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

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 14, 2011

Introduced by M. of A. P. RIVERA, ENGLEBRIGHT, PEOPLES-STOKES, BROOK-KRASNY, DINOWITZ, JAFFEE, PAULIN, COLTON, ROSENTHAL, KAVANAGH -- Multi-Sponsored by -- M. of A. BOYLAND, CUSICK, GOTTFRIED, LUPARDO, McENENY, PHEFFER, REILLY, WEINSTEIN -- read once and referred to the Committee on Economic Development

AN ACT to amend the environmental conservation law, in relation to the phase-out of state use of pesticides

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

Section 1. Legislative findings. The legislature finds and declares that pesticides are linked to a number of acute and chronic health problems and that it is therefore the policy of the state to phase-out pesticide use by the government for many pest control purposes and to adopt a pest control policy that substantially relies on non-chemical pest control strategies.

S 2. Article 33 of the environmental conservation law is amended by adding a new title 8 to read as follows:

TITLE 8

PHASE-OUT OF STATE USE OF PESTICIDES

SECTION 33-0801. DEFINITIONS.

33-0803. PHASE-OUT OF STATE USE OF PESTICIDES.

S 33-0801. DEFINITIONS.

AS USED IN THIS TITLE:

1. "ANTIMICROBIAL PESTICIDE" MEANS A PESTICIDE THAT: (A) IS INTENDED TO DISINFECT, SANITIZE, REDUCE, OR MITIGATE GROWTH OR DEVELOPMENT OF MICROBIOLOGICAL ORGANISMS; (B) IS INTENDED TO PROTECT INANIMATE OBJECTS, INDUSTRIAL PROCESSES OR SYSTEMS, SURFACES, WATER, OR OTHER CHEMICAL SUBSTANCES FROM CONTAMINATION, FOULING, OR DETERIORATION CAUSED BY BACTERIA, VIRUSES, FUNGI, PROTOZOA, ALGAE, OR SLIME; OR (C) IN THE

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

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INTENDED USE IS EXEMPT FROM, OR OTHERWISE NOT SUBJECT TO, A TOLERANCE UNDER APPROPRIATE PROVISIONS OF FEDERAL LAW.

2. "ANTIMICROBIAL PESTICIDE" DOES NOT INCLUDE: (A) A WOOD PRESERVATIVE OR ANTIFOULING PAINT PRODUCT FOR WHICH A CLAIM OF PESTICIDAL ACTIVITY IS MADE; (B) AN AGRICULTURAL FUNGICIDE PRODUCT; OR (C) AN AQUATIC HERBICIDE PRODUCT.

S 33-0803. PHASE-OUT OF STATE USE OF PESTICIDES.

1. EFFECTIVE JANUARY FIRST, TWO THOUSAND THIRTEEN, NO STATE DEPARTMENT, AGENCY, OR PUBLIC BENEFIT CORPORATION OR ANY PESTICIDE APPLICATOR EMPLOYED THEREBY AS A CONTRACTOR OR SUBCONTRACTOR FOR PEST CONTROL PURPOSES, SHALL APPLY ON STATE PROPERTY ANY PESTICIDE CLASSIFIED AS TOXICITY CATEGORY I BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, OR ANY PESTICIDE CLASSIFIED AS A KNOWN, LIKELY, OR PROBABLE HUMAN CARCINOGEN BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, EXCEPT AS PROVIDED FOR IN SUBDIVISION FOUR OF THIS SECTION.

2. EFFECTIVE JANUARY FIRST, TWO THOUSAND FOURTEEN, NO STATE DEPARTMENT, AGENCY, OR PUBLIC BENEFIT CORPORATION, OR ANY PESTICIDE APPLICATOR EMPLOYED THEREBY AS A CONTRACTOR OR SUBCONTRACTOR FOR PEST CONTROL PURPOSES, SHALL APPLY ON STATE PROPERTY ANY PESTICIDE CLASSIFIED AS TOXICITY CATEGORY II BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ANY PESTICIDE CLASSIFIED AS A POSSIBLE HUMAN CARCINOGEN BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, OR ANY PESTICIDE CLASSIFIED AS RESTRICTED USE BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OR THE DEPARTMENT, EXCEPT AS PROVIDED IN SUBDIVISION FOUR OF THIS SECTION.

3. EFFECTIVE JANUARY FIRST, TWO THOUSAND FIFTEEN, NO STATE DEPARTMENT, AGENCY, OR PUBLIC BENEFIT CORPORATION OR ANY PESTICIDE APPLICATOR EMPLOYED THEREBY AS A CONTRACTOR OR SUBCONTRACTOR FOR PEST CONTROL PURPOSES SHALL APPLY ANY PESTICIDE ON STATE PROPERTY, EXCEPT AS PROVIDED IN SUBDIVISION FOUR OF THIS SECTION.

4. THE PROVISIONS OF SUBDIVISIONS ONE, TWO, AND THREE OF THIS SECTION SHALL NOT APPLY TO THE FOLLOWING:

(A) PESTICIDES OTHERWISE LAWFULLY USED FOR THE PURPOSE OF MAINTAINING A SAFE DRINKING WATER SUPPLY AT DRINKING WATER TREATMENT PLANTS, WASTEWATER TREATMENT PLANTS, RESERVOIRS, AND RELATED COLLECTION, DISTRIBUTION, AND TREATMENT FACILITIES;

(B) ANTIMICROBIAL PESTICIDES;

(C) PESTICIDES IN CONTAINED BAITS FOR THE PURPOSES OF RODENT CONTROL; AND

(D) PESTICIDES CLASSIFIED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS EXEMPT MATERIALS UNDER 40 CFR 152.25.

5. ON OR BEFORE JANUARY FIRST, TWO THOUSAND THIRTEEN, THE DEPARTMENT SHALL ADOPT A PEST MANAGEMENT PLAN FOR EVERY STATE DEPARTMENT, AGENCY, AND PUBLIC BENEFIT CORPORATION. SUCH PLAN SHALL TAKE EFFECT ON JANUARY FIRST, TWO THOUSAND THIRTEEN AND SHALL BE CONSISTENT WITH THE PROVISIONS OF THIS TITLE. SUCH PLAN SHALL ADDRESS PEST POPULATION MONITORING, LEAST-TOXIC PESTICIDES FOR USE PRIOR TO JANUARY FIRST, TWO THOUSAND FIFTEEN, AND NON-CHEMICAL PEST CONTROL STRATEGIES FOR USE AFTER SUCH DATE, WHICH WILL EFFECTIVELY MANAGE PEST PROBLEMS IN A COMPREHENSIVE MANNER.

6. SHOULD ANY STATE DEPARTMENT, AGENCY, OR PUBLIC BENEFIT CORPORATION DETERMINE THAT A HUMAN HEALTH EMERGENCY WARRANTS THE USE OF A PESTICIDE THAT WOULD OTHERWISE NOT BE ALLOWED UNDER THIS TITLE, IT MAY APPLY FOR A SINGLE-USE WAIVER FROM THE DEPARTMENT OF HEALTH. THE DEPARTMENT OF HEALTH SHALL DETERMINE IF SUCH A WAIVER IS WARRANTED BASED ON THE FOLLOWING CRITERIA:

(A) THE PEST SITUATION POSES AN IMMEDIATE THREAT TO HUMAN HEALTH; AND

(B) VIABLE ALTERNATIVES DO NOT EXIST (SUCH A DETERMINATION SHALL BE MADE IN CONSULTATION WITH THE CORNELL COOPERATIVE EXTENSION SERVICE INTEGRATED PEST MANAGEMENT PROGRAM).

AS A CONDITION OF APPROVAL, THE DEPARTMENT OF HEALTH SHALL REQUIRE A COMMITMENT FROM EVERY STATE DEPARTMENT, AGENCY, AND PUBLIC BENEFIT CORPORATION THAT THE UNDERLYING CAUSES OF THE PEST OUTBREAK WILL BE ADDRESSED IN ORDER TO PREVENT FUTURE OUTBREAKS.

7. THE FOLLOWING ACTIVITIES SHALL BE EXEMPT FROM THE PROVISIONS OF THIS TITLE:

(A) PESTICIDES USED FOR AGRICULTURAL RESEARCH PURPOSES AT THE STATE UNIVERSITY COLLEGE OF TECHNOLOGY AT ALFRED, THE STATE UNIVERSITY COLLEGE OF TECHNOLOGY AT CANTON, THE STATE UNIVERSITY COLLEGE OF AGRICULTURE AT COBLESKILL, THE STATE UNIVERSITY COLLEGE OF TECHNOLOGY AT DELHI, THE STATE UNIVERSITY COLLEGE OF TECHNOLOGY AT FARMINGDALE, THE STATE UNIVERSITY COLLEGE OF AGRICULTURE AT MORRISVILLE, THE STATE UNIVERSITY COLLEGE OF TECHNOLOGY AT UTICA/ROME, AND THE NEW YORK STATE STATUTORY COLLEGES AT CORNELL, INCLUDING THE AGRICULTURAL EXPERIMENT STATION AT GENEVA AND ITS FIELD OFFICES.

(B) THE USE OF ROTENONE AND ASSOCIATED RESINS AS A PISCICIDE FOR PURPOSES DIRECTLY RELATED TO THE RECLAMATION OF FRESHWATER WATER BODIES TO PREPARE FOR THE REINTRODUCTION OF NATIVE SPECIES. WATER TREATED WITH ROTENONE SHALL NOT BE USED AS POTABLE WATER OR FOR IRRIGATION OF CROPS.

S 3. This act shall take effect immediately.