

6751

I N S E N A T E

February 3, 2010

Introduced by Sen. FOLEY -- 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 notification of hazardous substance releases

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

- 1 Section 1. The environmental conservation law is amended by adding a
2 new section 27-1310 to read as follows:
3 S 27-1310. NOTIFICATION.
4 1. THE DEPARTMENT SHALL GIVE NOTICE WITHIN SIXTY DAYS TO ALL PROPERTY
5 OWNERS WITHIN TWO THOUSAND FIVE HUNDRED FEET OF AN INACTIVE HAZARDOUS
6 WASTE DISPOSAL SITE AFFECTED BY ANY OF THE FOLLOWING CIRCUMSTANCES:
7 (A) WHENEVER THE DEPARTMENT FIRST BECOMES AWARE OF THE RELEASE OR THE
8 THREAT OF THE RELEASE OF A HAZARDOUS SUBSTANCE FOR WHICH THE DEPARTMENT
9 MAY ASSESS REMOVAL OR REMEDIATION COSTS;
10 (B) WHENEVER THE DEPARTMENT BECOMES AWARE OF EVIDENCE OF THE RELEASE
11 OF A HAZARDOUS SUBSTANCE THAT MAY DIRECTLY AND FORESEEABLY IMPACT GROUND
12 WATER OR THAT MAY DIRECTLY AND FORESEEABLY PRESENT A RISK OF EXPOSURE TO
13 HUMANS;
14 (C) WHENEVER THE DEPARTMENT CONSIDERS IT APPROPRIATE TO EMPLOY A
15 COMMUNITY RELATIONS SPECIALIST IN ANY CAPACITY WITH RESPECT TO A RELEASE
16 OR THREAT OF RELEASE OF A HAZARDOUS SUBSTANCE; OR
17 (D) WHENEVER THE DEPARTMENT SERVES NOTICE ON A RESPONSIBLE PARTY AS A
18 RESULT OF ANY SIGNIFICANT SPILLING, LEAKING, PUMPING, POURING, EMITTING,
19 EMPTYING, DISCHARGING, INJECTING, ESCAPING, LEACHING, DUMPING, OR
20 DISPOSING INTO THE ENVIRONMENT ANY WASTE, SPECIAL WASTE, POTENTIALLY
21 INFECTIOUS MEDICAL WASTE, POLLUTION CONTROL WASTE, INDUSTRIAL PROCESS
22 WASTE, HAZARDOUS WASTE, HAZARDOUS SUBSTANCE, OR CONTAMINANTS, THAT MAY
23 CONSTITUTE AN IMMINENT OR SUBSTANTIAL ENDANGERMENT TO HUMANS.
24 2. AT A MINIMUM, NOTICE SHALL BE GIVEN BY DIRECT MAIL, WHETHER BY
25 LETTER OR POSTCARD, AND MUST CONTAIN THE FOLLOWING INFORMATION:
26 (A) THE ADDRESS AND PHYSICAL DESCRIPTION OF EACH SITE;
27 (B) A BRIEF DESCRIPTION OF THE EVENTS SPECIFIED IN SUBDIVISION ONE OF
28 THIS SECTION, INCLUDING, BUT NOT LIMITED TO:

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

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(I) THE PRESENCE AND TYPE OF HAZARDOUS SUBSTANCE OR CHEMICALS RELEASED OR THREATENED TO BE RELEASED;

(II) A BRIEF DESCRIPTION OF THE NATURE AND HEALTH RISKS, OR POTENTIAL HEALTH RISKS, OF THE HAZARDOUS SUBSTANCE OR A LINK TO THE DEPARTMENT WEBSITE, THAT IS FREQUENTLY UPDATED AND CONTAINS DESCRIPTIONS OF THE CHEMICALS' NATURE AND HEALTH RISKS; AND

(III) WHETHER THERE WAS ANY SPILLING, LEAKING, PUMPING, POURING, EMITTING, EMPTYING, DISCHARGING, INJECTING, ESCAPING, LEACHING, DUMPING, OR DISPOSING OF ANY HAZARDOUS SUBSTANCE INTO OR ONTO THE LAND, WATER, OR AIR; AND

(C) THE CASE NUMBER OF THE ENFORCEMENT ACTION FOR WHICH NOTICE HAS BEEN GIVEN.

3. THE DEPARTMENT SHALL PROVIDE NOTICE BY NEWSPAPER AND ON THE DEPARTMENT WEBSITE UNDER THE STANDARDS ESTABLISHED IN SUBDIVISION FOUR OF THIS SECTION WHENEVER ANY OF THE FOLLOWING EVENTS OCCUR:

(A) WHENEVER THE DEPARTMENT FIRST BECOMES AWARE OF A SITE UNDERGOING REMEDIAL ACTION;

(B) WHENEVER THE DEPARTMENT FIRST BECOMES AWARE OF THE EXISTENCE OF THE PRESENCE OF A CONTAMINANT OR HAZARDOUS SUBSTANCE VIA A NOTIFICATION REQUIREMENT UNDER ANY OF THE FOLLOWING ACTS OR REGULATIONS:

(I) PURSUANT TO NOTIFICATION REQUIRED BY THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT (CERCLA), 42 U.S.C. SECTIONS 9603 (A) AND 9603 (C);

(II) PURSUANT TO ACTIONS TAKEN UNDER CERCLA SECTION 9604(A);

(III) ANY LISTING PURSUANT TO THE NATIONAL CONTINGENCY PLAN; OR

(IV) PURSUANT TO ANY ACTION FOR JUDICIAL RELIEF UNDERTAKEN PURSUANT TO THE FEDERAL SOLID WASTE ACT, 42 U.S.C. SECTIONS 6973 OR 6972 (A);

(C) WHENEVER THE DEPARTMENT HAS CONFIRMED, THROUGH SOUND SCIENTIFIC METHODS, THE PRESENCE OF AN ENVIRONMENTAL CONTAMINANT THAT EXCEEDS THE APPLICABLE FEDERAL OR STATE HEALTH AND SAFETY STANDARDS; OR

(D) WHENEVER THE DEPARTMENT IS AWARE OF THE PRESENCE OF A LEAKING UNDERGROUND STORAGE TANK.

4. NOTICE OF THE EVENTS DESCRIBED IN SUBDIVISION THREE OF THIS SECTION MUST BE PLACED ON A QUARTERLY BASIS IN A NEWSPAPER WIDELY CIRCULATED IN THE AREAS WHERE THE CONDITION DESCRIBED IN SUBDIVISION THREE OF THIS SECTION OCCURS FOR A MINIMUM PERIOD OF TWO YEARS. THE NEWSPAPER NOTICE MUST CONTAIN THE FOLLOWING INFORMATION IN NO LESS THAN ELEVEN-POINT FONT:

(A) A GENERAL DESCRIPTION OF THE EVENTS LEADING UP TO THE EVENTS DESCRIBED IN SUBDIVISION THREE OF THIS SECTION:

(I) WHETHER THERE WAS ANY SPILLING, LEAKING, PUMPING, POURING, EMITTING, EMPTYING, DISCHARGING, INJECTING, ESCAPING, LEACHING, DUMPING, OR DISPOSING OF ANY OF THE ITEMS LISTED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH INTO OR ONTO THE LAND, WATER, OR AIR; AND

(II) THE PRESENCE OF ANY WASTE, SPECIAL WASTE, POTENTIALLY INFECTIOUS MEDICAL WASTE, POLLUTION CONTROL WASTE, INDUSTRIAL PROCESS WASTE, HAZARDOUS WASTE, HAZARDOUS SUBSTANCE, OR CONTAMINANT;

(B) A DESCRIPTION OF THE PHYSICAL LOCATION OF EACH SITE, INCLUDING THE LEGAL DESCRIPTION OF THE PROPERTY AND THE STREET NAMES BORDERING EACH SITE;

(C) INFORMATION RELATING TO THE NATURE AND HEALTH RISKS OF THE HAZARDOUS SUBSTANCES OR THE ADDRESS OF THE DEPARTMENT WEBSITE WHERE ADDITIONAL INFORMATION MAY BE GATHERED ABOUT THE NATURE AND HEALTH RISKS ASSOCIATED WITH THE POLLUTANTS; AND

(D) IN THE CIRCUMSTANCE WHEN NOTICE IS TO BE GIVEN REGARDING THE PRESENCE OF A LEAKING UNDERGROUND STORAGE TANK, IT IS SUFFICIENT THAT THE

1 NEWSPAPER NOTICE IDENTIFY THE GENERAL AREA WHERE EACH LEAKING UNDER-
2 GROUND STORAGE TANK IS LOCATED AND SPECIFICALLY PROVIDE INSTRUCTIONS TO
3 DETERMINE THE EXACT LOCATIONS OF THE LEAKING UNDERGROUND STORAGE TANKS
4 THROUGH A WEBSITE OR OTHER SEARCHABLE DATA BASE MAINTAINED BY THE
5 DEPARTMENT.
6 5. THE DEPARTMENT IS NOT LIABLE FOR THE ACCURACY, AVAILABILITY, OR USE
7 OF ANY INFORMATION PROVIDED UNDER THIS SECTION UNLESS THE DEPARTMENT'S
8 ACT OR OMISSION CONSTITUTES WILLFUL AND WANTON MISCONDUCT.
9 6. AT A MINIMUM, THE DEPARTMENT SHALL PROVIDE AN ANNUAL UPDATE ON
10 INACTIVE HAZARDOUS WASTE DISPOSAL SITES ON THE DEPARTMENT WEBSITE.
11 S 2. This act shall take effect immediately.