## STATE OF NEW YORK

6122

1995-1996 Regular Sessions

## IN ASSEMBLY

March 7, 1995

'Introduced by M. of A. FELDMAN -- Multi-Sponsored by -- M. of A. DiNAPO-LI, GREENE, HOCHBERG, SEABROOK -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to restricting the use of chlorinated solvents in this state

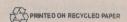
The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The legislature finds and declares that:

- 2 (a) Virtually all chlorinated organic compounds that have been studied 3 exhibit at least one of a wide range of serious toxic effects such as 4 endocrine dysfunction, developmental impairment, birth defects, reproductive dysfunction and infertility, hormonal disruption, immunosuppression, and cancer, often at extremely low doses.
- 7 (b) Stratospheric ozone depletion caused in part by the use of chlori-8 nated compounds including chlorinated solvents is expected to cause 9 millions of additional cases of human skin cancer, cataracts and immune 10 suppression, as well as major effects on aquatic and terrestrial food 11 chains.
- 12 (c) The use of chlorinated solvents such as methylene chloride, 13 trichloroethylene and perchloreothylene in industrial and manufacturing 14 processes has been recognized as posing significant workplace hazards.
- 15 (d) The weight of scientific evidence indicates that exposure to all 16 organochlorines should be presumed to pose a health risk, and therefore 17 policies to protect public health should be directed toward eventually 18 achieving no exposure to chlorinated organic chemicals as a class rather 19 than focusing on a series of individual chemicals.
- (e) Numerous public health and environmental organizations including the American Public Health Association and the International Joint Commission have recommended that the only feasible and prudent approach to eliminating the release and discharge of chlorinated organic chemicals and consequent exposure is to avoid the use of chlorine and its compounds in manufacturing processes.

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

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§ 48-0101. Definitions.

A. 6122 1 (f) The implementation of such a goal should proceed with priority 2 being given to industry sectors causing severe organochlorine pollution. (g) Chlorinated solvents have been identified in numerous hazardous 4 waste sites in the state and are considered major contributors to the 5 toxic contamination of many of the state's public and private drinking 6 water sources. (h) Alternative processes and substitute chemical already exist for 8 most uses of chlorinated solvents. § 2. The environmental conservation law is amended by adding a new 10 article 48 to read as follows: ARTICLE 48 CHLORINATED SOLVENTS 13 Section 48-0101. Definitions. 48-0103. Restrictions of the use, manufacture, or sale of chlo-14 rinated solvents. 48-0105. Safe alternatives policy. 48-0107. Surcharge imposed. 48-0109. Revolving loan program. 48-0111. Chlorinated solvent phase-out revolving loan account.

As used in this article, chlorinated solvent means the following chlorine-based chemicals: methylene chloride; perchloroethylene; trichloroethylene; and methyl chloroform. trichloroethylene; and methyl chloro-24 form.

25 § 48-0103. Restrictions on the use, manufacture, or sale of chlorinated

1. Except as provided under subdivision two or three of this section: (a) effective January first, nineteen hundred ninety-eight, no person in the state may manufacture, use or sell any amount of chlorinated solvents for the following purposes: metal cleaning operations, paint removers, industrial solvents, foam blowing, paints and coatings, aerosols, synthetic pesticides, and food processing;

(b) effective January first, two thousand, no person in the state may 34 manufacture, use or sell any amount of chlorinated solvents for the following purposes: dry cleaning and textile processing;

(c) effective January first, two thousand two, no person in the state may manufacture, use or sell any amount of chlorinated solvents for any purpose including chemical processing, electronics, film processing and 39 fibers.

All producers, users or sellers of chlorinated solvents or products containing any chlorinated solvents shall annually provide to the commissioner an inventory and description of their production, use or sale of chlorinated solvents within the state. The commissioner shall, 44 no later than January first, nineteen hundred ninety-six, issue regulations prescribing the reporting requirements of this section.

2. Any person may petition the commissioner for an exemption from the 47 requirements of subdivision one of this section, and the commissioner 48 may grant by rule such an exemption if the commissioner finds that:

(a) the continued use of the chlorinated solvent serves a compelling 50 public need; and

(b) an unreasonable risk of injury to health or environment would not 52 result; and

(c) good faith efforts have been made to develop an alternative process or chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for 56 such chlorinated solvent.

An exemption granted under this subdivision shall be subject to such terms and conditions as the commissioner may prescribe and shall be in effect for such period (but not more than two years from the date which it is granted) as the commissioner may prescribe. Such an exemption may not be renewed more than once.

3. Educational/medical users shall be exempt from the provisions of subdivision one of this section, provided that said medical/educational users shall annually provide to the commissioner an inventory and description of their use of any chlorinated solvents within the state. Said education/medical users shall use any such substance only in connection with instruction, education, research or medical treatment. The commissioner shall, no later than January first, nineteen hundred 13 ninety-six, issue regulations prescribing the reporting requirements of 14 this section.

15 4. The department and the environmental facilities corporation, in 16 cooperation with users and producers of chlorinated solvents, shall establish an intensive technology transfer, research, and technical assistance program to disseminate information regarding available alternatives to the use of chlorinated solvents and to develop new technologies that may be substituted for chlorinated solvent use.

5. The commissioner shall, within one year of enactment of this arti-22 cle, establish an advisory task force to investigate and analyze the impact of this article on the work force and industry of the state. In 24 addition, the task force shall recommend measures to provide training 25 for affected workers, to attract new businesses to the state in the area 26 of alternative technologies, and to otherwise assist the state's labor 27 force in adapting to the provisions of this article. The task force shall consist of nine members including three representing the public health sector and two each representing the labor, business and environ-30 mental sectors.

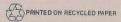
§ 48-0105. Safe alternatives policy. 31

32 No facility shall replace the manufacture, processing, use or sale of 33 any chlorinated solvent with any substitute toxic substance that is a known or probable carcinogen, teratogen, or mutagen, or with any alter-34 native product or process that creates an unreasonable risk of harm to 35 public health, workers, consumers, or any part of the environment as 37 determined by the commissioner.

§ 48-0107. Surcharge imposed.

1. Effective April first, nineteen hundred ninety-six, a surcharge 40 shall be levied on the privilege of producing in, importing into, or causing to be imported into the state methylene chloride, perchloroethy-42 lene (tetrachloroethylene), trichloroethylene and methyl chloroform. A 43 surcharge of five dollars per gallon is levied on each gallon of methy-44 lene chloride, perchloroethylene (tetrachloroethylene), trichloroethy-45 lene and methyl chloroform when first imported into or produced in the 46 state. The surcharge shall be imposed when transfer of title or 47. possession, or both, of the product offers in this state or when the product commingles with the general mass of this state.

2. Any person producing in, importing into, or causing to be imported into this state methylene chloride, perchloroethylene (tetrachloroethylene), trichloroethylene and/or methyl chloroform for sale, use or otherwise must register with the commissioner and become licensed for 53 the purpose of remitting the surcharge pursuant to this section. Such person must register as either a producer or importer of methylene chloride, perchloroethylene (tetrachloroethylene), trichloroethylene and/or 56 methyl chloroform. Persons operating at more than one location are only



required to have a single registration. Such person shall pay an annual registration fee of thirty dollars.

3. The surcharge imposed by this section shall be due on the first day of the month succeeding the month of production, importation, or removal from a storage facility and must be paid on or before the twentieth of each month. The surcharge shall be reported on forms in the manner prescribed by the commissioner.

4. Any person subject to the surcharge under this section or any person who sells surcharge-paid methylene chloride, perchloroethylene (tetrachloroethylene), trichloroethylene and/or methyl chloroform, other than retain dealer, must separately state the amount of such surcharge paid on any charge ticket, sales slip, invoice or other tangible evidence of the sale or must certify on the sales document that the surcharge required pursuant to this section has been paid.

5. All methylene chloride, perchloroethylene (tetrachloroethylene), trichloroethylene and methyl chloroform imported, produced, or sold in this state is presumed to be subject to the surcharge imposed by this section. Any person, except the final retail consumer, who has purchased methylene chloride, perchloroethylene (tetrachloroethylene), trichloroethylene or methyl chloroform must document that the surcharge imposed by this section has been paid or must pay such surcharge directly to the department in accordance with this section.

6. The department may authorize a quarterly return and payment when the surcharge remitted by the licensee for a preceding quarter did not exceed one hundred dollars; may authorize a semiannual return and payment when the surcharge remitted by the licensee for the preceding six months did not exceed two hundred dollars; and may authorize an annual return and payment when the surcharge remitted by the licensee for the preceding twelve months did not exceed four hundred dollars.

7. The surcharge imposed by this section shall be reported to the department. The payment shall be accompanied by such forms as the department prescribes. The proceeds of the surcharge, after deducting the administrative costs incurred by the department in administering, auditing, collecting, distributing, and enforcing the surcharge shall be transferred by the department into the chlorinated solvent phase-out revolving loan account and shall be used in accordance with the revolving loan program established in section 48-0109 of this article.

8. For the purposes of this section, the proceeds of the surcharge include funds collected and received by the department, including interest and penalties on delinquent surcharges.

9. Methylene chloride, perchloroethylene (tetrachloroethylene),
trichloroethylene and methyl chloroform exported from the first storage
facility at which it is held in this state by the producer or importer
is exempt from the surcharge pursuant to this section. Anyone exporting
methylene chloride, perchloroethylene (tetrachloroethylene), trichloroethylene and methyl chloroform on which a surcharge has been paid may
apply for a refund or credit. The commissioner may require such information as he deems necessary in order to approve the refund or credit.

tion as he deems necessary in order to approve the refund or credit.

10. Any person who fails to timely register or who knowingly gives or
causes to be given any false information as a part of the registration
or application for financial assistance or fails to remit the surcharge
in a timely fashion shall be liable for a penalty of not more than ten
thousand dollars in a court of competent jurisdiction. If the violation
is of a continuing nature each day during which it continues shall

constitute an additional, separate and distinct offense.

56 § 48-0109. Revolving loan program.

The environmental facilities corporation in consultation with the commissioner shall establish a revolving loan program to be funded by appropriations from the chlorinated solvent phase-out revolving loan account established pursuant to section 48-0111 of this article to provide financial assistance to any person to meet costs in satisfying the requirements as provided in this section. Upon certification from the environmental facilities corporation and the commissioner, the administrator may provide such loan to a person upon receipt of a written agreement providing reasonable assurances of repayment that is satisfactory to the comptroller. Such loan shall not bear interest and repayment of such loan provided that the term of the loan does not exceed one year. The amount of the loan shall not exceed one hundred thousand dollars. The environmental facilities corporation and the commissioner shall only certify such loans after a finding that such person has a plan to meet the requirements as provided in this section. The environmental facilities corporation and the department with consultation from the comptroller shall promulgate rules and regulations within ninety days of the effective date of this article for the operation of the chlorinated solvent phase-out revolving loan account which shall include, but not be limited to, the criteria to be used in determining eligibility for assistance; a procedure and any necessary information that any person needs to submit applications for a loan from the chlorinated solvent phase-out revolving loan account; a schedule of reviewing such applications, not to exceed thirty days, and notification to an applicant of approval or disapproval of such application for funding and any other requirements deemed necessary by the comptroller. The environmental facilities corporation and the commissioner shall compile and 27 make available information regarding the availability and application 28

29 § 48-0111. Chlorinated solvent phase-out revolving loan account. 30 1. The chlorinated solvent phase-out revolving loan account is hereby established to carry out the purposes of this article. Such account shall consist of all fines, penalties, judgments, recoveries, and other fees and charges collected for non remittance of the surcharge as provided above, surcharge revenues levied, collected and credited pursuant to the surcharge provided in section 48-0107 of this article, interest received on such money and any money made available pursuant to appropriation. The comptroller shall appoint and supervise an administrator of the fund. The administrator shall be the chief executive of the fund and shall disburse money from the fund pursuant to certification from the environmental facilities corporation and the commis-41 42 sioner.

2. The comptroller may invest and reinvest any moneys in said fund in obligations in which the comptroller is authorized to invest pursuant to the provisions of section ninety-eight of the state finance law. Any income or interest derived from such investment shall be included in the account.

3. Monies within the chlorinated solvent phase-out revolving loan account, upon appropriation by the legislature, shall be available to the environmental facilities corporation in consultation with the department for the purpose of this section. No monies within this account shall be used to fund state personnel. Monies shall be paid out of the account on the audit and warrant of the comptroller on vouchers certified or approved by the administrator of the account.

55 § 3. Severability. The provisions of this act are severable, and if 56 any of its provisions or an application thereof shall be held unconstiA. 6122

1 tutional by any court of competent jurisdiction, the decision of such 2 court shall not affect or impair any of the remaining provisions or

§ 4. This act shall take effect immediately.

