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

3780

2009-2010 Regular Sessions

I N S E N A T E

March 31, 2009

Introduced by Sens. THOMPSON, 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

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 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.

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

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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 2. 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.

S 17-2101. DEFINITIONS.

AS USED IN THIS TITLE:

1. "BIO-SOLIDS" MEANS DE-WATERED TREATMENT RESIDUALS THAT MEET FEDERAL AND STATE REGULATIONS AND LOCAL RULES FOR REUSE CONCERNING METALS, PATHOGENS, AND VECTOR ATTRACTION REDUCTION.

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

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

4. "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.

5. "PHOSPHORUS FERTILIZER" MEANS FERTILIZER IN WHICH THE AVAILABLE PHOSPHATE (P205) CONTENT IS GREATER THAN 0.67 PERCENT BY WEIGHT. PHOSPHORUS FERTILIZER DOES NOT MEAN COMPOST OR BIO-SOLIDS.

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

1. NO PERSON SHALL USE OR AUTHORIZE ANY PERSON BY WAY OF SERVICE CONTRACT OR OTHER ARRANGEMENT TO USE 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. NOTHING IN THIS TITLE SHALL IMPAIR OR SUPERSEDE THE AUTHORITY OF THE COMMISSIONER OF AGRICULTURE AND MARKETS TO REGULATE FERTILIZER PURSUANT TO ARTICLE TEN OF THE AGRICULTURE AND MARKETS LAW.

S 3. 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 INCHES BY ELEVEN AND ONE-HALF 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 4. This act shall take effect January 1, 2010, provided, however, that:

1. persons may continue to use phosphorus fertilizer on lawn and non-agricultural turf after January 1, 2010, if the fertilizer was purchased prior to such effective date;

2. section one of this act shall take effect July 1, 2010; and

3. commercial establishments may continue to use after July 1, 2010, inventory of household cleansing products used in dishwashers that was purchased prior to July 1, 2010 until such inventory is depleted.