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

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2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the state finance law, in relation to notification of emergency response organizations

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 33-1209 to read as follows:

S 33-1209. NOTIFICATION OF EMERGENCY RESPONSE ORGANIZATIONS AND HOSPITALS; RESPONSIBILITY FOR RELEASES.

1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH CERTIFIED APPLICATOR, REGISTERED PESTICIDE BUSINESS OR AGENCY, AND COMMERCIAL PERMIT HOLDER SHALL:

A. ANNUALLY NOTIFY LOCAL EMERGENCY RESPONSE ORGANIZATIONS AND HOSPITALS OF THE PRODUCT AND CHEMICAL NAMES, REGISTRATION NUMBERS, TYPES, QUANTITIES AND LOCATION OF ALL PESTICIDES STORED;

B. PROVIDE THE LOCAL EMERGENCY RESPONSE ORGANIZATIONS AND LOCAL HOSPITALS WITH THEIR EMERGENCY RESPONSE PLAN INCLUDING IDENTIFICATION AND LOCATION OF RESIDENTIAL AREAS, SCHOOLS, HOSPITALS, NURSING HOMES, AND OTHER SIMILAR FACILITIES WITHIN ONE MILE OF THE STORAGE SITE FOR NOTIFICATIONS PURPOSES; AND

C. MAINTAIN A CURRENT INVENTORY OF THE PESTICIDES IN STORAGE. A COPY OF SUCH INVENTORY SHALL BE KEPT AT A LOCATION WHICH IS ACCESSIBLE AND REMOVED FROM THE STORAGE AREA. IN THE EVENT OF A FIRE, SPILL OR OTHER SIMILAR INCIDENT INVOLVING THE PESTICIDE STORAGE AREA, THE CURRENT INVENTORY SHALL BE MADE AVAILABLE TO ALL EMERGENCY RESPONSE ORGANIZATIONS AND HOSPITALS.

2. EACH CERTIFIED APPLICATOR, REGISTERED PESTICIDE BUSINESS OR AGENCY, AND COMMERCIAL PERMIT HOLDER SHALL HAVE THE FOLLOWING OBLIGATIONS IN THE EVENT THAT IT RELEASES OR SPILLS PESTICIDE DURING TRANSPORT:

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

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A. MAKE EFFORTS TO IMMEDIATELY CONTAIN OR CONTROL SUCH PESTICIDE OR PESTICIDE CONTAMINATED MATERIAL IN SUCH A MANNER AS TO PREVENT ANY FURTHER MOVEMENT OF THE PESTICIDE OR PESTICIDE CONTAMINATED MATERIAL;

B. IMMEDIATELY NOTIFY THE LOCAL EMERGENCY RESPONSE ORGANIZATIONS AND THE DEPARTMENT UPON THE OCCURRENCE OF A PESTICIDE RELEASE OR SPILL; AND

C. UPON RECEIPT OF AN ITEMIZED LIST OF MATERIALS USED BY AN EMERGENCY RESPONSE ORGANIZATION TO CLEAN UP THE PESTICIDE RELEASE OR SPILL, REIMBURSE SUCH EMERGENCY RESPONSE ORGANIZATION FOR SUCH COSTS IN ACCORDANCE WITH THIS SECTION.

3. A. EACH LOCAL EMERGENCY RESPONSE ORGANIZATION SHALL BE ENTITLED TO REIMBURSEMENT FOR COSTS ASSOCIATED WITH THE RESPONSE TO ANY INCIDENT INVOLVING THE RELEASE OR SPILL OF PESTICIDES DURING TRANSPORT BY A CERTIFIED APPLICATOR, REGISTERED PESTICIDE BUSINESS OR AGENCY, OR COMMERCIAL PERMIT HOLDER. REIMBURSEMENT SHALL BE LIMITED TO THE COST OF EXPENDABLE MATERIALS USED IN THE RESPONSE TO THE INCIDENT WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, FOAMS AND GELS USED TO ABSORB THE PESTICIDES, THE REPLACEMENT OR CLEANING OF PROTECTIVE CLOTHING USED IN THE RESPONSE TO THE INCIDENT, AND THE REPLACEMENT OR CLEANING OF STORAGE CONTAINERS, DETECTION SUPPLIES AND OTHER EQUIPMENT USED IN THE RESPONSE TO THE INCIDENT; PROVIDED, HOWEVER, THAT REIMBURSEMENT SHALL NOT BE AVAILABLE FOR THE COST OF SALARIES FOR PERSONNEL, VEHICLE FUEL, OR VEHICLE WEAR AND TEAR AND MAINTENANCE.

B. AN EMERGENCY RESPONSE ORGANIZATION THAT USES EXPENDABLE MATERIALS IN RESPONSE TO AN INCIDENT INVOLVING THE RELEASE OR SPILL OF PESTICIDES MAY BILL THE RESPONSIBLE CERTIFIED APPLICATOR, REGISTERED PESTICIDE BUSINESS OR AGENCY, OR COMMERCIAL PERMIT HOLDER DIRECTLY FOR THE COST OF SUCH EXPENDABLE MATERIALS. SUCH BILL SHALL INCLUDE AN ITEMIZED LIST OF MATERIALS EXPENDED IN THE CLEAN-UP RESPONSE TOGETHER WITH AN INDICATION OF THE REPLACEMENT COST OF EACH ITEM. REIMBURSEMENT SHALL BE MADE DIRECTLY FROM THE CERTIFIED APPLICATOR, REGISTERED PESTICIDE BUSINESS OR AGENCY, OR COMMERCIAL PERMIT HOLDER, AS APPLICABLE, TO THE EMERGENCY RESPONSE ORGANIZATION WITHIN NINETY DAYS OF RECEIPT OF THE BILL. IN THE EVENT THAT AN EMERGENCY RESPONSE ORGANIZATION IS NOT REIMBURSED WITHIN THE TIME PERIOD SET FORTH HEREIN, THEN SUCH EMERGENCY RESPONSE ORGANIZATION SHALL HAVE A CAUSE OF ACTION TO COLLECT THE UNPAID REIMBURSEMENT TO WHICH IT IS ENTITLED PURSUANT TO THIS SECTION.

4. A. IN THE EVENT THAT THERE IS NO KNOWN CERTIFIED APPLICATOR, REGISTERED PESTICIDE BUSINESS OR AGENCY, OR COMMERCIAL PERMIT HOLDER RESPONSIBLE FOR THE RELEASE OR SPILL OF PESTICIDES, THEN THE EMERGENCY RESPONSE ORGANIZATION MAY APPLY FOR REIMBURSEMENT FOR THE COSTS OF CLEAN-UP OF SUCH PESTICIDE SPILL OR RELEASE PURSUANT TO SECTION NINETY-NINE-V OF THE STATE FINANCE LAW. TO APPLY FOR REIMBURSEMENT, SUCH EMERGENCY RESPONSE ORGANIZATION SHALL SUBMIT TO THE DEPARTMENT A SUMMARY OF THE INCIDENT AND RESPONSE, AN INDICATION OF THE DATE AND LOCATION OF THE INCIDENT, AND AN ITEMIZED LIST OF MATERIALS EXPENDED IN THE CLEAN-UP OF SUCH INCIDENT TOGETHER WITH AN INDICATION OF THE REPLACEMENT COST OF EACH ITEM. THE DEPARTMENT MAY, IN ITS DISCRETION, DEVELOP AN APPLICATION FORM FOR THE PURPOSES OF THIS SECTION. THE DEPARTMENT SHALL REVIEW SUBMITTED APPLICATIONS AND COORDINATE WITH THE DEPARTMENT OF TAXATION AND FINANCE WITH RESPECT TO SUCH APPLICATIONS.

B. REIMBURSEMENT PURSUANT TO THIS SUBDIVISION SHALL NOT PRECLUDE, PROHIBIT OR IN ANY WAY INHIBIT ANY REIMBURSEMENT THAT MAY BE AVAILABLE TO AN EMERGENCY RESPONSE ORGANIZATION PURSUANT TO SECTION ONE HUNDRED EIGHTY-ONE OF THE NAVIGATION LAW OR CHAPTER 103 OF TITLE 42 OF THE UNITED STATES CODE; PROVIDED HOWEVER, THAT AN EMERGENCY RESPONSE ORGANIZATION SHALL NOT BE ELIGIBLE FOR REIMBURSEMENT PURSUANT TO THIS SUBDI-

VISION FOR COSTS THAT HAVE ALREADY BEEN REIMBURSED TO SUCH EMERGENCY RESPONSE ORGANIZATION PURSUANT TO ANOTHER STATE OR FEDERAL LAW.

5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY CERTIFIED APPLICATOR, REGISTERED PESTICIDE BUSINESS OR AGENCY, OR COMMERCIAL PERMIT HOLDER THAT OWNS OR OPERATES A "FARM OPERATION" AS SUCH TERM IS DEFINED IN SUBDIVISION ELEVEN OF SECTION THREE HUNDRED ONE OF THE AGRICULTURE AND MARKETS LAW.

6. FOR THE PURPOSES OF THIS SECTION, THE TERM "EMERGENCY RESPONSE ORGANIZATION" SHALL MEAN A VOLUNTEER FIRE COMPANY AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED OF THE GENERAL MUNICIPAL LAW, A MUNICIPAL PAID FIRE DEPARTMENT, A HAZARDOUS MATERIALS EMERGENCY RESPONSE TEAM ESTABLISHED PURSUANT TO SECTION TWO HUNDRED NINE-Y OF THE GENERAL MUNICIPAL LAW, OR ANY OTHER SIMILAR MUNICIPAL, INDUSTRIAL, FEDERAL OR NOT-FOR-PROFIT ENTITY THAT OPERATES A HAZARDOUS MATERIALS UNIT.

S 2. Section 33-0705 of the environmental conservation law, as amended by section 2 of part S of chapter 60 of the laws of 2011, is amended to read as follows:

S 33-0705. Fee for registration.

1. The applicant for registration shall pay a fee as follows:

a. On or before July 1, 2014, six hundred dollars for each pesticide proposed to be registered, provided that the applicant has submitted to the department proof in the form of a federal income tax return for the previous year showing gross annual sales, for federal income tax purposes, of three million five hundred thousand dollars or less;

b. On or before July 1, 2014, for all others, six hundred twenty dollars for each pesticide proposed to be registered;

c. After July 1, 2014, fifty dollars for each pesticide proposed to be registered.

2. TEN DOLLARS OF EACH REGISTRATION FEE PAID PURSUANT TO THIS SECTION SHALL BE DEPOSITED INTO THE PESTICIDE SPILL REIMBURSEMENT PROGRAM FUND ESTABLISHED PURSUANT TO SECTION NINETY-NINE-V OF THE STATE FINANCE LAW FOR THE PURPOSE OF REIMBURSING EMERGENCY RESPONSE ORGANIZATIONS FOR THE COSTS ASSOCIATED WITH THE CLEAN-UP OF RELEASES AND SPILLS OF PESTICIDES PURSUANT TO SECTION 33-1209 OF THIS ARTICLE OR FOR THE COSTS ASSOCIATED WITH THE CLEAN-UP OF RELEASES OF OTHER HAZARDOUS MATERIALS AS SUCH TERM IS DESCRIBED IN SUBDIVISION ONE OF SECTION FOURTEEN-F OF THE TRANSPORTATION LAW.

S 3. The state finance law is amended by adding a new section 99-v to read as follows:

S 99-V. PESTICIDE SPILL REIMBURSEMENT PROGRAM FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMMISSIONER OF TAXATION AND FINANCE AND THE COMPTROLLER, A SPECIAL FUND TO BE KNOWN AS THE "PESTICIDE SPILL REIMBURSEMENT PROGRAM FUND".

2. SUCH FUND SHALL CONSIST OF ALL REVENUES RECEIVED BY THE DEPARTMENT OF TAXATION AND FINANCE, PURSUANT TO SUBDIVISION TWO OF SECTION 33-0705 OF THE ENVIRONMENTAL CONSERVATION LAW AND ALL OTHER MONEYS APPROPRIATED, CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT TO LAW.

3. MONEYS OF SUCH FUND SHALL BE KEPT SEPARATE AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTODY OF THE COMMISSIONER OF TAXATION AND FINANCE AND THE COMPTROLLER.

4. MONEYS IN SUCH FUND SHALL BE EXPENDED ONLY FOR THE ADMINISTRATION OF THE PESTICIDE SPILL REIMBURSEMENT PROGRAM ESTABLISHED PURSUANT TO SECTION 33-1209 AND SUBDIVISION TWO OF SECTION 33-0705 OF THE ENVIRONMENTAL CONSERVATION LAW.

5. ALL PAYMENTS FROM SUCH FUND SHALL BE MADE BY THE DEPARTMENT OF TAXATION AND FINANCE AFTER AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS APPROVED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.