STATE OF NEW YORK

8419--A

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 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to establishing nutrient inactivant application 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 application permits.
17-2305. Denial or revocation of permits.
17-2307. Permit fees.
17-2309. Regulations.

§ 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" shall mean products used for controlling phosphorus levels in lakes or ponds 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 application permit" shall mean a special SPDES permit issued under this title for the application of nutrient inacti-

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

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vants. 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; 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 application permits.

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

2. Application for a nutrient inactivant application 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. The application shall set forth the reasons for why the applicant is applying for the permit, including:

(a) the water bodies for which the applicant seeks to use a nutrient inactivant under the permit;

(b) what other measures have been taken for the control of phosphorus and harmful algal blooms with respect to the relevant waterbodies, including mechanical methods of control, and the outcomes of those measures taken; and

(c) why the use of a nutrient inactivant would be more appropriate than other methods of control.

3. An applicant for a nutrient inactivant application 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, as provided in section 33-0905 of this chapter, qualified to apply pesticides to standing or running water, and be employed by, or the owner or agent of a registered pesticide business or agency.

4. Nutrient inactivant application permits shall be valid for three years after which every permit must be renewed.

5. A person with a valid nutrient inactivant application 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 application 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. Regulations.

The department shall promulgate regulations for the implementation of this title.

§ 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 application 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 application permit.

For the purposes of this title, nutrient inactivant application 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. The environmental conservation law is amended by adding a new section 71-1947 to read as follows:

§ 71-1947. Enforcement of title 23 of article 17.

Any person who violates any provision of title 23 of article 17 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 shall be treated as a violation to which section 71-1929 of this title applies.

§ 5. 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.