DROPPED Bill

AN ACT to amend the environmental conservation law, in relation to restricting the manufacture, sale, distribution, use and disposal of products containing polychlorinated biphenyls, and prescribing penalties therefor

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

Section 1. Legislative findings. The legislature hereby finds that the regulation of the sale, distribution and use of polychlorinated biphenyls in the state is necessary for the health and welfare of its citizens and for the preservation and protection of its air and water resources. Polychlorinated biphenyls have been found to persist in the environment for long periods of time, and to concentrate in the food chain, causing the contamination of our fisheries and endangering human health. Exposure to or ingestion of relatively minute quantities of these compounds have been linked to cancer of the liver, reproductive failure and skin disease. The legislature further finds that present methods of disposal are inadequate to prevent the contamination of our environment by polychlorinated biphenyls.

§ 2. The environmental conservation law is hereby amended by inserting therein a new article, to be article forty, to read as follows:

TABLE OF CONTENTS

ARTICLE 40

POLYCHLORINATED BIPHENYLS

Section 40-0101. Declaration of policy.

40-0103. Definitions.

40-0105. Distribution and sale of products containing polychlorinated biphenyls.

40-0107. Powers and duties of the commissioner.

40-0109. Notice of public hearing.

40-0111. Judicial review.

MONS 060362

§ 40-0101. Declaration of policy.

It is hereby declared to be the policy of the state to protect present and future New Yorkers from the contamination and destruction of our natural resources and the danger of a public health hazard inherent in the uncontrolled and unnecessary release of polychlorinated biphenyls into our environment, by restricting the distribution and sale of products containing polychlorinated biphenyls as specified herein.

§ 40-0103. Definitions.

The following term, whenever used or referred to in this article, shall have the following meaning unless a different meaning clearly appears from the context:

"Polychlorinated biphenyls" means the various organic compounds produced by replacing two or more hydrogen atoms on the biphenyl molecule with chlorine.

§ 40-0105. Distribution and sale of products containing polychlorinated biphenyls.

1. No person shall distribute, sell, offer or expose for sale in this state any product manufactured in or brought into this state containing polychlorinated biphenyls after October first, nineteen hundred seventy-seven, except those products for which the use of polychlorinated biphenyls has been authorized by the commissioner pursuant to section 40-0107 of this chapter.

2. No person shall manufacture in or bring into this state for sale or distribution in this state any product containing polychlorinated biphenyls prior to October first, nineteen hundred seventy-seven with intent to evade the provisions of subdivision one of this section. Inventory stockpiling unreasonably in excess of customary business practice shall be considered presumptive evidence of a violation of this subdivision.

§ 40-0107. Powers and duties of the commissioner.

The commissioner is hereby authorized and required, after public hearings:

I

1. to prepare a comprehensive report no later than December first, nineteen hundred seventy-six on polychlorinated biphenyls, including but not limited to (a) the uses of

T

polychlorinated biphenyls; (b) the long and short term environmental and public health effects of direct and indirect discharges of polychlorinated biphenyls into the air, land and water resources of the state; and (c) the availability of

A

alternatives to polychlorinated biphenyls for the uses determined pursuant to paragraph (a) herein;

2. no later than December first, nineteen hundred

L

seventy-six, to promulgate a list of specified permissible uses of the various polychlorinated biphenyls in the state, provided, however, that no specified use shall be permitted

I

unless the commissioner affirmatively finds that there are no suitable alternatives available for such specified use, and such specified use is not likely to create a long or short term public health or environmental hazard;

C

3. to conduct such investigations and undertake such studies as may be appropriate to adopt such rules and regulations as may be necessary to assure that proper disposal practices

S

and safeguards are employed to minimize the discharge into the environment of polychlorinated biphenyls the use of which is permitted pursuant to subdivision two herein or which were used in products distributed or sold in the state prior to October first, nineteen hundred seventy-seven;

4. to promulgate rules and regulations specifying permissible disposal practices for all products containing polychlorinated biphenyls as identified pursuant to subdivision one, paragraph (a) herein;

5. to review and revise, as may be appropriate, upon the application of any interested party or upon the commissioner's own initiative, the list promulgated pursuant to subdivision two herein;

6. to issue subpoenas and administer oaths in connection with any hearings, studies or investigations held or undertaken pursuant to this article; and

7. to promulgate such rules and regulations as may be necessary and appropriate to carry out or give full force and effect to the purposes and provisions of this article.

§ 40-0109. Notice of public hearing.

Notice of public hearing shall be by publication in two newspapers most likely to give notice to the people of the state of such hearings at least once in each of three successive weeks. In addition, the commissioner shall give notice by mail to the manufacturers of products containing polychlorinated biphenyls known to the commissioner whenever practicable.

§ 40-0111. Judicial review.

Determinations of the commissioner shall be reviewable by a proceeding instituted pursuant to article seventy-eight of the civil practice law and rules not later than thirty days after the determination becomes final and binding upon the petitioner.

§ 3. Section 71-0521 of such law, as amended by chapter six hundred fourteen of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§ 71-0501. Applicability of this title.

This title shall apply to sections 3-0103 through 3-0115 inclusive and sections 3-0305 and 3-0307 of article 3; articles 9, 11, 13 and 15; titles 7, 9, 11 and 13 of article 21; articles 23 and 24; title 3 of article 27; and articles 40, 43, 45 and 47 of this chapter.

§ 4. Article seventy-one of such law is hereby amended by adding thereto a new title, to be title forty, to read as follows:

TITLE 40

ENFORCEMENT OF ARTICLE 40

Section 71-4001. Applicability of this title.

71-4003. Violation; penalties.

71-4005. Enforcement.

§ 71-4001. Applicability of this title.

In addition to the provisions of sections 71-0101 and 71-0301 and title five of this article, the provisions of this title shall be applicable to the enforcement of article forty of this chapter.

§ 71-4003. Violations; penalties.

1. Administrative sanctions. Any person who violates, disobeys or disregards any provision of article forty or any regulation promulgated pursuant thereto shall be liable to the people of the state for a civil penalty of not to exceed ten thousand dollars for every such violation, to be assessed, after a hearing or opportunity to be heard, by the commissioner. The penalty may be recovered in an action brought by the commissioner in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general;

and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner. In addition, the commissioner shall have power, following a hearing held pursuant to article forty of this chapter, to direct the violator to cease his violation of the act and to withdraw from the stream of commerce in the state all products manufactured, sold or distributed in violation of article forty or regulations promulgated thereunder, insofar as that is possible within a reasonable time and under the supervision of the commissioner. Any such order of the commissioner shall be enforceable in an action brought by the commissioner in any court of competent jurisdiction. Any civil penalty or order issued by the commissioner under this subdivision shall be reviewable in a proceeding instituted under article seventy-eight of the civil practice law and rules within thirty days after any such penalty or order becomes final and binding upon the petitioner.

2. Criminal sanctions. Any person who violates any provision of article forty shall, in addition, for the first offense, be guilty of a violation punishable by a fine of not less than five hundred nor more than five thousand dollars; for a second and each subsequent offense he shall be guilty of a misdemeanor punishable by a fine of not less than one thousand nor more than ten thousand dollars or a term of imprisonment of not less than fifteen days nor more than six months or both. In addition to or in lieu of these punishments, any offender may be ordered by the court to take affirmative

steps to withdraw from the stream of commerce all products manufactured, sold or distributed in violation of article forty or regulations duly promulgated thereunder insofar as that is possible. The court shall specify a reasonable time for the completion of the withdrawal, which shall be effected under the supervision of the commissioner. Each offense shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

§ 71-4005. Enforcement.

The attorney general, on his own initiative or at the request of the commissioner, shall prosecute persons who violate article forty or any regulation promulgated pursuant thereto. In addition, the attorney general, on his own initiative or at the request of the commissioner, shall have the right to recover a civil penalty of not to exceed ten thousand dollars for every such violation, and to seek equitable relief to restrain any such violation or threatened violation and to require the withdrawal from the stream of commerce in the state of all products manufactured, sold or distributed in violation of this article or regulations promulgated thereunder insofar as that is possible, within a reasonable time and under the supervision of the commissioner.

§ 5. Severability. The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 6. This act shall take effect on the thirtieth day after it shall have become a law.