

7634

2013-2014 Regular Sessions

I N   A S S E M B L Y

May 29, 2013

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Introduced by M. of A. GJONAJ -- read once and referred to the Committee  
on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to  
prohibiting the sale of heating oil containing waste oil

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

1     Section 1. Section 23-2308 of the environmental conservation law, as  
2     amended by chapter 118 of the laws of 1993, is amended to read as  
3     follows:  
4     S 23-2308. Prohibited disposal OR SALE of used oil.  
5     1. No person shall engage in the improper disposal OR SALE of used  
6     oil. Used oil shall only be deposited in an available used oil retention  
7     facility or disposed of as otherwise authorized or permitted by the  
8     commissioner.  
9     The provisions of this section shall not apply to the use of used oil  
10    for maintenance or lubrication of agricultural equipment.  
11    2. No person shall sell or offer for sale a used oil disposal kit or  
12    product which is comprised of absorbent material into which the lubri-  
13    cating oil from a vehicle is drained when performing an oil change and  
14    which is intended for disposal into the solid waste stream rather than  
15    for reuse or recycling.  
16    S 2. Section 71-2201 of the environmental conservation law, as added  
17    by chapter 740 of the laws of 1978, the opening paragraph and subdivi-  
18    sion 1 as amended and subdivision 3 as added by chapter 901 of the laws  
19    of 1983 and subdivision 4 as added by chapter 294 of the laws of 1991,  
20    is amended and a new section 71-2203 is added to read as follows:  
21    S 71-2201. [Enforcement of title 23 of article 23 of this chapter.  
22    Administrative and civil sanctions.] VIOLATIONS, CIVIL LIABILITY.  
23    1. Any person who violates any of the provisions of, or who fails to  
24    perform any duty imposed by title 23 of article 23 except the duty to  
25    accept used oil pursuant to section 23-2307 [or any person subject to

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

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1 section 23-2308 or any rule or regulation promulgated pursuant thereto],  
2 or any term or condition of any certificate or permit issued pursuant  
3 thereto, or any final determination or order of the commissioner made  
4 pursuant to this section shall be liable for a civil penalty not to  
5 exceed one thousand dollars for each such violation and an additional  
6 penalty of not more than five hundred dollars for each day during which  
7 such violation continues, to be assessed by the commissioner after a  
8 hearing or opportunity to be heard pursuant to the provisions of section  
9 71-1709 of this chapter, and, in addition thereto, such person may by  
10 similar process be enjoined from continuing such violation and any  
11 permit or certificate issued to such person may be revoked or suspended  
12 or a pending renewal application denied.

13 2. Any person who refuses to accept used oil as required pursuant to  
14 subdivision two of section 23-2307 shall be liable for a civil penalty  
15 not to exceed one hundred dollars.

16 3. Any person who [violates any provision of] IMPROPERLY DISPOSES OF  
17 USED OIL IN VIOLATION OF section 23-2308 of this chapter shall be  
18 subject to a civil penalty not to exceed two hundred fifty dollars for  
19 each violation.

20 3-A. ANY PERSON WHO KNOWINGLY ENGAGES IN THE SALE OF USED OIL, OR THE  
21 SALE OF HEATING OIL MIXED WITH USED OIL SHALL BE LIABLE FOR A CIVIL  
22 PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH VIOLATION.

23 4. Notwithstanding any other provision of law, any person who shall  
24 violate the provisions of paragraph [(c)] C of subdivision one of  
25 section 23-2307 or paragraph [(d)] D of subdivision two of section  
26 23-2307 of this chapter shall be liable for a civil penalty of not more  
27 than five hundred dollars, and an additional civil penalty of not more  
28 than five hundred dollars for each day during which such violation  
29 continues, not to exceed ten thousand dollars.

30 S 71-2203. CRIMINAL LIABILITY FOR VIOLATIONS.

31 1. ANY PERSON WHO SHALL KNOWINGLY ENGAGE IN THE SALE OF USED OIL OR  
32 HEATING OIL MIXED WITH USED OIL IN VIOLATION OF SECTION 23-2308 OF THIS  
33 CHAPTER, OR ANY CODE, RULE OR REGULATION PROMULGATED PURSUANT THERETO OR  
34 ANY FINAL DETERMINATION OR ORDER OF THE COMMISSIONER SHALL BE GUILTY OF  
35 A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A  
36 FINE, IN THE CASE OF A FIRST CONVICTION, OF NOT LESS THAN FIVE HUNDRED  
37 DOLLARS NOR MORE THAN EIGHTEEN THOUSAND DOLLARS OR BY IMPRISONMENT FOR A  
38 TERM OF NOT MORE THAN ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT,  
39 FOR EACH SEPARATE VIOLATION. IF THE CONVICTION IS FOR AN OFFENSE COMMIT-  
40 TED AFTER THE FIRST CONVICTION OF SUCH PERSON UNDER THIS SUBDIVISION,  
41 SUCH PERSON SHALL BE PUNISHED BY A FINE NOT TO EXCEED TWENTY-SIX THOU-  
42 SAND DOLLARS, OR BY IMPRISONMENT, OR BY BOTH SUCH FINE AND IMPRISONMENT.  
43 EACH DAY ON WHICH SUCH VIOLATION OCCURS SHALL CONSTITUTE A SEPARATE  
44 VIOLATION.

45 2. NO PROSECUTION UNDER THIS SECTION SHALL BE INSTITUTED UNTIL AFTER  
46 FINAL DISPOSITION OF AN APPEAL OR REVIEW, IF ANY.

47 3. ALL PROSECUTIONS UNDER THIS SECTION SHALL BE INSTITUTED BY THE  
48 COMMISSIONER AND SHALL BE CONDUCTED BY THE ATTORNEY GENERAL IN THE NAME  
49 OF THE PEOPLE OF THE STATE OF NEW YORK.

50 4. IN THE PROSECUTION OF ANY CRIMINAL PROCEEDING UNDER THIS SECTION BY  
51 THE ATTORNEY GENERAL AND, IN ANY PROCEEDING BEFORE A GRAND JURY IN  
52 CONNECTION THEREWITH, THE ATTORNEY GENERAL SHALL EXERCISE ALL THE POWERS  
53 AND PERFORM ALL THE DUTIES WHICH THE DISTRICT ATTORNEY WOULD OTHERWISE  
54 BE AUTHORIZED OR REQUIRED TO EXERCISE OR PERFORM, AND IN SUCH A PROCEED-  
55 ING THE DISTRICT ATTORNEY SHALL EXERCISE SUCH POWERS AND PERFORM SUCH  
56 DUTIES AS ARE REQUESTED OF HIM OR HER BY THE ATTORNEY GENERAL.

1       S   3. This act shall take effect on the first of January next succeed-  
2   ing the date on which it shall have become a law. Effective immediately  
3   the commissioner of environmental conservation is authorized to promul-  
4   gate any and all rules and regulations and take any other measures  
5   necessary to implement this act on its effective date on or before such  
6   date.