STATE OF NEW YORK

3564

2017-2018 Regular Sessions

IN ASSEMBLY

January 27, 2017

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

AN ACT to amend the environmental conservation law, the agriculture and markets law, and the insurance law, in relation to enacting the Mercury-Free Water Resources and Mercury Reduction Management Strategy Act; to amend the state finance law, in relation to making technical corrections thereto and to repeal certain provisions of the environmental conservation law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known as the "Mercury-Free Water Resources and Mercury Reduction Management Strategy Act".

§ 2. Title 21 of article 27 and section 71-2724 of the environmental conservation law are REPEALED.

§ 3. Article 15 of the environmental conservation law is amended by adding a new title 35 to read as follows:

TITLE 35

MERCURY REDUCTION MANAGEMENT STRATEGY

Section 15-3501. Short title.
15-3503. Definitions.
15-3505. Publicly owned sewage treatment plants; regulation of mercury.
15-3507. Publicly owned sewage treatment plants; control of mercury.
15-3509. Point source release; mercury containment trap requirement.
15-3511. Exemption.

§ 15-3501. Short title.

This title shall be known as the "Mercury Reduction Management Strategy Act".

§ 15-3503. Definitions.

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

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For purposes of this title, the terms "effluent limitation" and "point source" have the same meanings as are defined in section 17-0105 of this chapter and the term "household" means private dwellings and multiple dwellings as defined in section 4 of the multiple dwelling law.

§ 15-3505. Publicly owned sewage treatment plants; regulation of mercury.

1. On or before December thirty-first, two thousand seventeen, each publicly owned sewage treatment works shall:

(a) measure the levels of mercury in effluent from publicly owned treatment works using the United States environmental protection agency's test method;

(b) develop and implement a monitoring program to identify publicly owned treatment works users that discharge wastewater containing mercury; and

(c) provide information on mercury discharges and the sources of mercury discharges to the public through inserts in customer billing statements.

2. (a) On or before December thirty-first, two thousand eighteen, the department and each publicly owned treatment works shall use results from the measurements performed and the monitoring program implemented under subdivision one of this section to develop and implement a voluntary pollution prevention program.

(b) The purpose of the voluntary pollution prevention program is to minimize the levels of mercury in the discharge of publicly owned treatment works users to reflect the relative contribution of different sources of mercury to the mercury levels in the publicly owned treatment works effluent.

3. On or before December thirty-first, two thousand nineteen, the department shall develop:

(a) an acceptable limit on the concentration of mercury in sewage sludge and incinerator ash;

(b) effluent limitation on the discharge of mercury from publicly owned treatment works that are no greater than the limits of detection of the United States environmental protection agency's test method; and

(c) pretreatment standards that reflect the best available treatment technology for each category of sources of mercury that have been determined to contribute to the discharge of wastewater containing mercury to publicly owned treatment works.

§ 15-3507. Publicly owned sewage treatment plants; control of mercury.

1. The department shall establish:

(a) an acceptable limit on the concentration of mercury in sewage sludge and incinerator ash;

(b) effluent limitation on the discharge of mercury from publicly owned treatment works that are no greater than the limits of detection of the United States environmental protection agency's test method; and

(c) pretreatment standards that reflect the best available treatment technology for each category of sources of mercury that have been determined to contribute to the discharge of wastewater containing mercury to publicly owned treatment works.

2. A person shall not:

(a) discharge mercury through a publicly owned treatment works into a body of water in excess of the effluent standards established under subdivision 1 of this section;

(b) accept for disposal in a landfill sludge that contains mercury in excess of the standards under subdivision 1 of this section;

(c) discharge mercury into a wastewater treatment plant in excess of the pretreatment requirements established under subdivision 1 of this section; or

(d) apply to land any sewage sludge or incinerator ash that contains mercury in excess of the concentration limits established under subdivision 1 of this section.

§ 15-3509. Point source release; mercury containment trap requirement.

1. Any facility that has the potential for release of elemental mercury or a mercury containing substance into plumbing systems during its normal daily operations, including but not limited to dental offices, dental training or vocational schools, dental hospitals, mercury recycling centers, laboratories, and any other entity the department determines shall be considered a point source pursuant to article 17 of this chapter, unless such facility shall place into service a mercury containment trap as certified by the department.

2. The department shall promulgate regulations for the proper installation, maintenance, use, and certification of such mercury containment traps.

§ 15-3511. Exemption.

The provisions of subdivision 2 of section 15-3507 of this title shall not apply to households until two years after this title takes effect.

§ 4. Article 27 of the environmental conservation law is amended by adding a new title 22 to read as follows:

TITLE 22

COMPREHENSIVE MANAGEMENT OF WASTE MERCURY

Section 27-2201. Short title.
27-2203. Definitions.
27-2205. Disclosure of mercury content.
27-2207. Mercury-added product phase-out.
27-2209. Mercury disposal prohibition.
27-2211. Labeling of products containing mercury.
27-2213. Source separation.
27-2215. Collection.
27-2217. Elemental mercury.
27-2219. Removal from service; mercury-added products.
27-2221. Ban on toys, games, cosmetics, and apparel.
27-2223. Ban on distribution and sale of mercury thermometers.
27-2225. Replacement of mercury-added manometers and gas-pressure regulators.
27-2227. Dental office requirements.
27-2229. Notification.
27-2231. Informed consent; dental procedures.
27-2233. Ban on health insurance discrimination.
27-2235. Lamp recycling facility requirements.
27-2237. Addition of all mercury-added products to state universal wastes rules.
27-2239. State advisory committee on mercury pollution.
27-2241. Exemption.

§ 27-2201. Short title.

This title shall be known as the "Comprehensive Management of Waste Mercury Act".

§ 27-2203. Definitions.

As used in this title:

1. "Lamp recycling facility" means a facility operated to remove, recover, and recycle for reuse mercury or other hazardous materials from fluorescent or high intensity discharge lamps.

2. "Mercury-added product" means equipment or a product, device, or instrument into which elemental mercury or mercury compounds are intentionally added during its formulation or manufacture and in which the continued presence of mercury is desired to provide a specific characteristic or to perform a specific function, including but not limited to: batteries; lamps; thermostats; thermometers; electric switches; dental amalgams; appliances; gauges; medical or scientific instruments or devices; electric or displacement relays; gas pressure regulators; testing equipment; manometers; and any other electrical device from which the added mercury has not been removed.

3. "Person" shall mean any entity, including but not limited to natural persons, corporations, firms, limited liability companies, partnerships, state agencies, state authorities, and federal agencies.

4. "Household" means private dwellings and multiple dwellings as defined in section 4 of the multiple dwelling law.

§ 27-2205. Disclosure of mercury content.

A manufacturer or wholesaler shall not sell a mercury-added product at retail in this state, to a retailer in this state, or for use in this state without prior thereto notifying the commissioner in writing of the amount of mercury in each retail-sized unit of the product, the total amount of mercury in each type of product sold at retail in the state each year by the manufacturer or wholesaler, and the essential-use purpose that the mercury in the product serves.

§ 27-2207. Mercury-added product phase-out.

1. A manufacturer, directly or through an agent, shall not sell a mercury-added product at retail or wholesale in this state, to a retailer or wholesaler in this state, or for use in this state after January first, two thousand nineteen unless the manufacturer has received a "phase-out exemption" permit from the commissioner.

2. Upon making a determination that an application for a phase-out exemption is complete, the commissioner shall provide a sixty day public comment period on all applications for exemptions and shall hold a public informational meeting, if such a meeting is requested. The commissioner shall fully consider all written and oral submissions concerning proposed exemptions prior to taking final action on a phase-out exemption request.

3. The commissioner shall only grant a phase-out exemption upon determination of all of the following:

The mercury-added product is an essential use that is used where no alternative non-mercury-added products are available that:

(a) perform the same function;

(b) are commercially available;

(c) are economically practical; and

(d) are more environmentally safe.

§ 27-2209. Mercury disposal prohibition.

Mercury-added products shall not be placed in any of the following:

1. solid waste.

2. medical, infectious, or laboratory waste.

3. wastewater.

4. radioactive waste.

5. scrap metal processing or recycling streams.

§ 27-2211. Labeling of products containing mercury.

A manufacturer or wholesaler shall not sell at retail or wholesale in this state, to a retailer or wholesaler in this state, or for use in this state, and a retailer or wholesaler shall not knowingly sell in this state, a mercury-added product, unless such product is labeled in a manner to clearly inform a purchaser or consumer of such product that mercury is present in the product and that the product may not be disposed of in violation of the prohibitions established under section 27-2209 of this title.

§ 27-2213. Source separation.

Every person who discards solid waste, medical waste, infectious waste, laboratory waste, radioactive waste, or wastewater within the state or who places scrap metal in a reprocessing or recycling stream within the state shall ensure that the waste or scrap metal does not contain mercury above naturally occurring background levels. Any person who replaces, removes, or transports mercury-added products is responsible for the proper management of any discarded mercury-added product.

§ 27-2215. Collection.

The manufacturer of a mercury-added product shall:

1. Provide a system for the collection of such product from users in this state.

2. Clearly inform each purchaser of a mercury-added product of all of the following:

(a) Details concerning the available system for proper collection of the product.

(b) That state law prohibits charging a fee for collection of the product.

(c) That disposal of the product is prohibited in solid waste, medical waste, infectious waste, laboratory waste, radioactive waste, or wastewater, as is placement of the product in a scrap metal reprocessing or recycling stream.

3. The department shall promulgate regulations to implement this section.

§ 27-2217. Elemental mercury.

1. Sale. A person shall not sell mercury to another person in this state without providing a material safety data sheet, as defined in 42 U.S.C. 11049.

2. Use. A person who uses elemental mercury in any application shall not place, or deliver the mercury to another person who places, residues, particles, scrapings, or other materials that contain mercury in solid waste, medical waste, infectious waste, laboratory waste, radioactive waste, wastewater, or hazardous waste, except for traces of materials that may inadvertently pass through a filtration system during a dental procedure.

3. The department shall adopt regulations in relation to allowed trace point source releases of elemental mercury and mercury containing substances.

§ 27-2219. Removal from service; mercury-added products.

1. When a mercury-added product is removed from service, the mercury in the item shall be source-separated for stabilization for retirement or otherwise managed to prevent its release into the environment. The commissioner shall, by regulation, provide for the use of mercury, and permit mercury that has been source separated to be recycled for purposes of reuse, in products that have received a phase-out exemption permit from the commissioner pursuant to section 27-2207 of this title.

2. A person who is in the business of replacing or repairing a mercury-added product in households shall deliver, or cause to be delivered,

any item in need of replacement to a manufacturer's collection system pursuant to section 27-2215 of this title.

3. The department shall promulgate regulations for the proper removal from service and source-separation of mercury-added products, including, but not limited to, automobiles, buildings, home or commercial appliances, and fluorescent lamps.

§ 27-2221. Ban on toys, games, cosmetics, and apparel.

A manufacturer or wholesaler shall not sell at retail in this state, to a retailer in this state, or for use in this state, and a retailer shall not sell in this state, a mercury-added toy or game, or mercury-added cosmetics, or any item of clothing or wearing apparel that contains a mercury-added electric switch.

§ 27-2223. Ban on distribution and sale of mercury thermometers.

No person shall distribute free of charge or sell a mercury-added fever thermometer. Such thermometers shall be prohibited from being sold at retail as of January first, two thousand eighteen.

§ 27-2225. Replacement of mercury-added manometers and gas-pressure regulators.

1. The department of agriculture and markets shall develop a program to replace mercury-added manometers used for dairy purposes with non-mercury manometers for such purposes. The mercury, manometers, and apparatus shall be managed in accordance with this title.

2. (a) No person, public or private utility, or contractor shall use mercury-added gas-pressure regulators to monitor, regulate, or test vaporized gasses, including, but not limited to, those devices contained within natural gas lines.

(b) The department shall promulgate regulations for the proper removal of mercury-added gas-pressure regulators. Such regulations shall require those entities engaged in the use of mercury-added gas-pressure regulators to conduct a test for the presence of mercury after removal of such mercury-added gas-pressure regulators within a time period specified by the department.

(c) Upon the implementation of this title, priority shall be assigned to removal of those mercury-added gas-pressure regulators located within households and commercial premises.

(d) Notification. Any utility using mercury-added gas-pressure regulators within households or commercial premises shall notify owners of such properties of the existence of such mercury-added gas-pressure regulators and shall notify owners of the dangers posed by the presence of mercury. The department shall promulgate regulations providing for notification requirements.

3. (a) No person, public or private utility, or contractor shall use mercury-added testing equipment. For the purposes of this section, "mercury-added testing equipment" means any device containing mercury used for purposes of testing pressure, including, but not limited to, natural gas lines. This includes hand-held, portable, or stationary testing equipment containing mercury, including, but not limited to, mercury-added manometers and mercury-added gauges.

(b) The department shall promulgate regulations for the proper removal from service of mercury-added testing equipment, including testing for presence of mercury within dwellings known or possibly known to have been tested using mercury-added testing equipment.

§ 27-2227. Dental office requirements.

Each dental office is required to submit an annual amalgam mercury report describing quantities of all sources stored and recycled: including chair-side traps, clean scrap, elemental mercury, amalgam sludge,

and mercury containment traps. The department shall provide by regulation therefor.

§ 27-2229. Notification.

Every dentist shall display, in boldface print, in the English and Spanish language, and in a conspicuous place within such dentist's office, a notice stating the following:

"This office uses amalgam filling materials which contain and expose you to mercury, a chemical known to the State of New York as a toxin linked to neurological and developmental defects. Additionally, scientific studies of mercury-containing amalgam use have shown that a significant health hazard exists for pregnant women and children under the age of 15. Safe alternatives to mercury-containing amalgams exist. Please consult your dentist for more information."

§ 27-2231. Informed consent; dental procedures.

No dentist shall use mercury or mercury amalgam in a dental procedure unless, prior to the use, the dentist certifies in writing that the patient gave informed consent thereto freely and without coercion. Such informed consent shall be provided in writing and required for each dental office visit in which the procedure involves the use of mercury amalgam and shall contain the following statement in boldface print:

"I consent to the use of mercury containing amalgam in this dental procedure. I have been informed that the amalgam to be used in this procedure contains mercury, a chemical known to the State of New York as a toxin linked to neurological and developmental defects. Additionally, I have been informed that scientific studies of amalgam containing mercury have shown that a significant health hazard exists for pregnant women and children under the age of 15. I have also been informed that safe alternatives to amalgam containing mercury exist."

§ 27-2233. Ban on health insurance discrimination.

No health insurance policy or contract shall in any way discriminate against amalgams that do not contain added mercury.

§ 27-2235. Lamp recycling facility requirements.

No person shall operate a lamp recycling facility without obtaining a permit for the facility from the commissioner, issued by the commissioner no later than nine months after the effective date of this title.

§ 27-2237. Addition of all mercury-added products to state universal wastes rules.

The commissioner shall promulgate the universal wastes rules for mercury-added thermostats and shall add all mercury-added products to its universal wastes rules within one year of the effective date of this title.

§ 27-2239. State advisory committee on mercury pollution.

1. There is created an advisory committee on mercury pollution, to consist of one appointee of the temporary president of the senate, one appointee of the speaker of the assembly, the commissioner (or his or her designee), the commissioner of health (or his or her designee), and the following persons appointed by the governor: one public health specialist, one toxicologist, one representative of a Native American tribe or group, one scientist who is knowledgeable on matters related to mercury contamination, one children's advocate, and one consumer advocate. The advisory committee shall advise the legislature and the executive branch on matters relating to the prevention and cleanup of mercury pollution and the reduction in human exposure to mercury.

2. By January fifteenth of each year, beginning in two thousand eighteen, the advisory committee shall submit a report to the legislature regarding:

(a) The extent of mercury contamination in the soil, waters, and air of the state.

(b) The extent of any health risk from mercury contamination in the state, especially to women of childbearing years, children, Native Americans, sports fishers, and subsistence fishers; and ways to reduce human exposure to mercury.

(c) All methods available for minimizing risk of further contamination or increased health risk to the public.

(d) Coordination needed with other states to effectively address mercury issues and pollution.

(e) Ways to eliminate nonessential uses of mercury in health care institutions, government buildings, and consumer and business uses.

(f) Ways to reduce the waste disposal, wastewater disposal, and waste incineration of mercury-added products and the extent to which solid waste and medical waste are incinerated or autoclaved within the state or sent out of state for such purposes.

§ 27-2241. Exemption.

The provisions of section 27-2213 of this title shall not apply to households until two years after this title takes effect.

§ 5. The environmental conservation law is amended by adding a new section 71-2730 to read as follows:

§ 71-2730. Penalties for violations of title 22 of article 27 and title 35 of article 15.

1. For a first violation of title 22 of article 27 and title 35 of article 15 of this chapter, in lieu of a penalty, a violator shall be issued a written warning by the department and shall also be issued educational materials at the discretion of the department. Such person shall, however, for a second violation, be liable to the people of the state for a civil penalty not to exceed seventy-five dollars for each violation, which in the aggregate shall not exceed:

a. Two hundred twenty-five dollars for households, to the extent that the violation involves only the improper placement of the waste produced by the person or persons within such dwelling.

b. Ten thousand dollars for manufacturers of mercury-added products or distributors or providers of elemental mercury.

c. Five thousand dollars for all other violators.

2. Such civil penalty shall be in addition to any other penalties authorized under other federal, state, or local laws governing the illegal disposal, sale, resale, or distribution of elemental mercury or mercury-added products. The criminal penalties set forth in section 71-4001 of this article shall not apply to violations of title 22 of article 27 or title 35 of article 15 of this chapter.

3. Penalties under this section shall be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this article, and, in addition thereto, any person found to have violated the provisions of title 22 of article 27 or title 35 of article 15 of this chapter may by similar process be enjoined from continuing such violation. For the purposes of this section, the unlawful sale, resale, distribution, or disposal of each item containing mercury shall constitute a separate violation.

4. All civil penalties and fines collected for any violation of title 22 of article 27 or title 35 of article 15 of this chapter shall be paid over to the commissioner for deposit in the general fund of the state.

5. For purposes of this section, "household" means private dwellings and multiple dwellings as defined in section 4 of the multiple dwelling law.

§ 6. Section 16 of the agriculture and markets law is amended by adding a new subdivision 49 to read as follows:

49. Establish a program to replace mercury-added manometers used for dairy purposes with non-mercury manometers for such purposes pursuant to section 27-2225 of the environmental conservation law.

§ 7. The insurance law is amended by adding a new section 3242 to read as follows:

§ 3242. Dental amalgam nondiscrimination. No health insurance policy, contract, or benefit, whether subject to this article or article forty-three or forty-four of this chapter, shall discriminate in regard to dental amalgams in violation of section 27-2233 of the environmental conservation law.

§ 8. Subdivision 3 of section 92-s of the state finance law, as amended by section 11 of part F of chapter 58 of the laws of 2013, is amended to read as follows:

3. Such fund shall consist of the amount of revenue collected within the state from the amount of revenue, interest and penalties deposited pursuant to section fourteen hundred twenty-one of the tax law, the amount of fees and penalties received from easements or leases pursuant to subdivision fourteen of section seventy-five of the public lands law and the money received as annual service charges pursuant to section four hundred four-l of the vehicle and traffic law, all moneys required to be deposited therein from the contingency reserve fund pursuant to section two hundred ninety-four of chapter fifty-seven of the laws of nineteen hundred ninety-three, all moneys required to be deposited pursuant to section thirteen of chapter six hundred ten of the laws of nineteen hundred ninety-three, repayments of loans made pursuant to section 54-0511 of the environmental conservation law, all moneys to be deposited from the Northville settlement pursuant to section one hundred twenty-four of chapter three hundred nine of the laws of nineteen hundred ninety-six, provided however, that such moneys shall only be used for the cost of the purchase of private lands in the core area of the central Suffolk pine barrens pursuant to a consent order with the Northville industries signed on October thirteenth, nineteen hundred ninety-four and the related resource restoration and replacement plan, [~~the amount of penalties required to be deposited therein by section 71-2724 of the environmental conservation law,~~] all moneys required to be deposited pursuant to article thirty-three of the environmental conservation law, all fees collected pursuant to subdivision eight of section 70-0117 of the environmental conservation law, [~~all moneys collected pursuant to title thirty-three of article fifteen of the environmental conservation law, beginning with the fiscal year commencing on April first, two thousand thirteen, and all fiscal years thereafter,~~] fifteen million dollars plus all funds received by the state each fiscal year in excess of the amount received from April first, two thousand twelve through March thirty-first, two thousand thirteen, from the payments collected pursuant to subdivision four of section 27-1012 of the environmental conservation law and all funds collected pursuant to section 27-1015 of the environmental conservation law, provided such funds shall not be less than four million dollars for the fiscal year commencing April first, two thousand thirteen, and not less than eight million dollars for all fiscal years thereafter and all other moneys credited or transferred thereto from any other fund or source pursuant to law. All such revenue shall be initially deposited into the environmental protection fund, for application as provided in subdivision five of this section.

§ 9. This act shall take effect on the first of January next succeeding the date on which it shall have become a law. Effective immediately the commissioner of environmental conservation is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date.