAINING ANY CHLORINATED SOLVENT SHALL ANNUALLY PROVIDE TO THE COMMISSIONER AN INVENTORY AND DESCRIPTION OF THEIR PRODUCTION, USE AND SALE OF CHLORINATED SOLVENTS WITHIN THE STATE. THE COMMISSIONER SHALL, NO LATER THAN JANUARY FIRST, TWO THOUSAND TEN, ISSUE REGULATIONS PRESCRIBING THE REPORTING REQUIREMENTS OF THIS SUBDIVISION.

2. ANY PERSON MAY PETITION THE COMMISSIONER FOR AN EXEMPTION FROM THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION, AND THE COMMISSIONER MAY GRANT BY RULE SUCH AN EXEMPTION IF THE COMMISSIONER FINDS THAT:

(A) THE CONTINUED USE OF THE CHLORINATED SOLVENT SERVES A COMPELLING PUBLIC NEED;

(B) AN UNREASONABLE RISK OF INJURY TO HEALTH OR ENVIRONMENT WOULD NOT RESULT; AND

(C) GOOD FAITH EFFORTS HAVE BEEN MADE TO DEVELOP AN ALTERNATIVE PROCESS OR CHEMICAL SUBSTANCE WHICH DOES NOT PRESENT AN UNREASONABLE RISK OF INJURY TO HEALTH OR THE ENVIRONMENT AND WHICH MAY BE SUBSTITUTED FOR SUCH CHLORINATED SOLVENT.

AN EXEMPTION GRANTED UNDER THIS SUBDIVISION SHALL BE SUBJECT TO SUCH TERMS AND CONDITIONS AS THE COMMISSIONER MAY PRESCRIBE AND SHALL BE IN EFFECT FOR SUCH PERIOD (BUT NOT MORE THAN TWO YEARS FROM THE DATE WHICH IT IS GRANTED) AS THE COMMISSIONER MAY PRESCRIBE. SUCH AN EXEMPTION SHALL NOT BE RENEWED MORE THAN ONCE.

3. EDUCATIONAL/MEDICAL USERS SHALL BE EXEMPT FROM THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, PROVIDED THAT SAID EDUCATIONAL/MEDICAL USERS SHALL ANNUALLY PROVIDE TO THE COMMISSIONER AN INVENTORY AND DESCRIPTION OF THEIR USE OF ANY CHLORINATED SOLVENT WITHIN THE STATE. SAID EDUCATIONAL/MEDICAL USERS SHALL USE ANY SUCH SUBSTANCE ONLY IN CONNECTION WITH INSTRUCTION, EDUCATION, RESEARCH OR MEDICAL TREATMENT. THE COMMISSIONER SHALL, NO LATER THAN JANUARY FIRST, TWO THOUSAND TEN, ISSUE REGULATIONS PRESCRIBING THE REPORTING REQUIREMENTS OF THIS SUBDIVISION.

4. THE DEPARTMENT AND THE ENVIRONMENTAL FACILITIES CORPORATION, IN COOPERATION WITH USERS AND PRODUCERS OF CHLORINATED SOLVENTS, SHALL ESTABLISH AN INTENSIVE TECHNOLOGY TRANSFER, RESEARCH AND TECHNICAL ASSISTANCE PROGRAM TO DISSEMINATE INFORMATION REGARDING AVAILABLE ALTERNATIVES TO THE USE OF CHLORINATED SOLVENTS AND TO DEVELOP NEW TECHNOLOGIES THAT MAY BE SUBSTITUTED FOR CHLORINATED SOLVENT USE.

5. THE COMMISSIONER SHALL, WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ARTICLE, ESTABLISH AN ADVISORY TASK FORCE TO INVESTIGATE AND ANALYZE THE IMPACT OF THIS ARTICLE ON THE WORK FORCE AND INDUSTRY OF THE STATE. IN ADDITION, THE TASK FORCE SHALL RECOMMEND MEASURES TO PROVIDE TRAINING FOR AFFECTED WORKERS, TO ATTRACT NEW BUSINESSES TO THE STATE IN THE AREA OF ALTERNATIVE TECHNOLOGIES, AND TO OTHERWISE ASSIST THE STATE'S LABOR FORCE IN ADAPTING TO THE PROVISIONS OF THIS ARTICLE. THE TASK FORCE SHALL CONSIST OF NINE MEMBERS INCLUDING THREE REPRESENTING THE PUBLIC HEALTH SECTOR AND TWO EACH REPRESENTING THE LABOR, BUSINESS AND ENVIRONMENTAL SECTORS.

S 48-0105. SAFE ALTERNATIVES POLICY.

NO FACILITY SHALL REPLACE THE MANUFACTURE, PROCESSING, USE OR SALE OF ANY CHLORINATED SOLVENT WITH ANY SUBSTITUTE TOXIC SUBSTANCE THAT IS A KNOWN OR PROBABLE CARCINOGEN, TERATOGEN OR MUTAGEN, OR WITH ANY ALTERNATIVE PRODUCT OR PROCESS THAT CREATES AN UNREASONABLE RISK OF HARM TO PUBLIC HEALTH, WORKERS, CONSUMERS OR ANY PART OF THE ENVIRONMENT AS DETERMINED BY THE COMMISSIONER.

S 48-0107. SURCHARGE IMPOSED.

1. ON AND AFTER APRIL FIRST, TWO THOUSAND TEN, A SURCHARGE SHALL BE LEVIED ON THE PRIVILEGE OF PRODUCING IN, IMPORTING INTO OR CAUSING TO BE IMPORTED INTO THE STATE METHYLENE CHLORIDE, PERCHLOROETHYLENE (TETRACHLOROETHYLENE), TRICHLOROETHYLENE OR METHYL CHLOROFORM. A SURCHARGE OF FIVE DOLLARS PER GALLON SHALL BE LEVIED ON EACH GALLON OF METHYLENE CHLORIDE, PERCHLOROETHYLENE (TETRACHLOROETHYLENE), TRICHLOROETHYLENE AND METHYL CHLOROFORM WHEN FIRST IMPORTED INTO OR PRODUCED IN THE STATE. THE SURCHARGE SHALL BE IMPOSED WHEN TRANSFER OF TITLE OR POSSESSION, OR BOTH, OF THE PRODUCT OCCURS IN THIS STATE OR WHEN THE PRODUCT COMMINGLES WITH THE GENERAL MASS OF THIS STATE.

2. ANY PERSON PRODUCING IN, IMPORTING INTO OR CAUSING TO BE IMPORTED INTO THIS STATE METHYLENE CHLORIDE, PERCHLOROETHYLENE (TETRACHLOROETHYLENE), TRICHLOROETHYLENE AND/OR METHYL CHLOROFORM FOR SALE, USE OR OTHERWISE SHALL REGISTER WITH THE COMMISSIONER AND BECOME LICENSED FOR THE PURPOSE OF REMITTING THE SURCHARGE PURSUANT TO THIS SECTION. SUCH PERSON MUST REGISTER AS EITHER A PRODUCER OR IMPORTER OF METHYLENE CHLORIDE, PERCHLOROETHYLENE (TETRACHLOROETHYLENE), TRICHLOROETHYLENE AND/OR METHYL CHLOROFORM. PERSONS OPERATING AT MORE THAN ONE LOCATION SHALL

ONLY BE REQUIRED TO HAVE A SINGLE REGISTRATION. EACH SUCH PERSON SHALL PAY AN ANNUAL REGISTRATION FEE OF THIRTY DOLLARS.

3. THE SURCHARGE IMPOSED BY THIS SECTION SHALL BE DUE ON THE FIRST DAY OF THE MONTH SUCCEEDING THE MONTH OF PRODUCTION, IMPORTATION OR REMOVAL FROM A STORAGE FACILITY AND MUST BE PAID ON OR BEFORE THE TWENTIETH OF EACH MONTH. THE SURCHARGE SHALL BE REPORTED ON FORMS IN THE MANNER PRESCRIBED BY THE COMMISSIONER.

4. ANY PERSON SUBJECT TO THE SURCHARGE UNDER THIS SECTION OR ANY PERSON WHO SELLS SURCHARGE-PAID METHYLENE CHLORIDE, PERCHLOROETHYLENE (TETRACHLOROETHYLENE), TRICHLOROETHYLENE AND/OR METHYL CHLOROFORM, OTHER THAN RETAIL DEALER, SHALL SEPARATELY STATE THE AMOUNT OF SUCH SURCHARGE PAID ON ANY CHARGE TICKET, SALES SLIP, INVOICE OR OTHER TANGIBLE EVIDENCE OF THE SALE OR MUST CERTIFY ON THE SALES DOCUMENT THAT THE SURCHARGE REQUIRED PURSUANT TO THIS SECTION HAS BEEN PAID.

5. ALL METHYLENE CHLORIDE, PERCHLOROETHYLENE (TETRACHLOROETHYLENE), TRICHLOROETHYLENE AND METHYL CHLOROFORM IMPORTED, PRODUCED OR SOLD IN THIS STATE IS PRESUMED TO BE SUBJECT TO THE SURCHARGE IMPOSED BY THIS SECTION. ANY PERSON, EXCEPT THE FINAL RETAIL CONSUMER, WHO HAS PURCHASED METHYLENE CHLORIDE, PERCHLOROETHYLENE (TETRACHLOROETHYLENE), TRICHLOROE-THYLENE OR METHYL CHLOROFORM MUST DOCUMENT THAT THE SURCHARGE IMPOSED BY THIS SECTION HAS BEEN PAID OR MUST PAY SUCH SURCHARGE DIRECTLY TO THE DEPARTMENT IN ACCORDANCE WITH THIS SECTION.

6. THE DEPARTMENT MAY AUTHORIZE A QUARTERLY RETURN AND PAYMENT WHEN THE SURCHARGE REMITTED BY THE LICENSEE FOR A PRECEDING QUARTER DID NOT EXCEED ONE HUNDRED DOLLARS; MAY AUTHORIZE A SEMIANNUAL RETURN AND PAYMENT WHEN THE SURCHARGE REMITTED BY THE LICENSEE FOR THE PRECEDING SIX MONTHS DID NOT EXCEED TWO HUNDRED DOLLARS; AND MAY AUTHORIZE AN ANNUAL RETURN AND PAYMENT WHEN THE SURCHARGE REMITTED BY THE LICENSEE FOR THE PRECEDING TWELVE MONTHS DID NOT EXCEED FOUR HUNDRED DOLLARS.

7. THE SURCHARGE IMPOSED BY THIS SECTION SHALL BE REPORTED TO THE DEPARTMENT. THE PAYMENT SHALL BE ACCOMPANIED BY SUCH FORMS AS THE DEPARTMENT PRESCRIBES. THE PROCEEDS OF THE SURCHARGE, AFTER DEDUCTING THE ADMINISTRATIVE COSTS INCURRED BY THE DEPARTMENT IN ADMINISTERING, AUDITING, COLLECTING, DISTRIBUTING AND ENFORCING THE SURCHARGE SHALL BE TRANSFERRED BY THE DEPARTMENT INTO THE CHLORINATED SOLVENT PHASE-OUT REVOLVING LOAN ACCOUNT AND SHALL BE USED IN ACCORDANCE WITH THE REVOLV-ING LOAN PROGRAM ESTABLISHED IN SECTION 48-0109 OF THIS ARTICLE.

8. FOR THE PURPOSES OF THIS SECTION, THE PROCEEDS OF THE SURCHARGE SHALL INCLUDE FUNDS COLLECTED AND RECEIVED BY THE DEPARTMENT, INCLUDING INTEREST AND PENALTIES ON DELINQUENT SURCHARGES.

9. METHYLENE CHLORIDE, PERCHLOROETHYLENE (TETRACHLOROETHYLENE), TRICHLOROETHYLENE AND METHYL CHLOROFORM EXPORTED FROM THE FIRST STORAGE FACILITY AT WHICH IT IS HELD IN THIS STATE BY THE PRODUCER OR IMPORTER SHALL BE EXEMPT FROM THE SURCHARGE PURSUANT TO THIS SECTION. ANYONE EXPORTING METHYLENE CHLORIDE, PERCHLOROETHYLENE (TETRACHLOROETHYLENE), TRICHLOROETHYLENE AND METHYL CHLOROFORM ON WHICH A SURCHARGE HAS BEEN PAID MAY APPLY FOR A REFUND OR CREDIT. THE COMMISSIONER MAY REQUIRE SUCH INFORMATION AS HE OR SHE DEEMS NECESSARY IN ORDER TO APPROVE THE REFUND OR CREDIT.

10. ANY PERSON WHO FAILS TO TIMELY REGISTER OR WHO KNOWINGLY GIVES OR CAUSES TO BE GIVEN ANY FALSE INFORMATION AS A PART OF THE REGISTRATION OR APPLICATION FOR FINANCIAL ASSISTANCE OR FAILS TO REMIT THE SURCHARGE IN A TIMELY FASHION SHALL BE LIABLE FOR A PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS IN A COURT OF COMPETENT JURISDICTION. IF THE VIOLATION IS OF A CONTINUING NATURE, EACH DAY DURING WHICH IT CONTINUES SHALL CONSTITUTE AN ADDITIONAL, SEPARATE AND DISTINCT OFFENSE.

S 48-0109. REVOLVING LOAN PROGRAM.

THE ENVIRONMENTAL FACILITIES CORPORATION, IN CONSULTATION WITH THE COMMISSIONER, SHALL ESTABLISH A REVOLVING LOAN PROGRAM TO BE FUNDED BY APPROPRIATIONS FROM THE CHLORINATED SOLVENT PHASE-OUT REVOLVING LOAN ACCOUNT ESTABLISHED PURSUANT TO SECTION 48-0111 OF THIS ARTICLE TO PROVIDE FINANCIAL ASSISTANCE TO ANY PERSON TO MEET COSTS IN SATISFYING THE REQUIREMENTS AS PROVIDED IN THIS SECTION. UPON CERTIFICATION FROM THE ENVIRONMENTAL FACILITIES CORPORATION AND THE COMMISSIONER, THE ADMINISTRATOR MAY PROVIDE SUCH LOAN TO A PERSON UPON RECEIPT OF A WRITTEN AGREEMENT PROVIDING REASONABLE ASSURANCES OF REPAYMENT THAT IS SATISFACTORY TO THE COMPTROLLER. SUCH LOAN SHALL NOT BEAR INTEREST ON THE REPAYMENT OF SUCH LOAN PROVIDED THAT THE TERM OF THE LOAN DOES NOT EXCEED ONE YEAR. THE AMOUNT OF THE LOAN SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS. THE ENVIRONMENTAL FACILITIES CORPORATION AND THE COMMISSIONER SHALL ONLY CERTIFY SUCH LOANS AFTER A FINDING THAT SUCH PERSON HAS A PLAN TO MEET THE REQUIREMENTS AS PROVIDED IN THIS SECTION. THE ENVIRONMENTAL FACILITIES CORPORATION AND THE DEPARTMENT, WITH CONSULTATION FROM THE COMPTROLLER, SHALL PROMULGATE RULES AND REGULATIONS WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE FOR THE OPERATION OF THE CHLORINATED SOLVENT PHASE-OUT REVOLVING LOAN ACCOUNT WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE CRITERIA TO BE USED IN DETERMINING ELIGIBILITY FOR ASSISTANCE; A PROCEDURE AND ANY NECESSARY INFORMATION THAT ANY PERSON NEEDS TO SUBMIT APPLICATIONS FOR A LOAN FROM THE CHLORINATED SOLVENT PHASE-OUT REVOLVING LOAN ACCOUNT; AND A SCHEDULE OF REVIEWING SUCH APPLICATIONS, NOT TO EXCEED THIRTY DAYS, AND NOTIFICATION TO AN APPLICANT OF APPROVAL OR DISAPPROVAL OF SUCH APPLICATION FOR FUNDING AND ANY OTHER REQUIREMENTS DEEMED NECESSARY BY THE COMPTROLLER. THE ENVIRONMENTAL FACILITIES CORPORATION AND THE COMMISSIONER SHALL COMPILE AND MAKE AVAILABLE INFORMATION REGARDING THE AVAILABILITY AND APPLICATION FOR SUCH LOANS.

S 48-0111. CHLORINATED SOLVENT PHASE-OUT REVOLVING LOAN ACCOUNT.

1. THE CHLORINATED SOLVENT PHASE-OUT REVOLVING LOAN ACCOUNT IS HEREBY ESTABLISHED TO CARRY OUT THE PURPOSES OF THIS ARTICLE. SUCH ACCOUNT SHALL CONSIST OF ALL FINES, PENALTIES, JUDGMENTS, RECOVERIES, AND OTHER FEES AND CHARGES COLLECTED FOR NONREMITTANCE OF THE SURCHARGE AS REQUIRED BY SECTION 48-0107 OF THIS ARTICLE, SURCHARGE REVENUES LEVIED, COLLECTED AND CREDITED PURSUANT TO THE SURCHARGE PROVIDED IN SECTION 48-0107 OF THIS ARTICLE, INTEREST RECEIVED ON SUCH MONEY AND ANY MONEY MADE AVAILABLE PURSUANT TO APPROPRIATION. THE COMPTROLLER SHALL APPOINT AND SUPERVISE AN ADMINISTRATOR OF THE FUND. THE ADMINISTRATOR SHALL BE THE CHIEF EXECUTIVE OF THE FUND AND SHALL DISBURSE MONEY FROM THE FUND PURSUANT TO CERTIFICATION FROM THE ENVIRONMENTAL FACILITIES CORPORATION AND THE COMMISSIONER.

2. THE COMPTROLLER MAY INVEST AND REINVEST ANY MONEYS IN SAID FUND IN OBLIGATIONS IN WHICH THE COMPTROLLER IS AUTHORIZED TO INVEST PURSUANT TO THE PROVISIONS OF SECTION NINETY-EIGHT OF THE STATE FINANCE LAW. ANY INCOME OR INTEREST DERIVED FROM SUCH INVESTMENT SHALL BE INCLUDED IN THE ACCOUNT.

3. MONIES WITHIN THE CHLORINATED SOLVENT PHASE-OUT REVOLVING LOAN ACCOUNT, UPON APPROPRIATION BY THE LEGISLATURE, SHALL BE MADE AVAILABLE TO THE ENVIRONMENTAL FACILITIES CORPORATION FOR THE PURPOSE OF THIS ARTICLE. NO MONIES WITHIN THIS ACCOUNT SHALL BE USED TO FUND STATE PERSONNEL. MONIES SHALL BE PAID OUT OF THE ACCOUNT ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE ADMINISTRATOR OF THE ACCOUNT.

S 3. Severability. The provisions of this act are severable, and if any of its provisions or an application thereof shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions or other applications thereof.

S 4. This act shall take effect immediately.