STATE OF NEW YORK

9754

IN ASSEMBLY

February 5, 2018

Introduced by M. of A. ENGLEBRIGHT -- 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 used oil and to establishing civil and criminal penalties

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

Section 1. Section 23-2308 of the environmental conservation law, as amended by chapter 118 of the laws of 1993, is amended to read as follows:

§ 23-2308. Prohibited disposal **or sale** of used oil.

1. No person shall engage in the improper disposal of used oil. Used oil shall only be deposited in an available used oil retention facility or disposed of as otherwise authorized or permitted by the commissioner.

The provisions of this section shall not apply to the use of used oil for maintenance or lubrication of agricultural equipment.

2. No person shall sell or offer for sale a used oil disposal kit or product which is comprised of absorbent material into which the lubricating oil from a vehicle is drained when performing an oil change and which is intended for disposal into the solid waste stream rather than for reuse or recycling.

3. No person shall sell or offer for sale used oil, other than to oil rerefining facilities.

4. No used oil collector shall transfer used oil, other than to rerefining facilities or a facility permitted to dispose of used oil by the commissioner.

§ 2. Section 71-2201 of the environmental conservation law, as added by chapter 740 of the laws of 1978, the opening paragraph and subdivision 1 as amended and subdivision 3 as added by chapter 901 of the laws of 1983 and subdivision 4 as added by chapter 294 of the laws of 1991, is amended and a new section 71-2203 is added to read as follows:

§ 71-2201. Enforcement of title 23 of article 23 of this chapter.

[~~Administrative and civil sanctions.~~] **Violations, civil liability.** 1. Any person who violates any of the provisions of, or who fails to

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

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perform any duty imposed by title 23 of article 23 except the duty to accept used oil pursuant to section 23-2307 [~~or any person subject to section 23-2308 or any rule or regulation promulgated pursuant thereto~~], or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this section shall be liable for a civil penalty not to exceed one thousand dollars for each such violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

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

3. Any person who [~~violates any provision of~~] **improperly disposes of used oil in violation of** section 23-2308 of this chapter shall be subject to a civil penalty not to exceed two hundred fifty dollars for each violation.

3-a. Any person who knowingly engages in the sale of used oil, shall be liable for a civil penalty not to exceed one thousand dollars for each violation.

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

§ 71-2203. Criminal liability for violations.

1. Any person who shall knowingly engage in the sale of used oil in violation of section 23-2308 of this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine, in the case of a first conviction, of not less than five hundred dollars nor more than eighteen thousand dollars or by imprisonment for a term of not more than one year, or by both such fine and imprisonment, for each separate violation. If the conviction is for an offense committed after the first conviction of such person under this subdivision, such person shall be punished by a fine not to exceed twenty-six thousand dollars, or by imprisonment, or by both such fine and imprisonment. Each day on which such violation occurs shall constitute a separate violation.

2. In determining the amount of any fine, penalty or sentence imposed pursuant to this section, the commissioner or the court shall take into consideration any evidence introduced by a party regarding the economic impact of a penalty on a business, the compliance history of a violator, good faith efforts of a violator to comply, any economic benefit obtained from noncompliance, the amount of risk or damage to public health or the environment caused by a violator, whether the violation was procedural in nature, or such other factors as justice may require.

§ 3. This act shall take effect on the first of May 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.