

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. DiNAPOLI, 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:

- 1 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, repro-
5 ductive dysfunction and infertility, hormonal disruption, immunosuppres-
6 sion, 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 perchlorethylene 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.
20 (e) Numerous public health and environmental organizations including
21 the American Public Health Association and the International Joint
22 Commission have recommended that the only feasible and prudent approach
23 to eliminating the release and discharge of chlorinated organic chemi-
24 cals and consequent exposure is to avoid the use of chlorine and its
25 compounds in manufacturing processes.

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

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1 (f) The implementation of such a goal should proceed with priority
2 being given to industry sectors causing severe organochlorine pollution.

3 (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.

7 (h) Alternative processes and substitute chemical already exist for
8 most uses of chlorinated solvents.

9 § 2. The environmental conservation law is amended by adding a new
10 article 48 to read as follows:

11 ARTICLE 48

12 CHLORINATED SOLVENTS

13 Section 48-0101. Definitions.

14 48-0103. Restrictions of the use, manufacture, or sale of chlo-
15 rinated solvents.

16 48-0105. Safe alternatives policy.

17 48-0107. Surcharge imposed.

18 48-0109. Revolving loan program.

19 48-0111. Chlorinated solvent phase-out revolving loan account.

20 § 48-0101. Definitions.

21 As used in this article, chlorinated solvent means the following chlo-
22 rine-based chemicals: methylene chloride; perchloroethylene; trichloroe-
23 thylene; and methyl chloroform. trichloroethylene; and methyl chloro-
24 form.

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

27 1. Except as provided under subdivision two or three of this section:

28 (a) effective January first, nineteen hundred ninety-eight, no person
29 in the state may manufacture, use or sell any amount of chlorinated
30 solvents for the following purposes: metal cleaning operations, paint
31 removers, industrial solvents, foam blowing, paints and coatings,
32 aerosols, synthetic pesticides, and food processing;

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

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

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

46 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:

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

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

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

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

6 3. Educational/medical users shall be exempt from the provisions of
7 subdivision one of this section, provided that said medical/educational
8 users shall annually provide to the commissioner an inventory and
9 description of their use of any chlorinated solvents within the state.
10 Said education/medical users shall use any such substance only in
11 connection with instruction, education, research or medical treatment.
12 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
17 establish an intensive technology transfer, research, and technical
18 assistance program to disseminate information regarding available alter-
19 natives to the use of chlorinated solvents and to develop new technolo-
20 gies that may be substituted for chlorinated solvent use.

21 5. The commissioner shall, within one year of enactment of this arti-
22 cle, establish an advisory task force to investigate and analyze the
23 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
28 shall consist of nine members including three representing the public
29 health sector and two each representing the labor, business and environ-
30 mental sectors.

31 § 48-0105. Safe alternatives policy.

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

38 § 48-0107. Surcharge imposed.

39 1. Effective April first, nineteen hundred ninety-six, a surcharge
40 shall be levied on the privilege of producing in, importing into, or
41 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
48 product commingles with the general mass of this state.

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

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

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

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

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

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

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

38 8. For the purposes of this section, the proceeds of the surcharge
 39 include funds collected and received by the department, including inter-
 40 est and penalties on delinquent surcharges.

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

49 10. Any person who fails to timely register or who knowingly gives or
 50 causes to be given any false information as a part of the registration
 51 or application for financial assistance or fails to remit the surcharge
 52 in a timely fashion shall be liable for a penalty of not more than ten
 53 thousand dollars in a court of competent jurisdiction. If the violation
 54 is of a continuing nature each day during which it continues shall
 55 constitute an additional, separate and distinct offense.

56 § 48-0109. Revolving loan program.

1 The environmental facilities corporation in consultation with the
 2 commissioner shall establish a revolving loan program to be funded by
 3 appropriations from the chlorinated solvent phase-out revolving loan
 4 account established pursuant to section 48-0111 of this article to
 5 provide financial assistance to any person to meet costs in satisfying
 6 the requirements as provided in this section. Upon certification from
 7 the environmental facilities corporation and the commissioner, the
 8 administrator may provide such loan to a person upon receipt of a writ-
 9 ten agreement providing reasonable assurances of repayment that is
 10 satisfactory to the comptroller. Such loan shall not bear interest and
 11 repayment of such loan provided that the term of the loan does not
 12 exceed one year. The amount of the loan shall not exceed one hundred
 13 thousand dollars. The environmental facilities corporation and the
 14 commissioner shall only certify such loans after a finding that such
 15 person has a plan to meet the requirements as provided in this section.
 16 The environmental facilities corporation and the department with consul-
 17 tation from the comptroller shall promulgate rules and regulations with-
 18 in ninety days of the effective date of this article for the operation
 19 of the chlorinated solvent phase-out revolving loan account which shall
 20 include, but not be limited to, the criteria to be used in determining
 21 eligibility for assistance; a procedure and any necessary information
 22 that any person needs to submit applications for a loan from the chlori-
 23 nated solvent phase-out revolving loan account; a schedule of reviewing
 24 such applications, not to exceed thirty days, and notification to an
 25 applicant of approval or disapproval of such application for funding and
 26 any other requirements deemed necessary by the comptroller. The environ-
 27 mental facilities corporation and the commissioner shall compile and
 28 make available information regarding the availability and application
 29 for such loans.

30 § 48-0111. Chlorinated solvent phase-out revolving loan account.

31 1. The chlorinated solvent phase-out revolving loan account is hereby
 32 established to carry out the purposes of this article. Such account
 33 shall consist of all fines, penalties, judgments, recoveries, and other
 34 fees and charges collected for non remittance of the surcharge as
 35 provided above, surcharge revenues levied, collected and credited pursu-
 36 ant to the surcharge provided in section 48-0107 of this article, inter-
 37 est received on such money and any money made available pursuant to
 38 appropriation. The comptroller shall appoint and supervise an adminis-
 39 trator of the fund. The administrator shall be the chief executive of
 40 the fund and shall disburse money from the fund pursuant to certifi-
 41 cation from the environmental facilities corporation and the commis-
 42 sioner.

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

48 3. Monies within the chlorinated solvent phase-out revolving loan
 49 account, upon appropriation by the legislature, shall be available to
 50 the environmental facilities corporation in consultation with the
 51 department for the purpose of this section. No monies within this
 52 account shall be used to fund state personnel. Monies shall be paid out
 53 of the account on the audit and warrant of the comptroller on vouchers
 54 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 unconsti-

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
3 other applications thereof.
4 § 4. This act shall take effect immediately.