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

3863

2011-2012 Regular Sessions

I N A S S E M B L Y

January 28, 2011

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Aging

AN ACT to amend the agriculture and markets law, in relation to regulation of fertilizer products

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

Section 1. Section 143 of the agriculture and markets law is amended by adding four new subdivisions t, u, v and w to read as follows:

T. "AGRICULTURAL LAND" MEANS LAND USED IN AGRICULTURAL PRODUCTION FOR THE SALE OF CROPS, LIVESTOCK OR LIVESTOCK PRODUCTS.

U. "SEPTAGE" MEANS THE CONTENTS OF A SEPTIC TANK, CESSPOOL OR OTHER INDIVIDUAL SEWAGE TREATMENT FACILITY WHICH RECEIVES DOMESTIC SEWAGE WASTES.

V. "SLUDGE" MEANS THE ACCUMULATED SEMISOLIDS OR SOLIDS RESULTING FROM TREATMENT OF WASTEWATERS FROM PUBLICLY OR PRIVATELY OWNED OR OPERATED SEWAGE TREATMENT PLANTS, BUT DOES NOT INCLUDE THE TREATED EFFLUENT FROM A WASTEWATER TREATMENT PLANT, OR FOOD PROCESSING WASTES GENERATED FROM A FOOD PROCESSING ESTABLISHMENT LICENSED PURSUANT TO THE PROVISIONS OF ARTICLE TWENTY-C OF THIS CHAPTER.

W. "SLUDGE PRODUCTS" MEANS PRODUCTS MADE FROM SEPTAGE OR SLUDGE GENERATED IN THIS STATE OR ANOTHER STATE, AND INTENDED AS A SOIL AMENDMENT FOR AGRICULTURAL LAND.

S 2. Section 144 of the agriculture and markets law is amended by adding a new subdivision e to read as follows:

E. A DETAILED ANALYSIS OF ALL MATERIALS CONTAINED IN THE FERTILIZER PRODUCT.

S 3. Section 146-a of the agriculture and markets law is amended by adding a new subdivision c to read as follows:

C. THE COMMISSIONER SHALL ANALYZE SAMPLES OF ALL COMMERCIAL FERTILIZERS FOR THE PRESENCE OF SOLID WASTES, HAZARDOUS WASTES OR HAZARDOUS SUBSTANCES, AS DEFINED IN PARAGRAPH FOUR OF SUBDIVISION (B) OF SECTION

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

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ONE HUNDRED FORTY-SIX-B OF THIS ARTICLE. THE COMMISSIONER SHALL ANNUALLY REPORT THE RESULTS OF THE SAMPLING AND ANALYSIS TO THE GOVERNOR AND THE LEGISLATURE.

S 4. Section 146-b of the agriculture and markets law, as added by chapter 695 of the laws of 1974, is amended to read as follows:

S 146-b. Misbranded or adulterated fertilizer. No commercial fertilizer shall be distributed in this state if it is deemed to be misbranded or adulterated.

(a) A commercial fertilizer shall be deemed to be misbranded:

(1) if its labelling is false or misleading in any particular; [or]

(2) if it purports to be or is represented as a commercial fertilizer, or is represented as containing a plant nutrient or commercial fertilizer unless such plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in the adopting of such regulations the commissioner shall give due regard to commonly accepted definitions and official fertilizer terms such as those employed by the association of American plant food control officials[.]; OR

(3) IF ITS LABELLING DOES NOT CONTAIN A DETAILED STATEMENT OF ALL INGREDIENTS CONTAINED IN THE PRODUCT.

(b) A commercial fertilizer shall be deemed to be adulterated:

(1) if it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use, which may be necessary to protect plant life are not shown upon the label;

(2) if its composition falls below or differs from that which it is purported to possess by its labelling; [or]

(3) if it contains unwanted crop seed or weed seed[.]; OR

(4) IF IT CONTAINS ANY SUBSTANCE REGULATED AS A SOLID WASTE, AS DEFINED IN SECTION 27-0701 OF THE ENVIRONMENTAL CONSERVATION LAW, EXCEPT YARD WASTES, FOOD WASTES, SEPTAGE, SLUDGE AND SLUDGE PRODUCTS; A HAZARDOUS WASTE AS DEFINED IN SUBDIVISION THREE OF SECTION 27-0901 OF THE ENVIRONMENTAL CONSERVATION LAW, INCLUDING K061 WASTES GENERATED BY STEEL COMPANIES AND TREATED WASTES; OR A HAZARDOUS SUBSTANCE AS DEFINED IN SECTION 37-0103 OF THE ENVIRONMENTAL CONSERVATION LAW.

(C) A COMMERCIAL FERTILIZER THAT HAS BEEN ADULTERATED WITH ANY SUBSTANCE REGULATED AS A SOLID WASTE, HAZARDOUS WASTE OR HAZARDOUS SUBSTANCE, AS DESCRIBED IN PARAGRAPH FOUR OF SUBDIVISION (B) OF THIS SECTION SHALL NOT BE STORED, TRANSPORTED OR USED IN THE STATE.

(D) ANY PERSON, CORPORATION OR ASSOCIATION WHO VIOLATES THE PROVISIONS OF PARAGRAPH FOUR OF SUBDIVISION (B) OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR THE FIRST VIOLATION AND FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION. EACH DAY DURING WHICH THE PROHIBITED ACTIVITY OCCURS SHALL BE DEEMED A SEPARATE VIOLATION.

(E) ANY PERSON, CORPORATION OR ASSOCIATION WHO VIOLATES THE PROVISIONS OF SUBDIVISION (C) OF THIS SECTION BY STORING OR TRANSPORTING COMMERCIAL FERTILIZER CONTAINING A SOLID WASTE, HAZARDOUS WASTE OR HAZARDOUS SUBSTANCE, AS DEFINED IN PARAGRAPH FOUR OF SUBDIVISION (B) OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR THE FIRST VIOLATION AND ONE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION. EACH DAY DURING WHICH THE PROHIBITED ACTIVITY OCCURS SHALL BE DEEMED A SEPARATE VIOLATION.

S 5. Section 146-e of the agriculture and markets law, as added by chapter 695 of the laws of 1974, is amended to read as follows:

S 146-e. Stop sale orders. The commissioner may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this [act] ARTICLE until the law has been complied with and said commercial fertilizer is released in writing by the commissioner, or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this [act] ARTICLE have been complied with. IN THE CASE OF COMMERCIAL FERTILIZER WHICH HAS BEEN ADULTERATED WITH SOLID WASTE, HAZARDOUS WASTE OR A HAZARDOUS SUBSTANCE AS DEFINED IN PARAGRAPH FOUR OF SUBDIVISION (B) OF SECTION ONE HUNDRED FORTY-SIX-B OF THIS ARTICLE, THE COMMISSIONER SHALL ISSUE AND ENFORCE AN IMMEDIATE WRITTEN OR PRINTED "STOP SALE, USE OR REMOVAL" ORDER TO THE OWNER OR CUSTODIAN OF THE COMMERCIAL FERTILIZER.

S 6. This act shall take effect on the sixtieth day after it shall have become a law.