STATE OF NEW YORK

8932

IN SENATE

April 1, 2024

Introduced by Sen. HINCHEY -- 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, in relation to the regulation of toxic substances in playground surfacing materials

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

Section 1. Article 37 of the environmental conservation law is amended by adding a new title 4 to read as follows:

TITLE IV

REGULATION OF TOXIC SUBSTANCES IN PLAYGROUND SURFACING MATERIALS

Section 37-0401. Definitions.
37-0403. Prohibition on sale, distribution, or offer for sale of playground surfacing materials containing PFAS, PAHs, or certain quantities of lead.
37-0405. Required notification.
37-0407. Violations.

§ 37-0401. Definitions.

As used in this title, the following terms shall have the following meanings:

1. "Playground surfacing materials" means products, materials, or substances used or installed on the ground surface of a playground.

2. "Playground" means an outdoor recreation area for children equipped with one or more play structures.

3. "Manufacturer" means the person that manufactures a product or whose brand name is affixed to the product. In the case of a product imported into the United States, "manufacturer" includes the importer or first domestic distributor of the product if the person that manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

4. "PFAS" means perfluoroalkyl and polyfluoroalkyl substances and includes any member of the class of fluorinated organic chemicals containing at least one fully flourished carbon atom.

5. "PAHs" means polycyclic aromatic hydrocarbons.

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

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§ 37-0403. Prohibition on sale, distribution, or offer for sale of playground surfacing materials containing PFAS, PAHs, or certain quantities of lead.

Commencing on January first, two thousand twenty-six, no person shall sell, distribute, or offer for sale in this state any playground surfacing material that contains PFAS, PAHs, or more than ninety parts per million of lead.

§ 37-0405. Required notification.

1. A manufacturer of playground surfacing materials sold into the state shall provide persons that offer the product for sale or distribution in the state with a certificate of compliance. The certificate of compliance shall provide assurance, at a minimum, that the product does not contain any intentionally added PFAS, PAHs, or an amount of lead that is more than ninety parts per million. Any certificate of compliance provided under this section shall be signed by an authorized official of the manufacturer.

2. If PFAS, PAHs, or an amount of lead that is more than ninety parts per million are discovered in playground surfacing materials after the issuance of a certificate of compliance, the manufacturer shall recall the playground surfacing materials and reimburse the distributor or retailer for the playground surfacing materials.

§ 37-0407. Violations.

1. A violation of any of the provisions of this title or any rule or regulation promulgated pursuant thereto shall be punishable in the case of a first violation, by a civil penalty not to exceed ten thousand dollars. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed twenty-five thousand dollars for each violation.

2. If the department has reason to believe that a playground surfacing material contains PFAS, PAHs, or an amount of lead that is more than ninety parts per million and is being distributed, sold, or offered for sale in violation of this section, the department shall direct the manufacturer of the playground surfacing materials to, within thirty days:

(a) provide the department with independent, third-party laboratory test results demonstrating that the playground surfacing materials do not contain PFAS, PAHs, or an amount of lead that is more than ninety parts per million; or

(b) notify persons who sell the playground surfacing materials in this state that the sale of the playground surfacing materials is prohibited in this state and provide the department with a list of the names and addresses of those notified.

3. A distributor or retailer of a product, who is not also the manufacturer of the product, shall not be held in violation of this title if it can show that such distributor or retailer relied in good faith on the certificate of compliance provided for in subdivision one of section 37-0405 of this title or the retailer received a notification pursuant to subdivision two of this section.

4. The department shall make information about any citation issued pursuant to this section available to the public on its internet website.

§ 2. This act shall take effect immediately.