

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator BAER

- 1 AN ACT concerning the regulation of hazardous substances, amending
2 P.L.1983, c.383, and amending and supplementing P.L.1983, c.315.
3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:
6
7 1. Section 3 of P.L.1983, c.315 (C.34:5A-3) is amended to read as
8 follows:
9 3. As used in this act:
10 a. "Chemical Abstracts Service number" means the unique
11 identification number assigned by the Chemical Abstracts Service to
12 chemicals.
13 b. "Chemical name" means the scientific designation of a chemical
14 in accordance with the nomenclature system developed by the
15 International Union of Pure and Applied Chemistry or the Chemical
16 Abstracts Service rules of nomenclature.
17 c. "Common name" means any designation or identification such
18 as a code name, code number, trade name, brand name or generic
19 name used to identify a chemical other than by its chemical name.
20 d. "Container" means a receptacle used to hold a liquid, solid, or
21 gaseous substance, including, but not limited to, bottles, pipelines,
22 bags, barrels, boxes, cans, cylinders, drums, cartons, vessels, vats, and
23 stationary or mobile storage tanks. "Container" shall not include
24 process containers.
25 e. "Council" means the Right to Know Advisory Council created
26 pursuant to section 18 of this act.
27 f. "County health department" means a county health agency
28 established pursuant to P.L.1975, c.329 (C.26:3A2-1 et seq.), or the
29 office of a county clerk in a county which has not established a
30 department.
31 g. "Employee representative" means a certified collective
32 bargaining agent or an attorney whom an employee authorizes to

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

check
Federal
Law

uniform
fire code
→ trucking
terminals

generic
danger
placard
plus
NJDOT
list

scope
thresholds

enforcement
NJDOH
(DCA BFT)
joint

1 exercise his rights to request information pursuant to the provisions of
2 this act, or a parent or legal guardian of a minor employee.

3 h. "Employer" means any person or corporation in the State
4 engaged in business operations which has a Standard Industrial
5 Classification, as designated in the Standard Industrial Classification
6 Manual prepared by the federal Office of Management and Budget,
7 within the following Major Group Numbers, Group Numbers, or
8 Industry Numbers, as the case may be, except as otherwise provided
9 herein:

10 Major Group Number 07 (Agricultural Services), only Industry
11 Number 0782--Lawn and garden services; Major Group Numbers 20
12 through 39 inclusive (manufacturing industries); Major Group Number
13 42 (Motor Freight Transportation and Warehousing), only Industry
14 Numbers 4221--Farm Product Warehousing and Storage,
15 4225--General Warehousing and Storage, and 4226--Special
16 Warehousing and Storage, Not Elsewhere Classified; Major Group
17 Number 45 (Transportation by Air), only Industry Number 4511--Air
18 Transportation, certified carriers, and Group Number 458--Air
19 Transportation Services; Major Group Number 46 (Pipelines, Except
20 Natural Gas); Major Group Number 47 (Transportation Services),
21 only Group Numbers 471--Freight Forwarding, 474--Rental of
22 Railroad Cars, and 478--Miscellaneous Services Incidental to
23 Transportation; Major Group Number 48 (Communication), only
24 Group Numbers 481--Telephone Communication, and 482--Telegraph
25 Communication; Major Group Number 49 (Electric, Gas and Sanitary
26 Services); Major Group Number 50 (Wholesale Trade--Durable
27 Goods), only Industry Numbers 5085--Industrial Supplies,
28 5087--Service Establishment Equipment and Supplies, and
29 5093--Scrap and Waste Materials; Major Group Number 51
30 (Wholesale trade, nondurable goods), only Group Numbers
31 512--Drugs, Drug Proprietaries and Druggist's Sundries,
32 516--Chemicals and Allied Products, 517--Petroleum and petroleum
33 products, 518--Beer, Wine and Distilled Alcoholic Beverages, and
34 519--Miscellaneous Nondurable Goods; Major Group Number 55
35 (Automobile Dealers and Gasoline Service Stations), only Group
36 Numbers 551--Motor Vehicle Dealers (New and Used), 552--Motor
37 Vehicle Dealers (Used only), and 554--Gasoline Service Stations;
38 Major Group Number 72 (Personal Services), only Industry Numbers
39 7216--Dry Cleaning Plants, Except Rug Cleaning, 7217--Carpet and
40 Upholstery Cleaning, and 7218--Industrial Launderers; Major Group
41 Number 73 (Business Services), only Industry Number 7397
42 Commercial testing laboratories; Major Group Number 75 (automotive
43 repair, services, and garages), only Group Number 753--Automotive
44 Repair Shops; Major Group Number 76 (miscellaneous repair
45 services), only Industry Number 7692--Welding Repair; Major Group
46 Number 80 (health services), only Group Number 806--Hospitals; and

1 Major Group Number 82 (educational services), only Group Numbers
2 821--Elementary and Secondary Schools and 822--Colleges and
3 Universities, and Industry Number 8249--Vocational Schools. Except
4 for the purposes of section 26 of this act, "employer" means the State
5 and local governments, or any agency, authority, department, bureau,
6 or instrumentality thereof, or any non-profit, non-public school,
7 college or university.

8 i. "Environmental hazardous substance" means any substance on
9 the environmental hazardous substance list.

10 j. "Environmental hazardous substance list" means the list of
11 environmental hazardous substances developed by the Department of
12 Environmental Protection pursuant to section 4 of this act.

13 k. "Environmental survey" means a written form prepared by the
14 Department of Environmental Protection and transmitted to an
15 employer, on which the employer shall provide certain information
16 concerning each of the environmental hazardous substances at his
17 facility, including, but not limited to, the following:

18 (1) The chemical name and Chemical Abstracts Service number of
19 the environmental hazardous substance;

20 (2) A description of the use of the environmental hazardous
21 substance at the facility;

22 (3) The quantity of the environmental hazardous substance
23 produced at the facility;

24 (4) The quantity of the environmental hazardous substance brought
25 into the facility;

26 (5) The quantity of the environmental hazardous substance
27 consumed at the facility;

28 (6) The quantity of the environmental hazardous substance shipped
29 out of the facility as or in products;

30 (7) The maximum inventory of the environmental hazardous
31 substance stored at the facility, the method of storage, and the
32 frequency and methods of transfer;

33 (8) The total stack or point-source emissions of the environmental
34 hazardous substance;

35 (9) The total estimated fugitive or nonpoint-source emissions of
36 the environmental hazardous substance;

37 (10) The total discharge of the environmental hazardous substance
38 into the surface or groundwater, the treatment methods, and the raw
39 wastewater volume and loadings;

40 (11) The total discharge of the environmental hazardous substance
41 into publicly owned treatment works;

42 (12) The quantity, and methods of disposal, of any wastes
43 containing an environmental hazardous substance, the method of
44 on-site storage of these wastes, the location or locations of the final
45 disposal site for these wastes, and the identity of the hauler of the
46 wastes;

1 (13) The total quantity of environmental hazardous substances
2 generated at the facility, including hazardous substances generated as
3 nonproduct output;

4 (14) The quantity of environmental hazardous substances recycled
5 on-site and off-site; and

6 (15) Information pertaining to pollution prevention activities at the
7 facility.

8 As used in this subsection, "pollution prevention" and "nonproduct
9 output" shall have the same meaning as set forth in section 3 of
10 P.L.1991, c.235 (C.13:1D-37).

11 l. "Facility" means the building, equipment and contiguous area at
12 a single location used for the conduct of business. Except for the
13 purposes of subsection c. of section 13, section 14, [and] subsection
14 b. of section 25 of this act, and section 3 of P.L.1995, c. (C.) (now
15 before the Legislature as this bill), "facility" shall not include a
16 research and development laboratory.

17 m. "Hazardous substance" means any substance, or substance
18 contained in a mixture, included on the workplace hazardous substance
19 list developed by the Department of Health pursuant to section 5 of
20 this act, introduced by an employer to be used, studied, produced, or
21 otherwise handled at a facility. "Hazardous substance" shall not
22 include:

23 (1) Any article containing a hazardous substance if the hazardous
24 substance is present in a solid form which does not pose any acute or
25 chronic health hazard to an employee exposed to it;

26 (2) Any hazardous substance constituting less than 1% of a mixture
27 unless the hazardous substance is present in an aggregate amount of
28 500 pounds or more at a facility;

29 (3) Any hazardous substance which is a special health hazard
30 substance constituting less than the threshold percentage established
31 by the Department of Health for that special health hazard substance
32 when present in a mixture; or

33 (4) Any hazardous substance present in the same form and
34 concentration as a product packaged for distribution and use by the
35 general public to which an employee's exposure during handling is not
36 significantly greater than a consumer's exposure during the principal
37 use of the toxic substance.

38 n. "Hazardous substance fact sheet" means a written document
39 prepared by the Department of Health for each hazardous substance
40 and transmitted by the department to employers pursuant to the
41 provisions of this act, which shall include, but not be limited to, the
42 following information:

43 (1) The chemical name, the Chemical Abstracts Service number,
44 the trade name, and common names of the hazardous substance;

45 (2) A reference to all relevant information on the hazardous
46 substance from the most recent edition of the National Institute for

1 Occupational Safety and Health's Registry of Toxic Effects of
2 Chemical Substances;

3 (3) The hazardous substance's solubility in water, vapor pressure
4 at standard conditions of temperature and pressure, and flash point;

5 (4) The hazard posed by the hazardous substance, including its
6 toxicity, carcinogenicity, mutagenicity, teratogenicity, flammability,
7 explosiveness, corrosivity and reactivity, including specific information
8 on its reactivity with water;

9 (5) A description, in nontechnical language, of the acute and
10 chronic health effects of exposure to the hazardous substance,
11 including the medical conditions that might be aggravated by exposure,
12 and any permissible exposure limits established by the federal
13 Occupational Safety and Health Administration;

14 (6) The potential routes and symptoms of exposure to the
15 hazardous substance;

16 (7) The proper precautions, practices, necessary personal
17 protective equipment, recommended engineering controls, and any
18 other necessary and appropriate measures for the safe handling of the
19 hazardous substance, including specific information on how to
20 extinguish or control a fire that involves the hazardous substance; and

21 (8) The appropriate emergency and first aid procedures for spills,
22 fires, potential explosions, and accidental or unplanned emissions
23 involving the hazardous substance.

24 o. "Label" means a sign, emblem, sticker, or marker affixed to or
25 stenciled onto a container listing the information required pursuant to
26 section 14 of this act.

27 p. "Mixture" means a combination of two or more substances not
28 involving a chemical reaction.

29 q. "Process container" means a container, excluding a pipeline, the
30 content of which is changed frequently; a container of 10 gallons or
31 less in capacity, into which substances are transferred from labeled
32 containers, and which is intended only for the immediate use of the
33 employee who performs the transfer; a container on which a label
34 would be obscured by heat, spillage or other factors; or a test tube,
35 beaker, vial, or other container which is routinely used and reused.

36 r. "Research and development laboratory" means a specially
37 designated area used primarily for research, development, and testing
38 activity, and not primarily involved in the production of goods for
39 commercial sale, in which hazardous substances or environmental
40 hazardous substances are used by or under the direct supervision of a
41 technically qualified person.

42 s. "Special health hazard substance" means any hazardous
43 substance on the special health hazard substance list.

44 t. "Special health hazard substance list" means the list of special
45 health hazard substances developed by the Department of Health
46 pursuant to section 5 of this act for which an employer may not make

1 a trade secret claim.

2 u. "Trade secret" means any formula, plan, pattern, process,
3 production data, information, or compilation of information, which is
4 not patented, which is known only to an employer and certain other
5 individuals, and which is used in the fabrication and production of an
6 article of trade or service, and which gives the employer possessing it
7 a competitive advantage over businesses who do not possess it, or the
8 secrecy of which is certified by an appropriate official of the federal
9 government as necessary for national defense purposes. The chemical
10 name and Chemical Abstracts Service number of a substance shall be
11 considered a trade secret only if the employer can establish that the
12 substance is unknown to competitors. In determining whether a trade
13 secret is valid pursuant to section 15 of this act, the Department of
14 Health, or the Department of Environmental Protection, as the case
15 may be, shall consider material provided by the employer concerning
16 (1) the extent to which the information for which the trade secret claim
17 is made is known outside the employer's business; (2) the extent to
18 which the information is known by employees and others involved in
19 the employer's business; (3) the extent of measures taken by the
20 employer to guard the secrecy of the information; (4) the value of the
21 information, to the employer or the employer's competitor; (5) the
22 amount of effort or money expended by the employer in developing
23 the information; and (6) the ease or difficulty with which the
24 information could be disclosed by analytical techniques, laboratory
25 procedures, or other means.

26 v. "Trade secret registry number" means a code number
27 temporarily or permanently assigned to the identity of a substance in
28 a container by the Department of Health pursuant to section 15 of this
29 act.

30 w. "Trade secret claim" means a written request, made by an
31 employer pursuant to section 15 of this act, to withhold the public
32 disclosure of information on the grounds that the disclosure would
33 reveal a trade secret.

34 x. "Workplace hazardous substance list" means the list of
35 hazardous substances developed by the Department of Health pursuant
36 to section 5 of this act.

37 y. "Workplace survey" means a written document, prepared by the
38 Department of Health and completed by an employer pursuant to this
39 act, on which the employer shall report each hazardous substance
40 present at his facility.

41 (cf: P.L.1991, c.235, s.17)

42

43 2. Section 4 of P.L.1983, c.315 (C.34:5A-4) is amended to read as
44 follows:

45 4. a. The Department of Environmental Protection shall develop
46 an environmental hazardous substance list which shall include the list

1 of substances developed and used by the department for the purposes
2 of the Industrial Survey Project, established pursuant to P.L.1970,
3 c.33 (C.13:1D-1 et seq.), any substance on the United States
4 Department of Transportation Hazardous Materials List established
5 pursuant to 49 C.F.R. 172.101-102, and any substance on the list
6 established by the United States Environmental Protection Agency for
7 reporting pursuant to 42 U.S.C. §11023 and may include other
8 substances which the department, based on documented scientific
9 evidence, determines pose a threat to the public health and safety.

10 b. The department shall develop an environmental survey, which
11 shall be designed to enable employers to report information about
12 environmental hazardous substances at their facilities.

13 c. The department shall prepare and, upon request, make available
14 to employers, county health departments, or the public a Spanish
15 translation of the environmental survey. The department shall also
16 prepare and make available a Spanish translation of any written
17 material prepared by the department to inform the public of the
18 information available pursuant to the provisions of this act.

19 d. Three months prior to the effective date of this act the
20 department shall adopt, pursuant to the "Administrative Procedure
21 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the environmental
22 hazardous substance list.

23 e. An employer shall report on the environmental survey any
24 quantity of an environmental hazardous substance present at each
25 facility during the reporting period.

26 (cf: P.L. 1991, c.235, s.18)

27

28 3. Section 7 of P.L.1983, c.383 (C.52:27D-198) is amended to
29 read as follows:

30 7. a. The commissioner shall promulgate, in accordance with the
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
32 seq.), and after consulting with the fire safety commission, regulations
33 to insure the maintenance and operation of buildings and equipment in
34 such a manner as will provide a reasonable degree of safety from fire
35 and explosion.

36 Regulations promulgated pursuant to this section shall include a
37 uniform fire safety code primarily based on the standards established
38 by the Life Safety Code (National Fire Protection Association 101)
39 and any other fire codes of the National Fire Protection Association
40 and the Building Officials and Code Administrators International
41 (BOCA) Basic Fire Prevention Code, both of which may be adopted
42 by reference. The regulations may include modifications and
43 amendments the commissioner finds necessary.

44 b. The code promulgated pursuant to this section shall include the
45 requirements for fire detection and suppression systems, elevator
46 systems, emergency egresses and protective equipment reasonably

1 necessary to the fire safety of the occupants or intended occupants of
2 new or existing buildings subject to this act, including but not limited
3 to electrical fire hazards, maintenance of fire protection systems and
4 equipment, fire evacuation plans and fire drills, [and] all components
5 of building egress, and the requirements of section 4 of P.L. __, c. __
6 (C. __) (now before the Legislature as this bill). In addition, the
7 regulations issued and promulgated pursuant to this section which are
8 applicable to new or existing buildings shall include, but not be limited
9 to fire suppression systems, built-in fire fighting equipment, fire
10 resistance ratings, smoke control systems, fire detection systems, and
11 fire alarm systems including fire service connections.

12 c. When promulgating regulations, the commissioner shall take into
13 account the varying degrees of fire safety provided by the different
14 types of construction of existing buildings and the varying degrees of
15 hazard associated with the different types and intensity of uses in
16 existing buildings. When preparing regulations which require the
17 installation of fire safety equipment and devices, the commissioner
18 shall consult with the fire safety commission and shall take into
19 account, to the greatest extent prudent, the economic consequences of
20 the regulations and shall define different use groups and levels of
21 hazard within more general use groups, making corresponding
22 distinctions in fire safety requirements for these different uses and
23 levels of hazard. The commissioner shall also take into account the
24 desirability of maintaining the integrity of historical structures to the
25 extent that it is possible to do so without endangering human life and
26 safety. The regulations established pursuant to this subsection shall
27 apply to secured vacant buildings only to the extent necessary to
28 eliminate hazards affecting adjoining properties.

29 d. Except as otherwise provided in this act, including rules and
30 regulations promulgated hereunder, all installations of equipment and
31 other alterations to existing buildings shall be made in accordance with
32 the technical standards and administrative procedures established by
33 the commissioner pursuant to the "State Uniform Construction Code
34 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and shall be subject to
35 plan review and inspection by the local construction and subcode
36 officials having jurisdiction over the building, who shall enforce the
37 regulations established pursuant to this act applicable to the
38 installation or other alteration along with the regulations established
39 pursuant to the "State Uniform Construction Code Act."

40 e. The commissioner shall, by regulation, establish standards,
41 procedures and fees for the certification of persons engaged in the
42 business of installing fire suppression systems, for the warranting of
43 those systems, and for the establishment, funding and operation of a
44 warranty security program. A fire suppression system installed in a
45 building subject to this act shall be warranted in accordance with those
46 standards and procedures, shall be required to be covered by the

1 warranty security program, and shall be installed by a person certified
2 in accordance with those standards and procedures.

3 (cf: P.L.1983, c.383, s.7)

4

5 4. (New section) a. Except as otherwise provided in this section,
6 every employer shall post in plain view, either outside the main points
7 of entry or immediately inside the point of entry of any facility and any
8 area within a facility in which environmental hazardous substances are
9 used or stored, a United States Department of Transportation
10 Hazardous Materials Warning Placard which corresponds to the
11 hazard presented by the environmental hazardous substances located
12 within the facility, and which further displays, to the extent possible,
13 the United Nations or North American Identification Numbers
14 established pursuant to 49 C.F.R. 172.101 and 172.102.

15 b. Notwithstanding the requirements of subsection a. of this
16 section, every employer engaged in business operations which has a
17 Standard Industrial Classification, as designated in the Standard
18 Industrial Classification Manual prepared by the federal Office of
19 Management and Budget, within the Major Group Number 42 (Motor
20 Freight Transportation and Warehousing), and within Industry
21 Numbers 4221--Farm Product Warehousing and Storage,
22 4225--General Warehousing and Storage, and 4226--Special
23 Warehousing and Storage, Not Elsewhere Classified, shall:

24 (1) Post in plain view, either outside the main points of entry or
25 immediately inside the point of entry of any facility and any area within
26 a facility in which environmental hazardous substances are stored, a
27 United States Department of Transportation Hazardous Materials
28 Warning Placard which corresponds to the hazard presented by any
29 environmental hazardous substance that will be stored within the
30 facility or area for at least 72 hours, and which further displays, to the
31 extent possible, the United Nations or North American Identification
32 Numbers established pursuant to 49 C.F.R. 172.101 and 172.102;

33 (2) If the environmental hazardous substance will be stored for less
34 than 72 hours, (a) post in plain view, at or near the main points of
35 entry of any facility and any area within the facility in which the
36 environmental hazardous substances are stored, a United States
37 Department of Transportation Hazardous Materials Warning Placard
38 which contains the word "Dangerous" in large print; (b) immediately
39 report to the municipality in which the facility is located the quantity
40 and type of environmental hazardous substance being stored; and (c)
41 designate one employee as an official contact person, who shall be
42 available at all times and shall be able to provide up-to-date
43 information on the types and quantities of environmental hazardous
44 substances in the facility in the event of an emergency.

45 c. Notwithstanding the requirements of subsection a. of this
46 section, every secondary and elementary school, vocational school,

1 university, college and county college shall post in plain view, at or
 2 near the main points of entry of any area within a facility in which
 3 environmental hazardous substances are stored, a United States
 4 Department of Transportation Hazardous Materials Warning Placard
 5 which corresponds to the hazard class of materials located within the
 6 facility, and which further displays, to the extent possible, the United
 7 Nations (UN) or North American (NA) Identification Numbers
 8 established pursuant to 49 C.F.R. 172.101 and 172.102.

9
 10 5. This act shall take effect immediately.

11 12 13 STATEMENT 14

15 This bill would amend the "Worker and Community Right to Know
 16 Act," P.L.1983, c.315 (C.34:5A-1 et seq.), to add owners or operators
 17 of warehouses to the list of owners or operators of facilities required
 18 to report the use or storage of environmental hazardous substances
 19 under the act. The bill would add the United States Department of
 20 Transportation Hazardous Materials List established pursuant to 49
 21 C.F.R. 172.101-102, to the list of environmental hazardous substances
 22 required to be reported pursuant to the act. The bill would also
 23 require employers covered under the act to report any quantity of an
 24 environmental hazardous substance used or stored in the prior year in
 25 the annual Community Right to Know Survey. Currently, Department
 26 of Environmental Protection (DEP) regulations only require reporting
 27 if there is at least 500 pounds of an environmental hazardous substance
 28 present in the aggregate at the facility, unless federal law, rule or
 29 regulation provides for a lower threshold.

30 The bill would also require that all employers covered *uniform fire code*
 31 post placards, at or near the point of entry of a facility and any area
 32 within a facility, indicating the type of hazardous chemical used or
 33 stored within that facility or area. The placards would be in
 34 conformance with the United States Department of Transportation
 35 Hazardous Materials Warning Placard system, in conjunction with the
 36 United Nations or North American Hazardous Materials Identification
 37 System, which designates a four-digit number for certain hazardous
 38 substances. ?

39 Owners or operators of warehouses, which typically move goods in
 40 and out over short periods of time, would be required to post such
 41 placards indicating the hazard associated with a particular
 42 environmental hazardous substance which is located within the facility
 43 and any area within the facility and which will be stored in the facility
 44 or area for at least 72 hours. Owners of warehouses in which
 45 environmental hazardous substances will be stored for less than 72
 46 hours would be required to post a placard with the word "Dangerous"

OK

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stand
alone

1 printed on it. In addition, owners of warehouses with less than 72
2 hour turnover of EHSs would be required to report immediately the
3 quantity and type of such substances to the municipality in which they
4 are located, as well as designate an official contact person who would
5 be available to provide up-to-date information on EHSs within the
6 facility on an around-the-clock basis.

7 Elementary and secondary schools, vocational schools, colleges,
8 county colleges and universities would be required to post placards at
9 the area within a facility used for storage of environmental hazardous
10 substances.]

11 The bill also amends the "Uniform Fire Safety Act," P.L.1983,
12 c.383 (C.52:27D-192 et seq.), to require that the uniform fire safety
13 code include the placarding requirements of the bill. The code already
14 includes similar safety elements such as the maintenance of fire
15 protection systems and equipment, fire evacuation plans and fire
16 suppression systems.

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21 Requires warehouses to report under Worker and Community Right
22 to Know Act; establishes placarding requirement.

*all
commercial
occupancies*