



The New York Water Environment Association, Inc.
The Water Quality Management Professionals

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May 26, 2010

Assemblyman Robert Sweeney
Chair, NY State Assembly Environmental Conservation Committee
Legislative Office Building, Room 625
Albany, NY 12248

RE: Assembly Bill No. A08914 – Distribution, Sale, Offer and Exposure of
Phosphorus Compound in Household Cleaning Products and Lawn Fertilizers
– NYWEA’s Evaluation

Dear Assemblyman Sweeney,

As you know, the New York Water Environment Association (NYWEA) is a statewide nonprofit organization of approximately 2,500 water and wastewater professionals, environmental engineers and scientists, and water quality management professionals dedicated to protecting and enhancing the waters of New York. NYWEA is primarily an educational organization dedicated to educating not only our members but also those who are charged with setting policy and practices intended to protect the water environment here in New York.

Recently, NYWEA was asked by a representative of the New York State Department of Conservation (NYSDEC) if we have a position on the above-referenced Bill. While NYWEA has not routinely taken positions on individual bills, we have started a new pilot project through which we will be reviewing individual bills in an effort to provide an objective, un-biased third party review of proposed legislation by technical experts in protecting the water environment. Accordingly, NYWEA has reviewed proposed Bill A08914 and offer the following summary review and recommendations for your consideration.

On behalf of NYWEA, I commend you and your colleagues' leadership and dedicated work on this important topic. Please don't hesitate to contact either me at 716-667-6670 or twhetham@pirinie.com or NYWEA's Executive Director Patricia Cerro-Reehil at 315-422-7811, or pcr@nywea.org, if you would like to discuss our evaluation or believe that we can be of further assistance.

As we are in the midst of this pilot project on providing objective review and comment on individual bills, we would appreciate receiving feedback on the attached. If there are other bills which you would like NYWEA to review and comment on, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Whetham". The signature is fluid and cursive, with the first letter of the first name being a large, stylized "T".

Thomas Whetham
President

cc: Commissioner Pete Grannis, NYS DEC
Assistant Commissioner James Tierney, NYS DEC
Angus Eaton, NYS DEC
Julia Tighe, NYS DEC
NYWEA Board
NYWEA Government Affairs Committee



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**NYWEA Legislative Monitoring
Distribution, Sale, Offer and Exposure of Phosphorus Compound in Household
Cleaning Products and Lawn Fertilizers**

Bill No.: Assembly Bill No. A08914

Sponsors: Robert Sweeney, William Colton, and David Koon

Brief Summary of the Bill: The purpose of this bill is to limit the amount of phosphorus in dishwashing detergent, and limit the use of lawn fertilizer containing phosphorus, to reduce phosphorus discharges into waterbodies. The bill amends the Environmental Conservation Law to prohibit the sale or distribution of household cleansing products used in dishwashers which contain more than 0.5 percent by weight of a phosphorus compound and to prohibit the use of such products in commercial establishments as of July 1, 2010. It will also prohibit the application of phosphorus fertilizer on lawn or non-agricultural turf, except when: (1) a soil test demonstrates that additional phosphorus is needed for lawn or non-agricultural turf growth, or (2) new lawn or non-agricultural turf is being established. In addition, it requires retail stores to comply with the requirements of Agriculture and Markets Law (AML) S146-g related to the display of phosphorus fertilizer and the posting of educational signs.

1. How would passage of this bill improve NY waters?

Phosphorus is a nutrient pollutant that can (and is) causing a deterioration of water quality in many of our waterways. Found in lawn and agricultural fertilizers, detergents, yard clippings, soil erosion, manure, and human and animal waste, phosphorus enters the waterways through both point sources such as the discharges from wastewater treatment plants and septic systems and non-point stormwater runoff. Significant phosphorus pollution can frequently lead to the excessive growth of aquatic vegetation (such as algae blooms) that consumes oxygen in water and has a detrimental impact on aquatic organisms and fishing and recreation in the state's waterways.

2. How would passage of this bill improve the environmental and/or the public health of NY?

Historically, New York was among the first several states in the early 1970s to restrict the use of phosphorus in household laundry detergents and cleansers resulting in notable reductions in effluent phosphorus concentrations and loads from the wastewater treatment plants.¹ The use of phosphorus in dishwasher detergents (addressed by the subject Bill), however, was still allowed. Therefore, we anticipate that by prohibiting the use of phosphorus (in excess of 0.5% by weight) in dishwasher detergents and by setting limits on its use in lawn fertilizer products, the Bill would lead to a reduction in phosphorus loads to the state waters and, thus, help a number of state wastewater treatment facilities and local governments meet the ambient water quality standards for phosphorus in a cost-effective manner. Specifically, control of phosphorus in dishwasher detergents would result in reduction of the phosphorus inputs to the wastewater treatment plants, while elimination of phosphorus in fertilizer products, would reduce phosphorus entering stormwater runoff.

3. Does this bill address statewide, regional or local impact?

This bill would have a statewide impact. According to New York's last CWA Section 305(b) Report, over 1,162 miles of streams and rivers in the State and 144,767 acres of Lakes and ponds have levels of phosphorus which are too high². The proposed Bill would have the dual effect of reducing phosphorus loadings and enhancing water quality.

4. Who will have new requirements under this bill (i.e., individual, state agency, municipality, industry, etc.).

Retail stores that sell the banned products. Low phosphorus detergents and fertilizer *that does not contain phosphorus*, which meet the requirements of the bill are readily available. In fact, stores such as Wal-Mart, Home Depot and Target are already advertising and selling "No Phosphorus" fertilizers and dishwashing detergents.

5. Relative to any other environmental mandates on the affected entities, rate the importance of this bill in terms of protecting/improving (i) water quality (ii) environmental protection and/or protection of human health.

High -- Runoff from lawn products is recognized as one of the main causes of nutrient caused water quality problems in New York. Prohibiting the sale of Phosphorus containing fertilizer, except where tests have shown it is needed or

¹ Litke, D.W., Review of Phosphorus Control Measures in the United States and Their Effect on Water Quality, USGS Water-Resources Investigation Report 99-4007, National Water Quality Assessment Program, 1999

² See, http://iaspub.epa.gov/waters10/w305b_report_control.get_report?p_state=NY&p_cycle=#impairment

in the case of new lawn establishment, should significantly reduce phosphorus related water quality problems in the State.

6. What entity would bear the cost for complying with the proposed law?

Retail establishment and detergent/fertilizer manufacturers. There may also be some price increases to consumers for these products.

7. Using the relative scale of low, medium and high, what will be the:

(i) cost to comply -- Low as substitutes are available already.

(ii) Water quality, environmental and/or human health benefit

Potentially High. From an economic perspective, the reduction of phosphorus in stormwater runoff is a cost-effective approach to controlling the nonpoint sources of nutrients pollution. Nonpoint source pollution, caused by surface runoff from rainfall or snowmelt, is more difficult to control than the point source pollution which is usually conveyed through a pipe (e.g., wastewater treatment plant's outfall). Since, according to EPA, most watersheds are impaired by a combination of point- and nonpoint sources of pollution or are predominantly impaired by nonpoint sources,³ pursuing effectual and cost-effective control of nonpoint sources of phosphorus makes perfect sense. Moreover, the implementation of provisions of the Bill would lead to a measurable reduction of phosphorus in stormwater before the pollutants get into stormwater, an approach known as a "source control" measure, which, in a number of instances, may obviate the need for constructing expensive phosphorus control solutions at the treatment plants.

8. Other NYWEA Comments and Recommendations

Section 3 of the Bill outlines the enforcement procedures to address the violation of the key provisions of the Bill. For the first violation, the violators will be provided with the educational materials and receive a written warning, and only for the second and subsequent violations, would they be liable for fines. NYWEA concurs that education, rather than extraction of monetary penalties, is more likely to lead to compliance and water quality improvement. As an organization with a strong educational component, NYWEA recommends conducting a state-wide education campaign on this issue and would be interested in working with the Assembly Environmental Conservation Committee and NYS DEC to educate the environmental

³ National Association of Clean Water Agencies' (NACWA) September 24, 2009 letter to Peter Silva, Assistant Administrator, Office of Water, EPA; p. 8.

community and general public on the benefits of the Bill. The two major benefits that could be emphasized in the educational campaign are potential reduction in cost of and improvement in water quality and recreational condition of our waters.