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

11145

I N A S S E M B L Y

May 20, 2010

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

AN ACT to amend the environmental conservation law, in relation to mercury-added consumer products

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

Section 1. Subdivision 8 of section 27-2107 of the environmental conservation law, as added by chapter 676 of the laws of 2005, is amended to read as follows:

8. On or after January first, two thousand [eight, but no later than February twentieth, two thousand eight, and thereafter upon written request, but not more than once a year, the commissioner shall issue a written finding as to whether non-mercury alternatives are comparable in price to, are as effective in performance as, and are as accurate and precise as] ELEVEN, NO PERSON SHALL SELL, OFFER FOR SALE OR DISTRIBUTE ANY mercury [sphygmomanometers] SPHYGMOMANOMETER, mercury wetted reed [relays] RELAY, mercury flame [sensors] SENSOR, mercury [thermometers other than thermometers prohibited from sale pursuant to subdivision two of this section] THERMOMETER, or mercury [thermostats] THERMOSTAT, except for mercury thermostats used by a blind or visually impaired person. [Upon making an affirmative finding that a non-mercury alternative is comparable in price to, is as effective in performance as, and is as accurate and precise as any mercury-added consumer product delineated in this subdivision, no person shall sell, offer for sale or distribute such mercury-added consumer product for which the commissioner has made such an affirmative finding.] The provisions of this subdivision shall not apply to the sale or distribution of any mercury-added consumer product delineated in this subdivision [for which the commissioner has made such an affirmative finding,] if such product is used to replace a product that is a component in a larger product in use prior to [the issuance of such affirmative finding] JANUARY FIRST, TWO THOUSAND ELEVEN or the resale of any mercury-added consumer product delineated in this subdivision[, for which the commissioner has made such an

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

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affirmative finding,] manufactured prior to [the issuance of such affirmative finding] JANUARY FIRST, TWO THOUSAND ELEVEN.

S 2. Section 27-2107 of the environmental conservation law is amended by adding a new subdivision 10 to read as follows:

10. THE DEPARTMENT MAY GRANT A WAIVER FROM THE PROVISIONS OF SUBDIVISION EIGHT OF THIS SECTION UPON REQUEST BY THE MANUFACTURER OF A MERCURY-ADDED CONSUMER PRODUCT.

(A) AN APPLICATION FOR A WAIVER SHALL BE IN THE FORM PRESCRIBED BY THE DEPARTMENT AND DOCUMENT THE BASIS FOR THE REQUESTED WAIVER OR RENEWAL OF A WAIVER AND DESCRIBE HOW THE MANUFACTURER WILL ENSURE THAT A SYSTEM EXISTS FOR THE PROPER COLLECTION, TRANSPORTATION AND PROCESSING OF THE MERCURY-ADDED CONSUMER PRODUCTS AT THE END OF THEIR USEFUL LIFE.

(B) THE APPLICATION MUST INCLUDE AT A MINIMUM, INFORMATION THAT DEMONSTRATES:

(I) THERE ARE NO NON-MERCURY ALTERNATIVES THAT ARE COMPARABLE IN PRICE TO, ARE AS EFFECTIVE IN PERFORMANCE AS, OR ARE AS ACCURATE AND PRECISE AS THE IDENTIFIED MERCURY-ADDED CONSUMER PRODUCT;

(II) THE USE OF THE MERCURY-ADDED CONSUMER PRODUCT PROVIDES A NET BENEFIT TO THE ENVIRONMENT, PUBLIC HEALTH, OR PUBLIC SAFETY WHEN COMPARED TO A NON-MERCURY ALTERNATIVE; OR

(III) THERE ARE OTHER FACTORS AFFECTING THE USE OF NON-MERCURY ALTERNATIVES.

(C) THE MANUFACTURER MUST NOTIFY THE REGIONAL MULTI-STATE CLEARINGHOUSE, AS IDENTIFIED IN SECTION 27-2115 OF THIS TITLE, OF ITS REQUEST FOR A WAIVER PURSUANT TO THIS SUBDIVISION AND PROVIDE THE CLEARINGHOUSE WITH THE INFORMATION REQUIRED IN ITS WAIVER APPLICATION.

(D) THE DEPARTMENT MAY GRANT OR DENY, IN WHOLE OR IN PART, A REQUEST FOR A WAIVER. IN DETERMINING WHETHER TO GRANT OR DENY A WAIVER OR WAIVER RENEWAL, THE DEPARTMENT MAY CONSULT WITH THE CLEARINGHOUSE, OTHER STATES, OR REGIONAL GOVERNMENTAL ORGANIZATIONS TO PROMOTE CONSISTENCY IN THE IMPLEMENTATION OF THIS SUBDIVISION.

(E) WAIVERS SHALL BE GRANTED FOR A PERIOD NOT TO EXCEED TWO YEARS. UPON A REQUEST BY THE MANUFACTURER, THE DEPARTMENT MAY RENEW A WAIVER FOR A PERIOD NOT TO EXCEED TWO YEARS IF THE DEPARTMENT FINDS THAT THE MANUFACTURER CONTINUES TO MEET THE REQUIREMENTS FOR A WAIVER, THAT THE MANUFACTURER HAS COMPLIED WITH ALL CONDITIONS OF THE ORIGINAL WAIVER, AND THE MANUFACTURER DEMONSTRATES THAT REASONABLE EFFORTS HAVE BEEN MADE TO REMOVE MERCURY FROM THE PRODUCT SUBJECT TO THE WAIVER.

S 3. This act shall take effect immediately; provided, however, that any written findings of the commissioner of environmental conservation issued pursuant to subdivision 8 of section 27-2107 of the environmental conservation law, as it existed prior to the amendments made by section one of this act, shall remain in full force and effect until January 1, 2011 and upon that date shall be deemed repealed.