

TRANSMITTAL SLIP

TO David Warren

FROM David Flury DATE 7/5/80

RE:

FOR ACTION AS INDICATED:

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> Please Handle | <input type="checkbox"/> Comments |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Signature |
| <input type="checkbox"/> Prepare Reply for _____
Signature | <input type="checkbox"/> File |
| <input checked="" type="checkbox"/> Information | <input type="checkbox"/> Return to me |
| <input type="checkbox"/> Approval | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Prepare final/draft in _____ copies | <input type="checkbox"/> _____ |

quence or manufacturing and does not exceed one half of one percent (0.5%) of the content of the product by weight; or

(2) an incidental amount of an element or compound which is part of the household cleansing product formulation, and does not exceed one tenth of one percent (0.1%) of the contents of the product by weight.

(c) *Commissioner* shall mean the New York State Commissioner of Environmental Conservation.

Historical Note

Sec. filed April 28, 1972; repealed, new filed July 28, 1976; and. filed Nov. 9, 1978 eff. Nov. 9, 1978. Amended (a) and (b).

659.2 Applicability. This Part shall apply to all household cleansing products distributed, sold offered or exposed for sale in this State.

Historical Note

Sec. filed Apr. 28, 1972; and. filed Apr. 24, 1973; repealed, new filed July 28, 1976 eff. Oct. 1, 1976.

659.3 Prohibitions. (a) No household cleansing product except those used in dishwashers, food and beverage processing equipment and dairy equipment shall be distributed, sold, offered or exposed for sale in this State which shall contain a phosphorus compound in concentrations in excess of a trace quantity measured as elemental phosphorus.

(b) No household cleansing product used in dishwashers, food and beverage

processing equipment and dairy equipment shall be distributed, sold, offered or exposed for sale in this State which shall contain a phosphorous compound in concentrations in excess of 8.7 percent by weight measured as elemental phosphorus.

(c) No person shall distribute, sell, offer or expose for sale in this State any household cleansing product unless its wrapper or container shall be plainly labeled as provided in section 659.4 of this Part.

Historical Note

Sec. filed April 28, 1972; repealed, new filed July 23, 1976 eff. Oct. 1, 1976.

659.4 Labeling. (a) *Contents of label.* (1) The wrapper or container of a household cleansing product which contains no phosphorus or contains no phosphorus other than a trace quantity shall bear a label having one of the following legends: "Phosphate free", "No phosphate", "Phosphorus—trace amount" or "Phosphorus—less than 0.5% by weight" or having language conveying the same meaning which has been approved by the commissioner.

(2) A household cleansing product referred to in subdivision (b) of section 659.3 of this Part, which contains more than trace quantities of phosphorus shall bear a label which lists the percentage of elemental phosphorus contained therein by weight to the nearest one-tenth of one percent and the grams of elemental phosphorus to the nearest one-tenth of a gram per portion at the recommended use level. The statement shall be clear and in nontechnical language.

(b) *Placement and legibility of label.* Such label shall be located in its entirety, on a single front, side, or rear panel of the container; shall be in a type size and so positioned as to render it easily read and understood by the consumer; shall be in lines generally parallel to the base on which the container is designed to be displayed; and shall appear on a clear, contrasting background without being obscured by crowding, design or vignettes.

(c) *Sale of multiple units.* Where a household cleansing product is offered for sale in a wrapper or container which contains two or more units of the product, such wrapper or container, as well as each individual unit, shall be labeled as required by this section, unless such wrapper or container is transparent and the required label is visible.

(d) *Shipments in bulk.* The labeling requirements of this section shall not apply to a shipping container which contains individual packages of a household cleansing product which are labeled in accordance with the provisions of this section.

Historical Note

Sec. filed April 28, 1972; repealed, new filed July 23, 1976 eff. Oct. 1, 1976.

659.5 Analytical procedure. Analysis to determine the total phosphorus content of a household cleansing product shall be performed in accordance with methods and procedures approved by the commissioner.

Historical Note

Sec. filed July 23, 1976 eff. Oct. 1, 1976.

659.6 Disclosure of information. (a) Manufacturers of household cleansing products distributed, sold or offered for sale in this State shall furnish to the commissioner for the public record such information regarding such products as the commissioner may require, in such form as may be prescribed by the commissioner. For each household cleansing product, such information shall include, but shall not be limited to:

69

aforesaid rules; provided, however, he shall not waive those rules pertaining to the service of notice of hearing and service of the final order and determination.

Historical Note

Sec. filed April 28, 1972 eff. May 1, 1972.

PART 659

HOUSEHOLD CLEANSING PRODUCTS

(Statutory authority: Environmental Conservation Law, art. 35)

Sec.	Sec.
659.1 Definitions	659.4 Labeling
659.2 Applicability	659.5 Analytical procedure
659.3 Prohibitions	659.6 Disclosure of information

Historical Note

Part (§§ 659.1-659.4) filed April 28, 1972; repealed, new filed July 28, 1976 eff. Oct. 1, 1976.

Section 659.1 Definitions. As used in this Part, the following words and terms shall have the indicated meanings:

(a) *Household cleansing product* shall mean any product, including but not limited to soaps and detergents, containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils and household and commercial premises. Household cleansing product shall not mean:

- (1) foods, drugs and cosmetics, including personal care items such as toothpaste, shampoo and hand soap;
- (2) products labeled, advertised, marketed and distributed for use primarily as pesticides, as defined in article 33 of the Environmental Conservation Law.

(b) *Trace quantity* shall mean either:

- (1) an incidental amount of an element or compound which is not part of the household cleansing product formulation, is present only as an unintentional consequence of manufacturing and does not exceed one half of one percent (0.5%) of the content of the product by weight; or
- (2) an incidental amount of an element or compound which is part of the household cleansing product formulation, and does not exceed one tenth of one percent (0.1%) of the contents of the product by weight.

(c) *Commissioner* shall mean the New York State Commissioner of Environmental Conservation.

Historical Note

Sec. filed April 28, 1972; repealed, new filed July 28, 1976; amd. filed Nov. 9, 1978 eff. Nov. 9, 1978. Amended (a) and (b).

659.2 Applicability. This Part shall apply to all household cleansing products distributed, sold offered or exposed for sale in this State.

Historical Note

Sec. filed Apr. 28, 1972; amd. filed Apr. 24, 1973; repealed, new filed July 28, 1976 eff. Oct. 1, 1976.

659.3 Prohibitions. (a) No household cleansing product except those used in dishwashers, food and beverage processing equipment and dairy equipment shall be distributed, sold, offered or exposed for sale in this State which shall contain a phosphorus compound in concentrations in excess of a trace quantity measured as elemental phosphorus.

(b) No household cleansing product used in dishwashers, food and beverage

(1) The amount of elemental phosphorus by weight as measured to the nearest one-tenth of one percent;

(2) A list naming each ingredient which equals or exceeds five percent of the contents of the product by weight and specifying the content by weight of each ingredient to the nearest percent;

(3) A list naming each ingredient which does not equal or exceed five percent of the contents of the product by weight, provided that ingredients which are present in trace quantities need not be included on such list unless the commissioner specifically requests any such ingredient to be listed and provided further that the commissioner may require the listing of one or more of such ingredients by weight to the nearest percent; and

(4) The nature and extent of investigations and research performed by or for the manufacturer concerning the effects on human health and the environment of such product or such ingredients.

Ingredients shall be listed using the generic chemical name which conforms with generally accepted rules of chemical nomenclature.

(b) Such manufacturers shall furnish such information semiannually or at such other times as may be required by the commissioner.

(c) Such information shall be available to the public at the offices of the Department of Environmental Conservation in Albany, with the exception of those portions which the manufacturer determines, subject to the approval of the commissioner, would be, if disclosed, seriously prejudicial to the manufacturer's legitimate interest in trade secrets and economics of operation.

Historical Note

Sec. filed July 28, 1976 eff. Oct. 1, 1976.

PART 660

TIDAL WETLANDS--MORATORIUM PERMITS

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 25-0202)

Sec.		Sec.	
660.1	Definitions	660.8	Mandatory conditions of moratorium permit
660.2	Moratorium permit required	660.9	Notice of determination and record of proceedings
660.3	Petition for moratorium permit; determinations of non-applicability	660.10	Extension of expiration date
660.4	Publication of notice of petition	660.11	Modification of permit
660.5	Standards for the issuance of a moratorium permit; burden of proof	660.12	Revocation or suspension of moratorium permit
660.6	Public hearing	660.13	Joint proceedings under other laws and regulations
660.7	Issuance or denial of moratorium permit		

Historical Note

Part (§§ 660.1-660.13) added, filed July 1, 1974 eff. immediately.

Section 660.1 Definitions. The following terms when used in this Part shall have the following meanings:

(a) *Act* shall mean the Tidal Wetlands Act (article 25 of the Environmental Conservation Law as from time to time amended).

(b) *Alter* shall mean the performing of any activity which directly or indirectly may have a significant adverse effect on the existing condition of any tidal wetland, including but not limited to any form of draining, dredging, excavation and removal,

ARTICLE 35—DETERGENTS AND OTHER HOUSEHOLD
CLEANSING PRODUCTS

Sec.

- 35-0101. Scope of article.
- 35-0103. Definitions.
- 35-0105. Distribution and sale of household cleansing products.
- 35-0107. Powers and duties of commissioner.
- 35-0109. Notice of public hearing held pursuant to this article; hearing procedure.

§ 35-0101. Scope of article

By the enactment of this article the state fully exercises the exclusive right to regulate and control the labelling and ingredients of household cleansing products distributed, sold, offered, or exposed for sale in this state, within the scope and limitations of this article. The terms "regulation" and "control" include prohibitions or other restrictions on the distribution, sale, offering or exposing for sale of such products in this state. In order to assure statewide uniformity, such regulation and control by any political subdivision of the state of such products is prohibited after June 25, 1971 provided, however, that any such regulation and control in effect on June 1, 1971 shall be unaffected by this section.

L.1972, c. 664, § 2.

Source of Section

Environmental Conservation Law c. 716, § 2; and repealed by L.1972, of 1970, c. 140, § 17, added L.1971, c. 664, § 2.

Library References

- | | |
|--|-----------------------------------|
| Health and Environment ↯25.5. | C.J.S. Navigable Waters § 11. |
| Navigable Waters ↯35. | C.J.S. Waters §§ 43 et seq., 123. |
| Waters and Water Courses ↯64 et seq., 120. | |

§ 35-0103. Definitions

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

1. "Household cleansing product" means any product, including but not limited to soaps and detergents, containing a surfactant as a wetting or dirt emulsifying agent and used primarily

for domestic or commercial cleaning purposes, including but not limited to, the cleansing of fabrics, dishes, food utensils and household and commercial premises. Household cleansing product shall not mean foods, drugs, cosmetics, insecticides, fungicides and rodenticides or cleansing products used primarily in industrial manufacturing, production and assembling processes as provided by the commissioner by rule and regulation.

2. "Person" means any individual, partnership, firm or corporation.

3. "Phosphorus" means elemental phosphorus.

L.1972, c. 664, § 2.

Source of Section

Environmental Conservation Law c. 716, § 2; and repealed by L.1972, of 1970, c. 140, § 17, added L.1971, c. 664, § 2.

§ 35-0105. Distribution and sale of household cleansing products

1. No person shall distribute, sell, offer or expose for sale in this state any household cleansing product unless its wrapper or container shall be plainly labeled as provided in this subdivision. The commissioner may by rule or regulation exempt products shipped or distributed in bulk from provisions of this subdivision. The wrapper or container of every household cleansing product must list the weight of each ingredient which the commissioner determines may affect adversely human health or the environment, including but not limited to phosphorus. Such listing shall be by percentage of total weight of such product and by grams per recommended use, in descending order of predominance. Labeling of ingredients shall be in accordance with the nomenclature established by regulation of the commissioner. The percentage by weight in the container and the weight in grams per recommended use level of each ingredient shall be expressed to at least two significant figures or as specified by the commissioner. Analyses to determine actual composition shall be performed in accordance with rules and regulations of the commissioner.

2. No household cleansing product shall be distributed, sold, offered or exposed for sale in this state after December 31, 1971, which shall contain a phosphorus compound in excess of eight and seven-tenths percent by weight expressed as phosphorus. No household cleansing product shall be distributed, sold, offered or exposed for sale in this state on or after June 1, 1973, which

Index

12

HOLD

ducts.
article;

ises the
ingredi-
ffered,
itations
include
sale, of-
ate. In
control
is pro-
y such
be unaf-

L.1972,

11.
1. 123.

in this
mean-

includ-
a sur-
marily

§ 35-0105 ENVIRONMENTAL CONSERVATION Art. 35

shall contain a phosphorus compound other than such trace or incidental concentrations as may be authorized by the commissioner by regulation.

3. No person shall distribute, sell, offer or expose for sale in this state any household cleansing product which does not comply with regulations of the commissioner promulgated pursuant to subdivision 3 of section 35-0107.

L.1972, c. 664, § 2.

Source of Section

Environmental Conservation Law c. 716, § 2; and repealed by L.1972, of 1970, c. 140, § 17, added L.1971, c. 664, § 2.

Notes of Decisions

I. Local laws

Section 2(b) of Eric County Local Law No. 8 regulating the sale of detergents containing phosphorous was not rendered invalid and was not in violation of Const. art. 9, § 2 by reason of subsequent enactment of former Environmental Conservation Law § 17. Colgate-Palmolive Co. v. Erie County, 1972, 39 A.2d 641, 331 N.Y.S.2d 95.

§ 35-0107. Powers and duties of commissioner

1. The commissioner is hereby authorized to promulgate regulations requiring manufacturers of household cleansing products distributed, sold or offered for sale in this state, to furnish to the commissioner for the public record as herein provided information regarding such products in a form prescribed by the commissioner including the nature and extent of investigations and research performed by the manufacturer concerning the effects of such products on human health and the environment. These reports shall be available to the public at the department of environmental conservation, except those portions the manufacturer determines, subject to the approval of the commissioner, would be, if disclosed, seriously prejudicial to the manufacturer's legitimate interest in trade secrets and economics of operation.

2. No later than February 1, 1973 the commissioner shall prepare and submit a comprehensive report to the governor and legislature on the status of progress made in research and development to provide a safe and effective substitute for phosphates in household cleansing products.

3. Whenever the commissioner finds, after investigation, that any ingredient of household cleansing products distributed, sold, offered or exposed for sale in this state, other than an in-

74

Art. 35 DETERGENTS, ETC. § 35-0109

ingredient for which limitations are set forth in subdivision 2 of section 35-0105, will or is likely to materially affect adversely human health or the environment, he may, after public hearing, restrict or limit by regulation the use of such ingredient in such products.

L.1972, c. 664, § 2.

Source of Section

Environmental Conservation Law c. 716, § 2; and repealed by L.1972, of 1970, c. 140, § 17, added L.1971, c. 664, § 2.

§ 35-0109. Notice of public hearing held pursuant to this article; hearing procedure

1. Notice of public hearing shall be by publication in two newspapers most likely to give notice to the people of this state of such hearings at least once in each of three successive weeks, provided, however, that notice of public hearing shall be given to the manufacturer or manufacturers of such household cleansing products in writing, whenever practicable or in such other form as in the commissioner's judgment will reasonably notify such manufacturer of said hearing. Such hearing shall not be conducted less than thirty days following the date of first publication of notice of such hearing.

2. The commissioner may adopt other appropriate regulations prescribing the procedures to be followed at such hearings.

L.1972, c. 664, § 2.

Source of Section

Environmental Conservation Law c. 716, § 2; and repealed by L.1972, of 1970, c. 140, § 17, added L.1971, c. 664, § 2.

Index

working under the direct supervision of a certified applicator". Subd. 8-a. L.1978, c. 685, § 9, eff. Sept. 1, 1978, added subd. 8-a.

TITLE 15—SEIZURE

§ 33-1501. Pesticides which may be seized

1. Any pesticide that is distributed, sold, offered for sale or used within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state may be seized for confiscation:

[See main volume for text of a to d and 2]

As amended L.1978, c. 685, § 10.

1978 Amendment. Subd. 1. L. 1978, c. 685, § 10, eff. Sept. 1, 1978, in opening par. substituted "sold, offered for sale or used" for "sold or offered for sale".

ARTICLE 35—DETERGENTS AND OTHER HOUSEHOLD CLEANSING PRODUCTS

§ 35-0103. Definitions

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

[See main volume for text of 1 to 3]

4. "Commercial establishment" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including but not limited to laundries, hospitals, and food or restaurant establishments.

As amended L.1975, c. 341, § 1.

1975 Amendment. Subd. 4. L. 1975, c. 341, § 1, eff. July 1, 1975, added subd. 4.

§ 35-0105. Distribution and sale of household cleansing products; possession or use of household cleansing products containing phosphorus by commercial establishments restricted

[See main volume for text of 1]

2. No household cleansing product shall be distributed, sold, offered or exposed for sale in this state after December 31, 1971, which shall contain a phosphorus compound in excess of eight and seven-tenths percent by weight expressed as phosphorus. No household cleansing product except those used in dishwashers, food and beverage processing equipment, and dairy equipment shall be distributed, sold, offered or exposed for sale in this state on or after June 1, 1973, which shall contain a phosphorous compound other than such trace or incidental concentrations as may be authorized by the commissioner by regulation. No owner, occupant, or person in control of a commercial establishment shall possess or use or authorize any other person by way of service contract or other arrangement to possess or use in this state any household cleansing product except those used in dishwashers, food and beverage processing equipment, and dairy equipment, on or after January 1, 1976 which shall contain a phosphorus compound other than in such trace or incidental concentrations as may be authorized by the commissioner by regulation.

3. No person shall distribute, sell, offer or expose for sale in this state any household cleansing product which does not comply with regu-

76

§ 35-0105 ENVIRONMENTAL CONSERVATION LAW

lations of the commissioner promulgated pursuant to subdivision 3 of section 35-0107.

As amended L.1973, c. 384, § 1; L.1975, c. 341, § 2.

1975 Amendment. Catchline. L. 1975, c. 341, § 2, eff. July 1, 1975, included the possession or use of cleansing products containing phosphorus by commercial establishments.

1973 Amendment. Subd. 2. L.1973, c. 384, § 1, eff. May 31, 1973, inserted "except those used in dishwashers, food and beverage processing equipment, and dairy equipment."

Subd. 2. L.1975, c. 341, § 2, eff. July 1, 1975, added sentence beginning "No owner, occupant, or person."

ARTICLE 36 - PARTICIPATION IN FLOOD INSURANCE PROGRAMS [NEW]

Sec.

- 36-0101. Statement of findings and purposes.
- 36-0103. Definitions.
- 36-0105. Local government responsibility.
- 36-0107. Department responsibility.
- 36-0109. Non-qualification by local government.
- 36-0111. Flood hazard evaluation of state facilities, lands and programs.
- 36-0113. Cooperation and coordination.
- 36-0115. Miscellaneous provisions.

§ 36-0101. Statement of findings and purposes

Recurrent flooding of large areas of the state presents serious hazards to and causes adverse effects upon the health, safety, welfare and property of the people of the state, both within and outside such areas, including loss of life, loss and damage to private and public property, disruption of lives and livelihoods, interruption of commerce, transportation, communication and governmental services and unsanitary and unhealthful living and environmental conditions. Flood plain management is, therefore, a matter of state concern and the establishment of improved flood plain management practices is important to the health, safety and welfare of all of the state.

Recognizing the fact that the nation cannot afford the tragic loss of life and property annually caused by flood occurrences, the Congress has passed and the President has signed legislation requiring that communities designated as having special flood hazards participate in the national flood insurance program as a prerequisite to the receipt of certain broad categories of federally related financial assistance, including home mortgage loans, for the acquisition, construction, reconstruction, repair, or improvement of real property located in such areas or for certain facilities to be used therein.

Qualification for participation in the national flood insurance program requires the adoption of adequate land use controls and enforcement measures. While many local governments have individually established such programs, experience has demonstrated that fully effective flood plain management requires land use control in all flood prone localities.

The protection of the health, safety, and general welfare of the people of the state and the assurance of continuation of critically needed financial assistance can, therefore, best be provided by the establishment of effective flood plain controls and enforcement measures, and by facilitating local participation in the national flood insurance program.

Accordingly, the purposes of this article are to reduce flood hazards and losses, and to prevent the termination of critically needed financial assistance by facilitating community qualification and participation in the national flood insurance program. These purposes will be accomplished by assisting local governments in the promulgation of effective flood plain management regulations, by taking advantage of all

ENVIRONMENTAL CONSERVATION LAW

available federal assistance, insuring that each community has an opportunity to participate in the program.

It is further the purpose of this article to insuring that the necessary administrative and disbursement procedures are conducted so as to insure that the maximum number of communities are eligible to participate in the program.

Added L.1974, c. 8. Effective Date. Provided that this article shall be in effect Sept. 1, 1974.

§ 36-0103. Definitions

1. "Flood hazard" means a condition which, if not corrected, may result in a substantial and prudent hazard to the health, safety and welfare of the community. The determination of flood hazard shall be made by the commissioner of the department of environmental conservation.

2. "Local government" means a city, town or village.

3. "National flood insurance program" means the program authorized under the Federal Flood Insurance Act of 1968, as amended.

Added L.1974, c. 142 U.S.C.A. §§ 142 U.S.C.A. §§

Effective Date. Provided that this article shall be in effect Sept. 1, 1974.

§ 36-0105. Local government responsibility

When a local government is designated as having special flood hazards, the department of environmental conservation shall require the local government to submit a plan of flood plain management within ten working days of the date of designation.

Added L.1974, c. 8. Effective Date. Provided that this article shall be in effect Sept. 1, 1974.

§ 36-0107. Department responsibility

1. Upon receipt of a plan of flood plain management from a local government, the department of environmental conservation shall determine whether the plan meets the minimum requirements for qualification for participation in the national flood insurance program. If the plan does not meet the requirements, the department shall advise the local government of the deficiencies and the steps necessary to qualify for participation in the program.

2. The department of environmental conservation shall facilitate the identification of flood hazards by the local government and shall provide technical assistance to the local government in the preparation of the plan of flood plain management.

3. If, within the time specified in the plan of flood plain management, the local government fails to submit a plan of flood plain management, the department of environmental conservation shall advise the local government of the consequences of its failure to do so.