STATE OF NEW YORK

8419

IN SENATE

January 29, 2024

Introduced by Sen. HARCKHAM -- 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 establishing nutrient inactivant applicator permits

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

Section 1. Article 17 of the environmental conservation law is amended by adding a new title 23 to read as follows:

TITLE 23

SPECIAL PERMITS FOR APPLICATION OF NUTRIENT INACTIVANTS

Section 17-2301. Definitions.

17-2303. Nutrient inactivant applicator permits.

17-2305. Denial or revocation of permits.

17-2307. Permit fees.

17-2309. Sanctions.

§ 17-2301. Definitions.

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

1. "Nutrient inactivant application business" shall mean a business that commercially applies nutrient inactivants.

2. "Nutrient inactivants" are products used for controlling phosphorus levels in lakes to prevent and inhibit harmful algal blooms including aluminum sulfate, sodium aluminate, lanthanum, and other such products as determined by the department.

3. "Application of nutrient inactivants" shall mean the commercial application of nutrient inactivants.

4. "Nutrient inactivant applicator" shall be a person certified by the department pursuant to section 17-2303 of this title.

5. "Nutrient inactivant applicator permit" shall mean a special SPDES permit issued under this title for the application of nutrient inactivants. Such permit shall be considered a SPDES permit issued under title eight of this article and shall have the same requirements and privileges as a SPDES permit issued under title eight of this article;

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

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provided, however, where the requirements and privileges of a permit issued under this title is inconsistent with that of a permit issued under title eight of this article, the requirements and privileges described in this title shall apply.

§ 17-2303. Nutrient inactivant applicator permits.

1. Notwithstanding any other provision of law or regulation pursuant to this title, a person who has a valid nutrient inactivant applicator permit issued by the commissioner may engage in the commercial application of nutrient inactivants.

2. Application for a nutrient inactivant applicator permit shall be made to the commissioner. The application shall be on a form prescribed by the commissioner and shall be accompanied by the fee or fees provided in section 17-0821 of this article.

3. An applicant for a nutrient inactivant applicator permit shall:

(a) provide proof to the commissioner of such applicant's knowledge of the safe and proper use, handling, storage and disposal of nutrient inactivants and application equipment and/or satisfy the commissioner as to the applicant's knowledge and experience concerning the proper use, handling, storage, and disposal of nutrient inactivants and application equipment; and

(b) be a certified pesticide applicator, be registered as a pesticide business or agency, and have a commercial permit under title nine of article thirty-three of this chapter.

4. Nutrient inactivant applicator permits shall be valid for three years after which every applicator shall recertify.

5. No certification shall be valid unless the certified person also holds a valid identification card issued by the commissioner. Certification identification cards shall be valid for three years.

6. A person with a valid nutrient inactivant applicator permit shall maintain such records and shall furnish such reports concerning the application of nutrient inactivants as the commissioner shall require. All records required to be kept under this section shall be available for inspection by the commissioner.

§ 17-2305. Denial or revocation of permits.

The commissioner, after due notice and opportunity of hearing to an applicant or person with a valid nutrient inactivant applicator permit, may deny an application or revoke a permit pursuant to title eight of this article.

§ 17-2307. Permit fees.

All fees established by the commissioner pursuant to this title shall be the same as those established by section 17-0821 of this article.

§ 17-2309. Sanctions.

Notwithstanding any other provision of law or regulation pursuant to this title and/or any provision of this article as it relates to the application of nutrient inactivants, any person who violates any provision of this title or any rule, regulation or order issued thereunder shall be liable to the people of this state for a civil penalty of up to one thousand dollars for a first violation to be assessed by the commissioner after a hearing or opportunity to be heard. In determining the amount of the penalty, the commissioner shall take into account whether the violation posed an immediate threat to the environment or the health and safety of the public. Any subsequent violation of this title and/or any provision of this article as it relates to the application of nutrient inactivants would be subject to the appropriate sanctions pursuant to title eight of this article.

§ 2. Section 33-0103 of the environmental conservation law is amended by adding a new subdivision 4 to read as follows:

4. This article shall not apply to the application of nutrient inactivants, as such term is defined in section 17-2301 of this chapter, by a person holding a nutrient inactivant applicator permit under title twenty-three of article seventeen of this chapter.

§ 3. The environmental conservation law is amended by adding a new section 17-0833 to read as follows:

§ 17-0833. SPDES permits; nutrient inactivant applicator permit.

For the purposes of this title, nutrient inactivant applicator permits issued under title twenty-three of this article shall be considered a special type of SPDES permit. SPDES permits shall not be issued for the application of nutrient inactivants, as such term is defined in section 17-2301 of this article, except as provided for under title twenty-three of this article.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.