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

7711--A

2011-2012 Regular Sessions

I N A S S E M B L Y

May 16, 2011

Introduced by M. of A. SWEENEY, JAFFEE, MAISEL, ZEBROWSKI, ROSENTHAL, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. CASTELLI, GIBSON, GLICK, LATIMER, LUPARDO, McENENY, P. RIVERA, THIELE -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to regulating the manufacture, sale and use of shipping pallets, recycled and new, that contain the deca mixture

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

Section 1. The environmental conservation law is amended by adding a new section 37-0112 to read as follows:

S 37-0112. DECA MIXTURE IN SHIPPING PALLETS.

1. FOR PURPOSES OF THIS SECTION "DECA MIXTURE" SHALL MEAN A FLAME RETARDANT CONTAINING DECABROMODIPHENYL ETHER.

2. (A) NO PERSON SHALL MANUFACTURE, SELL OR OFFER FOR SALE OR DISTRIBUTE FOR SALE OR USE IN THE STATE A PRODUCT THAT IS MANUFACTURED FROM RECYCLED SHIPPING PALLETS CONTAINING THE DECA MIXTURE, EXCEPT THAT THIS PROHIBITION DOES NOT APPLY TO THE MANUFACTURING, SELLING OR DISTRIBUTION OF SHIPPING PALLETS THAT ARE MANUFACTURED FROM RECYCLED SHIPPING PALLETS CONTAINING THE DECA MIXTURE.

(B) ON AND AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, NO PERSON SHALL MANUFACTURE, SELL OR OFFER FOR SALE OR DISTRIBUTE FOR SALE OR USE IN THE STATE A SHIPPING PALLET CONTAINING THE DECA MIXTURE, OTHER THAN A SHIPPING PALLET MADE FROM RECYCLED SHIPPING PALLETS PROVIDED, HOWEVER THAT SUCH RECYCLED PRODUCT MAY CONTAIN UP TO ONE-TENTH OF ONE PER CENTUM OF DECABROMODIPHENYL ETHER BY MASS.

3. NOTWITHSTANDING PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, A PERSON MAY SELL OR DISTRIBUTE A SHIPPING PALLET CONTAINING THE DECA

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

LBD09463-03-1

MIXTURE FOR WHICH AN EXEMPTION IS OBTAINED PURSUANT TO THIS SUBDIVISION. A MANUFACTURER OR OWNER OF A SHIPPING PALLET MAY APPLY FOR AN EXEMPTION BY FILING A WRITTEN APPLICATION WITH THE COMMISSIONER. THE APPLICATION MUST INCLUDE A PROPOSED DURATION FOR THE EXEMPTION. THE COMMISSIONER MAY GRANT AN EXEMPTION UPON FINDING THAT:

(A) A SAFER ALTERNATIVE THAT MEETS THE CRITERIA OF SUBDIVISION FIVE OF THIS SECTION DOES NOT EXIST;

(B) A SHIPPING PALLET CONTAINING A PROPOSED SAFER ALTERNATIVE FAILS TO MEET APPLICABLE FIRE SAFETY STANDARDS, APPROVALS AND TESTS OR RELEVANT PERFORMANCE STANDARDS;

(C) ADDITIONAL TIME IS NEEDED BY THE APPLICANT TO COMPLETE TESTING OR OBTAIN APPROVAL TO ENSURE THAT A SHIPPING PALLET CONTAINING A PROPOSED SAFER ALTERNATIVE COMPLIES WITH APPLICABLE FIRE SAFETY STANDARDS, APPROVALS AND TESTS; OR

(D) ADDITIONAL TIME IS NEEDED BY THE APPLICANT TO MODIFY THE MANUFACTURING PROCESS IN ORDER TO PRODUCE A SHIPPING PALLET CONTAINING THE SAFER ALTERNATIVE.

THE COMMISSIONER SHALL NOT GRANT AN EXEMPTION PURSUANT TO THIS SUBDIVISION FOR LONGER THAN TWO YEARS.

4. BEGINNING JANUARY FIRST, TWO THOUSAND THIRTEEN, A MANUFACTURER OF A PRODUCT CONTAINING THE DECA MIXTURE RESTRICTED UNDER SUBDIVISION TWO OF THIS SECTION MUST NOTIFY PERSONS THAT SELL THE MANUFACTURER'S PRODUCT OF THE REQUIREMENTS OF THIS SECTION.

5. IT IS THE POLICY OF THE STATE THAT THE DECA MIXTURE BE REPLACED WITH SAFER ALTERNATIVES AS SOON AS PRACTICABLE.

FOR THE PURPOSES OF THIS SECTION, "SAFER ALTERNATIVE" MEANS A SUBSTITUTE PROCESS, PRODUCT, MATERIAL, CHEMICAL, STRATEGY OR ANY COMBINATION OF THESE THAT AT A MINIMUM, MEETS THE FOLLOWING CRITERIA:

(A) WHEN COMPARED TO THE CHEMICAL TO BE REPLACED WOULD REDUCE THE POTENTIAL FOR HARM TO HUMAN HEALTH AND THE ENVIRONMENT;

(B) SERVES A FUNCTIONALLY EQUIVALENT PURPOSE THAT ENABLES APPLICABLE FIRE SAFETY STANDARDS, APPROVALS AND TESTS AND RELEVANT PERFORMANCE STANDARDS TO BE MET;

(C) IS COMMERCIALLY AVAILABLE ON A NATIONAL BASIS;

(D) IS NOT COST-PROHIBITIVE; AND,

(E) HAS NOT BEEN IDENTIFIED AS OR DOES NOT MEET THE CRITERIA FOR IDENTIFICATION AS A PERSISTENT, BIOACCUMULATIVE TOXIC CHEMICAL BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

S 2. This act shall take effect immediately.