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

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I N A S S E M B L Y

January 10, 2012

Introduced by M. of A. MAISEL, ENGLEBRIGHT, COLTON, P. RIVERA, ROSENTHAL, SCHIMEL, LINARES, DINOWITZ, ROBERTS, WEPRIN -- Multi-Sponsored by -- M. of A. BOYLAND, COOK, PERRY, THIELE, WEISENBERG -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to disposal of mercury-containing lamps and manufacturer collection and recycling programs

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

Section 1. Section 27-2113 of the environmental conservation law, as added by chapter 145 of the laws of 2004, subdivision 1 as amended by chapter 676 of the laws of 2005, is amended to read as follows:

S 27-2113. Exemptions.

[1.] The provisions of this title shall not apply to photographic film and paper, pharmaceutical products, biological products or any substance that may be lawfully sold over the counter without a prescription under the federal Food, Drug and Cosmetic Act, 21 USC 301 et seq. For the purposes of this subdivision, "biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product or an analogous product, or arsphenamine, or any other trivalent organic arsenic compound used for the prevention, treatment or cure of a disease or condition of human beings.

[2. The provisions of subdivision one of section 27-2105 of this title shall not apply to mercury-containing lamps discarded by households.

3. The provisions of subdivision one of section 27-2105 of this title shall not apply to mercury-containing lamps discarded by a small business if such small business discards no more than fifteen mercury-containing lamps per month. For the purposes of this subdivision "small business" means any business which is resident in this state, independently owned and operated, not dominant in its field, and employing not more than one hundred individuals.]

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

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S 2. The environmental conservation law is amended by adding a new section 27-2119 to read as follows:

S 27-2119. MERCURY LAMP COLLECTION PROGRAM.

1. DEFINITIONS. "PRODUCER" MEANS A PERSON THAT:

(A) HAS OR HAD LEGAL OWNERSHIP OF THE BRAND, BRAND NAME OR CO-BRAND OF A MERCURY-CONTAINING LAMP SOLD IN OR INTO THIS STATE;

(B) IMPORTS OR HAS IMPORTED MERCURY-CONTAINING LAMPS; OR

(C) MAKES OR MADE AN UNBRANDED MERCURY-CONTAINING LAMP THAT IS SOLD OR HAS BEEN SOLD IN OR INTO THIS STATE.

2. PRODUCER RESPONSIBILITIES. (A) EVERY PRODUCER OF MERCURY-CONTAINING LAMPS SOLD IN OR INTO THIS STATE SHALL, INDIVIDUALLY OR COLLECTIVELY, AND NOT LATER THAN JUNE FIRST, TWO THOUSAND FOURTEEN, SUBMIT A PLAN TO THE DEPARTMENT FOR APPROVAL THAT DESCRIBES A COLLECTION PROGRAM FOR OUT-OF-SERVICE MERCURY-CONTAINING LAMPS. THE COLLECTION PROGRAM SHALL NOT INVOLVE ANY DIRECT COST TO HOUSEHOLDS OR SMALL BUSINESSES FOR PARTICIPATING IN THE PROGRAM. THE COLLECTION PROGRAM SHALL AT A MINIMUM INCLUDE: THE IDENTITY OF COLLECTION, TRANSPORTATION AND PROCESSING SERVICE PROVIDERS, INCLUDING CONSIDERATION GIVEN TO EXISTING RESIDENTIAL CURBSIDE COLLECTION INFRASTRUCTURE AND MAILBACK SYSTEMS AS AN APPROPRIATE COLLECTION MECHANISM; HOW MERCURY AND OTHER HAZARDOUS SUBSTANCES WILL BE HANDLED FOR COLLECTION THROUGH FINAL DISPOSITION; THE USE OF ANY THIRD PARTY ORGANIZATIONS THAT MAY CONDUCT ALL OR PART OF THE COLLECTION AND RECYCLING PROGRAM, AND THE SPECIFIC RESPONSIBILITIES OF EACH SUCH ORGANIZATION; AND AN EDUCATION AND OUTREACH PROGRAM.

COLLECTION METHODS MAY INCLUDE, BUT ARE NOT LIMITED TO, (I) INDIVIDUAL PRODUCT MAIL RETURN AND/OR MULTIPLE COLLECTION CONTAINERS AND COLLECTION SITES LOCATED AT RETAILERS, MUNICIPALITIES FOR COLLECTION AT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES, OR HOUSEHOLD HAZARDOUS WASTE EVENTS; (II) THE DISTRIBUTION OF CONTAINERS FOR MERCURY-CONTAINING LAMP COLLECTION; AND (III) CRITERIA TO ENSURE THAT THE CAPTURE RATE OF OUT-OF-SERVICE MERCURY-CONTAINING LAMPS IS MAXIMIZED.

(B) NOT LATER THAN DECEMBER FIRST, TWO THOUSAND FOURTEEN, PRODUCERS OF MERCURY-CONTAINING LAMPS SHALL IMPLEMENT THE COLLECTION PROGRAM OUTLINED IN THEIR PLAN.

(C) BEGINNING JUNE FIRST, TWO THOUSAND FIFTEEN, AND ANNUALLY THEREAFTER, EACH PRODUCER OF MERCURY-CONTAINING LAMPS SHALL SUBMIT A REPORT TO THE DEPARTMENT THAT INCLUDES, AT A MINIMUM, THE FOLLOWING INFORMATION:

(I) THE NUMBER OF MERCURY-CONTAINING LAMPS COLLECTED AND RECYCLED BY THE PRODUCER DURING THE PREVIOUS CALENDAR YEAR;

(II) THE ESTIMATED TOTAL AMOUNT OF MERCURY CONTAINED IN THE LAMP COMPONENTS COLLECTED BY THAT PRODUCER IN THE PREVIOUS CALENDAR YEAR;

(III) AN EVALUATION OF THE EFFECTIVENESS OF THE PRODUCER'S COLLECTION PROGRAM AND ANY FINANCIAL INCENTIVES; AND

(IV) AN ACCOUNTING OF THE ADMINISTRATIVE COSTS INCURRED IN THE COURSE OF ADMINISTERING THE COLLECTION AND RECYCLING PROGRAM AND ANY FINANCIAL INCENTIVE PLAN.

3. DEPARTMENT RESPONSIBILITIES. (A) WITHIN NINETY DAYS OF RECEIPT OF A COMPLETE PRODUCER PLAN REQUIRED BY SUBDIVISION TWO OF THIS SECTION, THE DEPARTMENT SHALL REVIEW SUCH PLAN AND APPROVE, DENY OR APPROVE WITH MODIFICATIONS EACH PLAN SUBMITTED. THE DEPARTMENT SHALL NOT APPROVE A PLAN UNLESS ALL ELEMENTS OF SUBDIVISION TWO OF THIS SECTION ARE ADEQUATELY ADDRESSED. IN REVIEWING A PLAN, THE DEPARTMENT MAY CONSIDER THE CONSISTENCY OF THE PLAN WITH COLLECTION IN OTHER STATES AND CONSIDER CONSISTENCY BETWEEN PRODUCER PROGRAMS. IN REVIEWING PLANS, THE DEPARTMENT SHALL ENSURE THAT EDUCATION AND OUTREACH PROGRAMS ARE UNIFORM AND CONSISTENT TO ENSURE EASE OF IMPLEMENTATION.

(B) THE DEPARTMENT SHALL MAINTAIN AND POST ON ITS WEBSITE A LIST OF ENTITIES AND LOCATIONS THAT SERVE AS COLLECTION POINTS FOR MERCURY-CONTAINING LAMPS.

(C) IN CONJUNCTION WITH THE EDUCATIONAL AND OUTREACH PROGRAMS IMPLEMENTED BY PRODUCERS, THE DEPARTMENT MAY CONDUCT AN EDUCATION AND OUTREACH PROGRAM DIRECTED AT RETAILERS AND HOMEOWNERS TO PROMOTE THE COLLECTION OF DISCARDED MERCURY-CONTAINING LAMPS.

(D) BY DECEMBER FIRST, TWO THOUSAND FIFTEEN, AND ANNUALLY THEREAFTER, THE DEPARTMENT SHALL POST A REPORT ON ITS WEBSITE DETAILING THE COLLECTION AND RECYCLING OF MERCURY-CONTAINING LAMPS IN THE STATE. SUCH REPORT SHALL INCLUDE AN EVALUATION OF THE EFFECTIVENESS OF THE COLLECTION AND RECYCLING PROGRAMS, AND INFORMATION ON ACTUAL COLLECTION RATES.

S 3. This act shall take effect immediately, provided however that section one of this act shall take effect January 1, 2014.