

## No. 1992-41

## AN ACT

## SB 14

Imposing restrictions and prohibitions on the distribution, sale and use of halogenated hydrocarbon chemicals and aromatic hydrocarbon chemicals as sewage system cleaners; requiring the disclosure of contents of sewage system cleaners; requiring the Department of Environmental Resources to administer and enforce certain provisions; providing for the powers and duties of the Environmental Quality Board; and imposing penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Sewage System Cleaner Control Act.

Section 2. Legislative findings; declaration of purpose.

(a) Findings.—It is hereby determined and declared as a matter of legislative finding that halogenated hydrocarbon chemicals and aromatic hydrocarbon chemicals used as sewage system cleaners and additives are a significant and unnecessary source of water pollution and groundwater contamination and economic loss.

(b) Purpose.—It is the purpose of this act to:

- (1) Eliminate the introduction of these toxic chemicals into the surface water and groundwater of this Commonwealth.
- (2) Prohibit the sale, distribution and use of sewage system cleaners and additives that contain these toxic chemicals.

(3) Require the disclosure of the contents of sewage system cleaners or additives that are sold or distributed or used in this Commonwealth.

### Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Board.” The Environmental Quality Board.

“Community sewage system.” Any system, whether publicly or privately owned, for the collection of sewage or industrial wastes of a liquid nature from two or more lots and the treatment and/or disposal of the sewage or industrial waste on one or more of the lots or at any other site.

“Department.” The Department of Environmental Resources of the Commonwealth and its authorized representatives.

“Individual sewage system.” A wastewater system or any part of a wastewater system consisting of piping, tanks or other facilities serving a single lot and collecting and disposing of sewage in whole or in part into the soil or into any waters of this Commonwealth or by means of conveyance to another site for final disposal; an alternate individual sewage system shall mean any individual sewage system not heretofore recognized by rules, regulations and standards of the department.

“Label.” The written, printed or graphic matter on or attached to the product or device or any container or wrapper of such product or device.

“Labeling.” All labels and all other written, printed or graphic matter accompanying the product or device at any time or to which reference is made on the label or in literature accompanying the product or device except to any official publication of any Federal or State agency or institution authorized by law to conduct research in sewage disposal, including sewage cleaners or additives.

“Manufacturer.” The formulator, distributor, packager or person who manufactures, formulates, mixes, combines, processes or prepares a product for wholesale or retail sale specifically as a sewage system cleaner or additive. The term does not include a person who makes and/or sells base chemicals that might be used in the manufacture, formulation or other processing of substances for sale as a sewage system cleaner or additive.

“Misbranded.” A product or device is misbranded if:

(1) Its labels or labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

(2) Any word, statement or other information required by or under authority of this act, including regulations adopted hereto, to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase.

(3) The labeling or information accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirement imposed under this act, are adequate to protect health or ground-water or surface water.

(4) There is not affixed to the container of the product or the device a label bearing:

- (i) the name and address of the manufacturer or person for whom produced; and
- (ii) the name, brand or trademark under which the product or device is sold.

“Person.” Any individual, partnership, corporation, manufacturer, association, institution, cooperative enterprise, municipal authority, the Federal Government and its agencies, State institutions and agencies (including, but not limited to, the Department of General Services and the State Public School Building Authority), municipalities or other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provision prescribing a fine or imprisonment or penalty, or any combination of the foregoing, the term “person” shall include the officers and directors of any corporation or other legal entity having officers and directors.

“Restricted chemical material.” A chemical material containing concentrations in excess of one part per hundred or such other concentration as the Environmental Quality Board may designate by regulation, by weight of any of the following:

- (1) Any halogenated hydrocarbon chemical, aliphatic or aromatic, including, but not limited to, trichloroethane, trichloroethylene, tetrachloroethylene, methylene chloride, halogenated benzenes and carbon tetrachloride.
- (2) An aromatic hydrocarbon chemical, including, but not limited to, benzene, toluene and naphthalene.
- (3) A phenol derivative in which a hydroxy group and two or more halogen atoms are bonded directly to a six-carbon aromatic ring, including, but not limited to, trichlorophenol or pentachlorophenol.
- (4) Acrolein, acrylonitrile or benzidine.
- (5) Any other chemical material designated by regulation by the Environmental Quality Board.

The term does not include perfumes, coloring agents or any chemical material which is biodegradable and not a significant source of contamination of the groundwaters or surface water.

“Sewage system.” Any part of any community sewage system or individual sewage system, including, but not limited to, all toilets, piping, drains, sewers, septic tanks, distribution boxes, absorption fields, seepage pits, cesspools and dry wells.

“Sewage system cleaner or additive.” Any solid or liquid material intended to be used or used primarily for the purpose of cleaning, treating or unclogging any part of a sewer system, but excluding those products intended to scour, clean, treat, disinfect or deodorize the surface of common fixtures, including, but not limited to, sinks, tubs, showers and toilets. Further excluded from the term are compounds used in municipal waste water treatment systems, industrial waste water treatment systems for which a National Pollutant Discharge Elimination System (NPDES) permit has been issued or industrial waste water treatment systems which discharge to a

publicly owned treatment works as flocculants, foam control agents, emulsion breakers and corrosion and scale inhibitors.

#### Section 4. Powers and duties of department.

The department shall have the following powers and duties:

(1) To administer the sewage system cleaner control program pursuant to the provisions of this act.

(2) To cooperate with appropriate Federal, State and interstate agencies, local units of government and appropriate private organizations in carrying out its duties under this act.

(3) To report to the General Assembly from time to time on further assistance that will be needed to administer the sewage system cleaner control program.

(4) To regulate the distribution, sale, use and consumption of restricted chemicals as provided in this act.

(5) To enter into any premises, place, establishment or building for the purpose of conducting inspections to determine compliance with this act or rules, regulations and standards issued pursuant to this act.

(6) To conduct any investigations necessary to determine compliance with this act or rules, regulations and standards issued pursuant to this act.

#### Section 5. Powers and duties of the Environmental Quality Board.

(a) Rules and regulations.—The board shall have the power and duty to adopt rules and regulations to accomplish the purposes of this act.

(b) Standards.—The board may promulgate regulations establishing analytical standards for sewage system cleaners and additives.

(c) Prohibition or restriction of product.—When the board finds, after investigation by the department and any public hearings which the board deems necessary, that any ingredient, in addition to a restricted chemical material, in a sewage system cleaner or additive distributed, sold, offered or exposed for sale in this Commonwealth will have an adverse affect on human health or the environment, it shall by regulation prohibit or restrict the sale, distribution, offer or exposure for sale or use by any person of sewage system cleaners or additives containing the ingredient.

(d) Authorization after investigation or hearing.—Whenever the board finds, after investigation by the department and any public hearings which the board deems necessary, that any restricted chemical material will not have any adverse affect on human health or the environment when used as a sewage system cleaner or additive, it may authorize the use of the chemical material in the products, notwithstanding any provisions of this act to the contrary.

(e) Confidential information.—The board and the department shall hold confidential any information obtained pursuant to section 6 when shown by any manufacturer that such information, if made public, would divulge confidential business information, methods or processes entitled to protection as trade secrets of the manufacturer.

#### Section 6. Manufacturer's duties.

(a) Product information.—Until such time as the board adopts final regulations, manufacturers of sewage system cleaners or additives distributed,

sold or offered for sale in this Commonwealth shall furnish to the department information regarding such products, including a certified list of chemical components of the products, updated on an annual basis, and a scientific analysis acceptable to the department of the known and potential effects of the product on groundwater and/or surface water.

(b) Labels or labeling.—Each manufacturer of any sewage system cleaner or additive distributed, sold or offered for sale in this Commonwealth shall list the chemical components of such products on a label or labeling, along with information regarding instructions for use, precautions and antidotes. In addition, the labels or labeling shall contain a statement that the contents may cause groundwater or surface water contamination when used in conjunction with an on-lot sewage disposal system.

#### Section 7. Prohibited acts.

(a) Distribution.—No person shall distribute, sell, offer or expose for sale in this Commonwealth any sewage system cleaner or additive containing any restricted chemical material.

(b) Use.—No person shall use, introduce or apply or cause any other person to use, introduce or apply in any sewage system, surface water or groundwaters any sewage cleaner or additive containing any restricted chemical material.

(c) Sales restricted.—No person shall distribute, sell, manufacture or offer or expose for sale any sewage system cleaner or additive covered by this act unless a list of the components of the covered product has been provided to the department. These lists must be updated annually at a time designated by the board.

#### Section 8. Enforcement orders.

The department may issue such orders to persons, distributors, manufacturers, dealers, retailers and consumers as are necessary to aid in the enforcement of the provisions of this act. The orders may include orders requiring cessation of the use, sale, manufacture or distribution of any substance or chemical or product which is in violation of any provision of this act. An order issued under this act shall take effect upon notice unless the order specifies otherwise. The right of the department to issue an order under this act is in addition to any penalty which may be imposed pursuant to this act.

#### Section 9. Public nuisance.

Any violation of this act, rules and regulations promulgated pursuant to this act or order of the department shall constitute a public nuisance.

#### Section 10. Procedure and enforcement.

Any activity or condition declared by this act to be a nuisance shall be abatable in the manner provided by law or equity for the abatement of public nuisances. In addition, suits to abate such nuisances or suits to restrain or prevent any violation of this act may be instituted in equity or at law in the name of the Commonwealth upon relation of the Attorney General, upon relation of any district attorney of any county or upon relation of the solicitor of any municipality affected, after notice has first been served upon the Attorney General of the intention of the district attorney or solicitor to so proceed. The court may provide for payment of a civil penalty as specified in section 11.

**Section 11. Civil penalties.**

Any person who misbrands any product or device subject to this act or who violates any provision of this act or any order, rule, regulation or standard issued or promulgated under this act may be assessed a civil penalty of not more than \$25,000 per day for each violation. The penalty may be assessed whether or not the violation was willful. In determining the amount of the civil penalty, the department shall consider the willfulness of the violation, damage or injury to the Commonwealth or its citizens, cost of restoration and other relevant factors. *Violations on separate days shall be considered separate and distinct offenses under this section.* The person charged with the penalty shall have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, the person shall, within the 30-day period, file an appeal with the Environmental Hearing Board. Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. In the event a person contests the amount of the penalty, the issue on appeal shall be the amount of the proposed penalty if the fact of the violation was the subject of an appealable order of the department.

**Section 12. Criminal penalties.**

(a) **Summary offense.**—Any person who misbrands any product or device subject to this act or who violates any provision of this act or any order, rule, regulation or standard issued or promulgated under this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$1,000 and costs and, in default of payment of the fine and costs, shall undergo imprisonment for not more than 30 days.

(b) **Misdemeanor.**—Any person who willfully misbrands any product or device subject to this act or who willfully violates any provision of this act, any rule, regulation or standard of the department or any order of the department commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$1,000 nor more than \$25,000 per day for each violation or to imprisonment for a period of not more than one year, or both.

(c) **Subsequent offense.**—Any person who, within two years after a conviction of a misdemeanor for any violation of this act, violates any provision of this act, any rule or regulation of the department or any order of the department commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than \$2,500 nor more than \$50,000 for each violation or to imprisonment for a period of not more than two years, or both.

(d) **Separate offenses.**—Violations on separate days shall be considered separate and distinct offenses under subsections (a), (b) and (c).

**Section 13. Fines and penalties collected.**

All fines and penalties collected under the provisions of this act shall be paid into the Clean Water Fund provided for in the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

**Section 14. Savings provision.**

Nothing in this act shall be construed as estopping the Commonwealth or any district attorney from proceeding in courts of law or equity to abate pollution forbidden under the laws of the Commonwealth or to abate nuisances under existing law. Nothing contained in this act shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity or under the common law or statutory law, criminal or civil. No provisions of this act shall be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity to suppress nuisances, to abate any pollution now or hereafter existing or to enforce common law or statutory rights.

**Section 15. Severability.**

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**Section 16. Effective date.**

This act shall take effect in 180 days.

**APPROVED—**The 28th day of May, A. D. 1992.

**ROBERT P. CASEY**