

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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APRIL 6, 1987

REFERRED TO COMMITTEE ON LABOR RELATIONS, APRIL 6, 1987

AN ACT

1 Regulating chemical substances; providing for community
2 protection from these substances; requiring disclosure of the
3 identity of these substances by employers and the labeling of
4 hazardous materials; requiring material safety data on
5 hazardous substances to be given to employees; requiring
6 employers to operate educational programs relating to
7 hazardous substances; providing for further duties of the
8 Department of Labor and Industry; requiring employers
9 handling hazardous substances to cooperate with local
10 government officials and emergency personnel; further
11 providing for complaint procedures, for investigations, and
12 for compliance orders and the enforcement thereof; providing
13 penalties; making a repeal; and making an appropriation.

TABLE OF CONTENTS

14 Chapter 1. Preliminary Provisions
15 Section 101. Short title.
16 Section 102. Scope.
17 Chapter 2. Employees
18 Section 201. Declaration of policy.
19 Section 202. Definitions.
20 Section 203. Notice.

1 Section 204. Materials.
2 Section 205. Material safety data sheets.
3 Section 206. Nonhazardous chemical identification.
4 Section 207. Labeling.
5 Section 208. Protection of employees.
6 Section 209. Employee training.
7 Section 210. Powers and duties of department.
8 Section 211. Trade secrets.
9 Section 212. Complaints and investigations.
10 Section 213. Compliance order and penalties.
11 Section 214. Exemptions.
12 Section 215. Construction.
13 Section 216. Preemption.
14 Section 217. Relationship to OSHA standard.
15 Section 218. Waiver.
16 Chapter 3. Community
17 Section 301. Declaration of policy.
18 Section 302. Definitions.
19 Section 303. Emergency information.
20 Section 304. Obligations of employers.
21 Section 305. Powers and duties of department.
22 Section 306. Trade secrets.
23 Section 307. Construction.
24 Section 308. Preemption.
25 Chapter 4. Miscellaneous
26 Section 401. Appropriation.
27 Section 402. Repeals.
28 Section 403. Expiration.
29 Section 404. Effective date.

30 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 CHAPTER 1

3 PRELIMINARY PROVISIONS

4 Section 101. Short title.

5 This act shall be known and may be cited as the Chemical
6 Right-to-Know Act.

7 Section 102. Scope.

8 This act provides protection for employees and the general
9 public from hazardous substances in the workplace.

10 CHAPTER 2

11 EMPLOYEES

12 Section 201. Declaration of policy.

13 The General Assembly finds and declares as follows:

14 (1) There exists within this Commonwealth a potential
15 danger to employees because of their exposure to hazardous
16 substances encountered in the workplace.

17 (2) Employers within this Commonwealth whose businesses
18 require the use of hazardous substances have a duty to inform
19 their employees about the nature of the dangers which they
20 face.

21 (3) It is the duty of the Commonwealth to organize a
22 hazardous substance communication network so that employees
23 can obtain available information concerning hazardous
24 substances found in the workplace in a fast, efficient
25 manner.

26 Section 202. Definitions.

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

1 "ACGIH." American Conference of Government Industrial
2 Hygienists.

3 "Article." A manufactured item which is formed to a specific
4 shape or design during manufacture, which has end-use functions
5 dependent in whole or in part upon its shape or design during
6 end use and which does not release or otherwise result in
7 exposure to a hazardous substance under normal conditions or
8 use.

9 "Chemical." An element, chemical, compound or mixture of
10 elements or compounds.

11 "Chemical identification sheet (CIS)." A document concerning
12 a chemical which (document) is prepared under section 207.

13 "Chemical manufacturer." An employer in SIC Codes 20 to 39
14 with a facility where hazardous substances are manufactured,
15 produced, processed, formulated, mixed, blended or repackaged
16 for use or distribution.

17 "Chemical name." The scientific designation of a chemical in
18 accordance with the nomenclature system developed by the
19 International Union of Pure and Applied Chemistry (IUPAC) or the
20 Chemical Abstracts Service (CAS) rules of nomenclature.

21 "Common name." A designation or identification such as a
22 code name, code number, trade name, brand name or generic name
23 used to identify a chemical other than by its chemical name.

24 "Container." A bag, barrel, bottle, box, can, cylinder,
25 drum, reaction vessel, storage tank or the like that contains a
26 hazardous substance. The term does not include pipes and piping
27 systems.

28 "Department." The Department of Labor and Industry of the
29 Commonwealth.

30 "Designated representative." An individual or organization

1 to whom an employee or former employee gives written
2 authorization to exercise the employee's rights under this
3 chapter. A recognized or certified collective bargaining agent
4 shall be treated automatically as a designated representative
5 without regard to written employee authorization.

6 "Distributor." A business which supplies or sells containers
7 of hazardous substances to employer purchasers.

8 "Employee." A worker employed by an employer who is exposed
9 in everyday use or foreseeable emergencies to hazardous
10 substances in a workplace. The term includes, but is not limited
11 to, production workers, line supervisors and repair or
12 maintenance personnel. The term does not include office workers,
13 grounds maintenance personnel, security personnel or nonresident
14 management personnel unless their job performance routinely
15 involves potential exposure to hazardous substances. The term
16 does not include domestic or casual laborers employed at a place
17 of residence.

18 "Employer." A nonmanufacturing employer.

19 "Exposure" or "exposed." The situation where an employee is
20 subjected to a hazardous substance in the course of employment
21 through a route of entry, such as inhalation, ingestion, skin
22 contact or absorption. The terms include potential (for example,
23 accidental or possible) exposure.

24 "Foreseeable emergency." A potential occurrence which could
25 result in an uncontrolled release of a hazardous substance into
26 the workplace. The term includes, but is not limited to,
27 equipment failure, rupture of containers and failure of control
28 equipment.

29 "Hazard warning." Words, pictures and symbols, or a
30 combination thereof, appearing on a label which instruct

1 employees as to immediate action they should take for their own
2 protection.

3 "Hazardous substance." A chemical which is a physical or
4 health hazard as defined and required by the OSHA standard.

5 "Health professional." A physician, nurse, industrial
6 hygienist, toxicologist or epidemiologist providing medical,
7 occupational-health or environmental-health services.

8 "Identity." A chemical or common name which is indicated on
9 the material safety data sheets for the substance. The identity
10 used shall permit cross-references to be made among the required
11 list of hazardous substances, the label and the material safety
12 data sheets.

13 "Immediate use." The status where the hazardous substance
14 will be under the control of and used only by the person who
15 obtained it and only within the workshift in which it is
16 obtained.

17 "Importer." The first business with employees within the
18 customs territory of the United States which receives hazardous
19 substances produced in other countries for the purpose of
20 supplying them to distributors or to employer purchasers within
21 this Commonwealth.

22 "Label." Written, printed or graphic material displayed on
23 or affixed to containers of hazardous substances.

24 "Manufacturing employer." A person engaged in a business
25 with SIC Codes 20 through 39 where hazardous substances are
26 either used or are produced or processed for use or
27 distribution.

28 "Material safety data sheet (MSDS)." Printed material
29 concerning a hazardous substance which is prepared in accordance
30 with the OSHA standard.

1 "Mixture." A combination of two or more chemicals if the
2 combination is not, in whole or in part, the result of a
3 chemical reaction.

4 "Nonmanufacturing employer." A person engaged in a business
5 in a SIC Code other than SIC Codes 20 through 39. The term
6 includes the Commonwealth and political subdivisions and
7 agencies and instrumentalities of the Commonwealth and political
8 subdivisions.

9 "OSHA." The Federal Occupational Safety and Health
10 Administration.

11 "OSHA standard." Section 1910.200 of 29 CFR, as promulgated
12 at 48 Fed. Reg. 53280 (November 25, 1983).

13 "Responsible party." Someone who can provide additional
14 information on the hazardous substance and appropriate emergency
15 procedures, if necessary.

16 "Secretary." The Secretary of Labor and Industry of the
17 Commonwealth.

18 "SIC." Standard Industrial Code, as designated in the
19 Standard Industrial Classification Manual prepared by the
20 Federal Office of Management and Budget.

21 "Trade secret." A minimally novel and commercially valued
22 formula, pattern, process, device, information or compilation of
23 information (including chemical name or other unique chemical
24 identifier) that is used in an employer's business, that the
25 employer keeps secret from the public and competitors and that
26 gives the employer an opportunity to obtain an advantage over
27 competitors who do not know or use it.

28 "Use." Handle, react, process, package or repackage, or
29 transport within a plant.

30 "Work area." A room or defined space in an establishment

1 where hazardous substances are produced or used and where
2 employees are present.

3 "Workplace." An establishment at one geographical location
4 containing one or more work areas.

5 Section 203. Notice.

6 (a) Posting requirement.--Employers shall post in each
7 workplace, in a location or locations where notices to employees
8 are normally posted, the following:

9 (1) A list of all hazardous substances present in the
10 workplace.

11 (2) Notification to employees and their representatives
12 of their rights under this act.

13 (3) Other notices required by the department to be
14 posted.

15 (b) List.--The list of hazardous substances required by
16 subsection (a) shall include all the hazardous substances in
17 that workplace listed by their identity.

18 (c) Placement.--Printed information required by subsection
19 (a) shall be on the front page of the posting. Only the list of
20 substances should be continued on a second page, if necessary.
21 If this list exceeds three single-spaced, typewritten pages, it
22 may be kept in some other location if that location is
23 referenced on the posting. In the case of outdoor or temporary
24 worksites which are not contiguous to a building regularly used
25 by the employer as a workplace, postings of notices, material
26 safety data sheets and other materials shall be in a location to
27 which employees, during the course of a normal day of work, have
28 access which does not depend on the permission or intervention
29 of management or supervisory personnel.

30 (d) Department.--The list of hazardous substances required

1 by subsection (a) shall be made available to the department upon
2 request.

3 (e) Retention.--The list of hazardous substances required by
4 subsection (a) shall be maintained by the employer for 30 years.

5 Section 204. Materials.

6 Materials required to be furnished to an employee or
7 designated representative shall be furnished at no cost to the
8 employee or designated representative.

9 Section 205. Material safety data sheets.

10 (a) Federal compliance.--An MSDS prepared in accordance with
11 the OSHA standard complies with this chapter.

12 (b) Manufacturers, distributors and importers.--Chemical
13 manufacturers, distributors and importers shall ensure that
14 nonmanufacturing-employer purchasers of hazardous substances are
15 provided an appropriate MSDS with their initial shipment and
16 with the first shipment after an MSDS is updated. In lieu of
17 physically attaching material safety data sheets to containers
18 shipped, the chemical manufacturer, distributor or importer may
19 mail them to the purchaser at the time of the shipment. If the
20 MSDS is not provided with the shipment, the nonmanufacturing-
21 employer purchaser shall obtain one from the chemical
22 manufacturer, distributor or importer or from the department as
23 soon as possible.

24 (c) Access.--The employer shall maintain copies of the
25 required material safety data sheets for each hazardous
26 substance in the workplace and shall ensure that they are
27 readily accessible to employees in each work area.

28 (d) Availability.--Upon request, copies of material safety
29 data sheets, as well as the list of hazardous substances used in
30 the workplace as posted in section 203, shall be made available

1 by employers as soon as possible to employees, their designated
2 representatives, the department and the health professional or
3 group of health professionals.

4 Section 206. Nonhazardous chemical identification.

5 (a) Container labels.--

6 (1) Chemical manufacturers, importers and distributors
7 shall insure that containers of nonhazardous chemicals and
8 chemical mixtures delivered to manufacturing and
9 nonmanufacturing employers are clearly labeled, tagged or
10 marked with the identity of the chemicals in the containers.
11 The identity shall be cross-referenced and indicated on the
12 CIS. As used in this paragraph, the term, "identity," means
13 the chemical or common name of the substance.

14 (2) Manufacturing and nonmanufacturing employers may not
15 remove or deface existing labels on incoming containers of
16 nonhazardous substances unless the container is immediately
17 relabeled or unless the container is intended for immediate
18 use. Manufacturing and nonmanufacturing employers shall
19 insure that labels are legibly displayed on the container.

20 (3) This subsection does not apply to the exceptions in
21 section 207(f).

22 (b) Chemical identification sheets.--

23 (1) Chemical manufacturers, distributors and importers
24 shall insure that manufacturing and nonmanufacturing employer
25 purchasers of hazardous and nonhazardous chemicals and
26 chemical mixtures are provided an appropriate CIS with their
27 initial shipment and with the first shipment after a CIS is
28 updated. In lieu of physically attaching a CIS to a container
29 that is shipped, the CIS may be mailed to the purchaser at
30 the time of the shipment. If the CIS is not provided with the

shipment, the purchaser shall obtain one as soon as possible from the chemical manufacturer, distributor or importer or from the department.

(2) Manufacturing and nonmanufacturing employers shall maintain copies of the required chemical identification sheets for each hazardous and nonhazardous substance in the workplace and shall insure that they are readily accessible to employees in the work area.

(3) Upon request copies of chemical identification sheets shall be made readily available to designated representatives and the department.

(4) A CIS shall contain at least all of the following information:

(i) Identity used on the label.

(ii) Chemical and common name of each nonhazardous chemical contained in the substance which (chemical) comprises 3% or more of the substance.

(iii) Name, address and telephone number of the chemical manufacturer, importer or other responsible party preparing or distributing the CIS.

(iv) Date of preparation or last revision.

(5) If a nonhazardous chemical constitutes part of a hazardous substance or mixture, the information under paragraph (4)(ii) can be made part of the MSDS; or the CIS shall be affixed to the existing MSDS and shall be considered an integral part of the MSDS.

Section 207. Labeling.

(a) Removal.--The employer may not remove or deface existing labels on incoming containers of hazardous substances unless the container is immediately relabeled with the required

1 information.

2 (b) Immediate use.--

3 (1) The employer is not required to label portable
4 containers into which hazardous substances are transferred
5 from labeled containers and which are intended only for the
6 immediate use of the employee who performs the transfer.

7 (2) If a nonmanufacturing employer transfers a hazardous
8 substance into an unlabeled storage container, the
9 nonmanufacturing employer shall label, tag or mark that
10 container with a hazard warning and the substance's identity.
11 The nonmanufacturing employer may call upon the chemical
12 manufacturer, distributor or importer for assistance in
13 complying with this paragraph.

14 (c) Display.--The employer shall ensure that labels are
15 legibly displayed on the container.

16 (d) Delivery.--Chemical manufacturers, distributors and
17 importers shall ensure that containers of hazardous substances
18 delivered to nonmanufacturing-employer purchasers are labeled in
19 accordance with the OSHA standard.

20 (e) Existing labels.--The employer need not affix new labels
21 to comply with this section if existing labels already convey
22 the required information.

23 (f) Exceptions.--This section does not apply to:

24 (1) A pesticide as defined in the Insecticide,
25 Fungicide, and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136
26 et seq.) when subject to the labeling requirements of that
27 act and labeling regulations issued under that act by the
28 Environmental Protection Agency.

29 (2) A food, food additive, color additive, drug or
30 cosmetic, including materials intended for use as ingredients

1 in such products (for example, flavors and fragrances), as
2 such terms are defined in the Federal, Food, Drug and
3 Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.) and
4 regulations issued under that act when they are subject to
5 the labeling requirements of that act and labeling
6 regulations issued under that act by the Food and Drug
7 Administration.

8 (3) Distilled spirits (beverage alcohols), wine or malt
9 beverage intended for nonindustrial use, as such terms are
10 defined in the Federal Alcohol Administration Act (49 Stat.
11 977, 27 U.S.C. § 201 et seq.) and regulations issued under
12 that act when subject to the labeling requirements of that
13 act and labeling regulations issued under that act by the
14 Bureau of Alcohol, Tobacco and Firearms.

15 (4) A consumer product or hazardous substance as those
16 terms are defined in the Consumer Product Safety Act (Public
17 Law 92-573, 15 U.S.C. § 2051 et seq.) and Federal Hazardous
18 Substances Act (Public Law 86-613, 15 U.S.C. § 1261 et seq.)
19 when subject to a consumer product safety standard or
20 labeling requirement of those acts or regulations issued
21 under those acts by the Consumer Product Safety Commission.

22 Section 208. Protection of employees.

23 (a) Punitive action prohibited.--No person may discharge or
24 discriminate against an employee because the employee has filed
25 a complaint under this chapter, has instituted or caused to be
26 instituted a proceeding under this chapter, has testified or is
27 about to testify in a proceeding under this act or has exercised
28 on behalf of the employee or others a right afforded by this
29 act.

30 (b) Penalty.--An employee who believes that he has been

1 discharged or otherwise discriminated against by a person in
2 violation of this section may, within 30 days after the
3 violation occurs, file a complaint with the department alleging
4 discrimination. Upon receipt of the complaint, the department
5 shall investigate as it deems appropriate. If, upon
6 investigation, the department determines that this section has
7 been violated, the department shall bring an action in the court
8 of common pleas in the county in which the violation occurred
9 against the violator. In this action the court of common pleas
10 shall have jurisdiction, for cause shown, to restrain violations
11 of subsection (a) and order appropriate relief, including
12 rehiring or reinstatement of the employee to the former position
13 with back pay.

14 (c) Notice.--Within 90 days of the receipt of a complaint
15 filed under this section, the department shall notify the
16 complainant of its determination under subsection (b).

17 Section 209. Employee training.

18 (a) Employers.--Employers shall provide employees with
19 information and training on hazardous substances in their work
20 area at the time of their initial assignment; whenever a new
21 hazard is introduced into their work area; and at regular
22 intervals throughout the employees' employment, at least once
23 every year. During this training program, employees shall be
24 informed of:

25 (1) The requirements of this act.

26 (2) Operations in the work area where hazardous
27 substances are present.

28 (3) The location and availability of the material safety
29 data sheets required by section 205.

30 (4) Methods and observations the employee may use to

1 detect the presence or release of a hazardous substance in
2 the work area.

3 (5) The physical and health hazards of the hazardous
4 substances in the work area.

5 (6) The measures employees can take to protect
6 themselves from the hazards, including specific procedures
7 the employer has implemented to protect employees from
8 exposure to hazardous substances, such as appropriate work
9 practices, emergency procedures and personal protective
10 equipment to be used.

11 (7) The details of the hazard communication program
12 developed by the employer, including an explanation of the
13 labeling system and the MSDS and how employees can obtain and
14 use the appropriate hazard information.

15 (b) Department.--As part of its outreach program, the
16 department shall develop and maintain an education and training
17 assistance program to aid employers who, because of size or
18 other practical considerations, are unable to develop programs
19 by themselves. The program shall be available to employers on
20 request.

21 Section 210. Powers and duties of department.

22 (a) Inspections.--For purposes of enforcement of this
23 chapter, officers and employees of the department, upon
24 presentation of credentials to the employer, shall have the
25 right of entry into a workplace at reasonable times to inspect
26 within reasonable limits and in a reasonable manner.

27 (b) Regulations.--The department shall promulgate
28 regulations and forms reasonably necessary to carry out this
29 chapter.

30 (c) Notices.--The department shall notify employers of their

1 rights and responsibilities under this chapter by first class
2 mailing to all affected employers.

3 Section 211. Trade secrets.

4 (a) General rule.--The specific chemical identity, including
5 the chemical name and other specific identification of a
6 chemical or hazardous substance, may be withheld by an employer,
7 if:

8 (1) The claim that the information withheld is a trade
9 secret can be supported.

10 (2) Information contained in the MSDS concerning the
11 properties and effects of the hazardous substance is
12 disclosed.

13 (3) The MSDS or CIS indicates that the specific chemical
14 identity is being withheld as a trade secret.

15 (4) The specific chemical identity is made available to
16 health professionals, employees and designated
17 representatives in accordance with the applicable provisions
18 of this section.

19 (b) Emergencies.--Where a physician or nurse treating an
20 employee determines that a medical emergency exists and the
21 specific chemical identity of a hazardous substance is necessary
22 for emergency or first aid treatment, the nonmanufacturing
23 employer shall immediately disclose the specific chemical
24 identity of a trade secret substance to that treating physician
25 or nurse regardless of the existence of a written statement of
26 need or a confidentiality agreement. The nonmanufacturing
27 employer may require a written statement of need and
28 confidentiality agreement under subsections (c) and (d) as soon
29 as circumstances permit.

30 (c) Nonemergencies.--In nonemergency situations, an employer

1 shall, upon request, disclose a specific chemical identity
2 otherwise permitted to be withheld under subsection (a) to a
3 health professional providing services to exposed employees and
4 to employees and designated representatives if:

5 (1) The request is in writing.

6 (2) The request describes with reasonable detail one or
7 more of the following occupational health needs for the
8 information:

9 (i) To assess the hazards of the chemicals to which
10 employees will be exposed.

11 (ii) To conduct or assess sampling of the workplace
12 atmosphere to determine employee exposure levels.

13 (iii) To conduct preassignment or periodic medical
14 surveillance of exposed employees.

15 (iv) To provide medical treatment to exposed
16 employees.

17 (v) To select or assess appropriate personal
18 protective equipment for exposed employees.

19 (vi) To design or assess engineering controls or
20 other protective measures for exposed employees.

21 (vii) To conduct studies to determine the health
22 effects of exposure.

23 (3) The request explains in detail why the disclosure of
24 the specific chemical identity is essential and that, in lieu
25 of the disclosure of the specific chemical identity, the
26 disclosure of the following information would not enable the
27 health professional, employee or designated representative to
28 meet the occupational health needs described in paragraph

29 (2):

30 (i) Properties and effects of the chemical.

(ii) Measures for controlling the employee's exposure to the chemical.

(iii) Methods of monitoring and analyzing the employee's exposure to the chemical.

(iv) Methods of diagnosing and treating harmful exposures to the chemical.

(4) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information

(5) The health professional, contractor of the services of the health care professional, employee or designated representative, as appropriate, agrees in a written confidentiality agreement not to use the trade secret information for any purpose other than the health needs asserted under paragraph (2) and agrees not to release the information under any circumstances other than to OSHA, the Department of Health, or the department as provided in subsection (f), except as authorized by the terms of the agreement or by the manufacturer, importer or employer. As used in this paragraph, the contractor of the service of the health professional means a downstream employer, labor organization or employee.

(d) Provisions of agreement.--The confidentiality agreement authorized by subsection (c)(5):

(1) May restrict the use of the information to the health purposes indicated in the written statement of need.

(2) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable preestimate of likely damages.

(3) May not include requirements for the posting of a

1 penalty bond.

2 (e) Other remedies.--Nothing in this chapter precludes the
3 parties from pursuing noncontractual remedies to the extent
4 permitted by law.

5 (f) Notice to provider.--If the health professional,
6 employee or designated representative receiving the trade secret
7 information decides that there is a need to disclose it to the
8 Department of Health, the department, or OSHA, the employer who
9 provided the information shall be informed prior to, or at the
10 same time as, the disclosure.

11 (g) Denial.--If the chemical manufacturer, distributor,
12 importer or employer denies a written request for disclosure of
13 a specific chemical identity, the denial shall:

14 (1) Be provided to the health professional, employee or
15 designated representative within 30 days of request.

16 (2) Be in writing.

17 (3) Include evidence to support the claim that the
18 specific chemical identity is a trade secret.

19 (4) State the specific reasons why the request is being
20 denied.

21 (5) Indicate any alternatives the chemical manufacturer,
22 distributor, importer or employer may wish to suggest to
23 satisfy the specific medical, occupational health or public
24 health need without revealing the specific chemical identity.

25 (h) Department consideration.--

26 (1) The health professional, employee or designated
27 representative whose request for information is denied under
28 subsection (c) may refer the request and the written denial
29 of the request to the department for consideration.

30 (2) When a health professional, employee or designated

1 representative refers the denial to the department, the
2 department shall consider the evidence to determine if:

3 (i) The employer has supported the claim that the
4 specific chemical identity is a trade secret.

5 (ii) The health professional, employee or designated
6 representative has supported the claim that there is a
7 medical, occupational health or real and immediate public
8 health need for the information.

9 (iii) The health professional, employee or
10 designated representative has demonstrated adequate means
11 to protect the confidentiality.

12 (3) The department shall order the employer to release
13 the withheld information if the department determines that
14 the specific chemical identity requested under subsection (c)
15 is not a bona fide trade secret or that it is a trade secret
16 but the requesting health professional, employee or
17 designated representative has a legitimate medical,
18 occupational health, or public health need for the
19 information; has executed a written confidentiality
20 agreement; and has shown adequate means for complying with
21 the terms of such agreement.

22 (4) If a chemical manufacturer, importer or employer
23 demonstrates to the department that a confidentiality
24 agreement under subsection (c)(5) would not provide
25 sufficient protection against the potential harm from the
26 unauthorized disclosure of the information, the department
27 may issue an order or impose additional limitations or
28 conditions upon the disclosure of the information as
29 appropriate to assure that the occupational health services
30 are provided without an undue risk of harm to the chemical

1 manufacturer, importer or employer.

2 (i) Disclosure to department.--Notwithstanding the existence
3 of a trade secret claim, a chemical manufacturer, distributor,
4 importer or employer shall, upon request, disclose to the
5 department information which this section requires the employer
6 to make available. Where there is a trade secret claim, the
7 claim must be made no later than at the time the information is
8 provided to the department so that suitable determinations of
9 trade secret status can be made and the necessary protections
10 can be implemented.

11 (j) Protection.--Nothing in this section shall be construed
12 as requiring the disclosure of process or percentage of mixture
13 information which is a trade secret.

14 (k) Defense secrets.--Information certified by Federal
15 officials as necessarily kept secret for national defense
16 purposes shall be accorded protection against disclosure under
17 Federal law as specified by the certifying official.

18 Section 212. Complaints and investigations.

19 (a) Procedure.--An employee or a representative of employees
20 who believes that there is a violation by the employees'
21 employer of this chapter may request an inspection by filing a
22 complaint of the violation with the department. The complaint
23 shall be in writing, shall be signed and shall set forth with
24 reasonable particularity the grounds for the complaint. Within a
25 reasonable period of time after receipt of the complaint, the
26 department shall notify the employer of the complaint in writing
27 by certified mail and permit the employer to demonstrate
28 compliance with this chapter. If compliance has not been
29 demonstrated to the satisfaction of the department within 14
30 days of the mailing of the notification, an agent or employee of

1 the department shall inspect, at reasonable times, the
2 employer's workplace and conditions pertinent to the grounds of
3 the complaint and shall, in a reasonable manner, make additional
4 investigation deemed necessary for the determination of the
5 employer's compliance with this chapter. If an agent or employee
6 of the department proceeding under this section is denied
7 admission to a place of employment, the agent or employee may
8 apply for a search warrant to a Commonwealth judicial officer
9 authorized to issue a search warrant for the purposes of
10 inspecting or examining a property, building, premise, place,
11 book, record or other physical evidence; of conducting tests; or
12 of taking samples of a chemical. The warrant shall be issued
13 upon probable cause. It shall be sufficient probable cause to
14 show any of the following:

15 (1) The inspection, examination, test or sampling is
16 pursuant to a general administrative plan to determine
17 compliance with this chapter.

18 (2) The agent or employee has reason to believe that a
19 violation of this chapter has occurred or may occur.

20 (3) The agent or employee has been refused access to the
21 property, building, premises, place, book, record or physical
22 evidence or has been prevented from conducting tests or
23 taking samples.

24 (b) Discretion of department.--The department shall have
25 authority to assess civil penalties provided in this section,
26 giving due consideration to the appropriateness of the penalty
27 with respect to the size of the business of the employer being
28 charged, the gravity of the violation, the good faith of the
29 employer and the history of previous violations.

30 (c) Disposition of penalties.--Civil penalties owed under

1 this section shall be paid to the department for deposit into
2 the State Treasury and may be recovered in a civil action
3 brought in the court of common pleas for the judicial district
4 where the violation is alleged to have occurred or where the
5 employer had a principal office. The penalties collected shall
6 be used to defray the costs of enforcement of this section.

7 Section 213. Compliance order and penalties.

8 (a) Issuance and content of order.--If, upon inspection or
9 investigation of a complaint, the department finds that an
10 employer has violated this chapter, it shall, with reasonable
11 promptness, issue to the employer an order to comply. This order
12 shall be in writing, shall be sent by certified mail, shall
13 specifically describe the nature of the violation and shall
14 state a reasonable time period within which the violation must
15 be corrected by the employer.

16 (b) Public nuisance.--A violation of this chapter or a,
17 regulation or an order of the department under this chapter
18 constitutes a public nuisance.

19 (c) Enforcement orders.--The department may issue orders to
20 persons as it deems necessary to aid in the enforcement of this
21 chapter. An order issued under this chapter shall take effect
22 upon notice unless the order specifies otherwise. An appeal to
23 the Environmental Hearing Board shall not act as a supersedeas.
24 The power of the department to issue an order under this chapter
25 is in addition to any other remedy which may be afforded to the
26 department under this act or any other statute.

27 (d) Duty to comply with orders of the department.--It shall
28 be the duty of a person to proceed diligently to comply with any
29 order issued under subsection (c). If the person fails to
30 proceed diligently, or fails to comply with the order within the

1 time, if any, specified, the department may enforce the order in
2 Commonwealth Court under 42 Pa.C.S. § 761(a)(2) (relating to
3 original jurisdiction).

4 (e) Civil penalty.--If the violation has not been corrected
5 within the time period specified, the department may levy a
6 civil penalty of not more than \$1,000 per day for each
7 violation.

8 (f) Advance notice of inspection.--A person who gives
9 advance notice of an inspection to be conducted under this
10 chapter, without authority from the department, shall be
11 assessed a civil penalty of not more than \$1,000.

12 (g) False statements.--A person who knowingly makes a false
13 statement, representation or certification in a list, record or
14 other document required to be maintained under this chapter
15 shall be assessed a civil penalty of not more than \$10,000.

16 (h) Criminal penalty.--An employer who repeatedly violates a
17 requirement for which a civil penalty has been assessed, an
18 employer who fails to provide information required under section
19 211(b) or a person who intentionally discloses information
20 claimed as a trade secret except as authorized by section 211 or
21 nondisclosure agreements executed under section 211 commits a
22 misdemeanor of the second degree and shall, upon conviction, be
23 sentenced to pay a fine of not more than \$20,000 or to undergo a
24 term of imprisonment of not more than two years, or both.

25 Section 214. Exemptions.

26 (a) Laboratories.--This chapter does not apply to
27 laboratories except as follows:

28 (1) Employers shall ensure that existing labels on
29 incoming containers of hazardous substances are not removed
30 or defaced.

1 (2) Employers shall maintain material safety data sheets
2 that are received with incoming shipments of hazardous
3 substances and ensure they are accessible to laboratory
4 employees.

5 (3) Employers shall ensure that laboratory employees are
6 apprised of the hazards of the substances in their workplaces
7 under section 209.

8 (4) Employers are subject to sections 212 and 213.

9 (b) Substances.--The chapter does not apply to:

10 (1) Substances which are foods, drugs, cosmetics or
11 tobacco products intended for personal consumption by
12 employees while in the workplace.

13 (2) Hazardous waste as defined in section 103 of the act
14 of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
15 Management Act.

16 (3) Tobacco or tobacco products.

17 (4) Wood or wood products, including preserved wood.

18 (5) An article.

19 Section 215. Construction.

20 The provision of information to an employee shall not affect
21 the liability of an employer with regard to the health and
22 safety of an employee or other persons exposed to hazardous
23 substances, nor shall it affect the employer's responsibility to
24 take an action to prevent the occurrence of occupational disease
25 as required under any other provision of law. The provision of
26 information to an employee shall not affect any other duty or
27 responsibility of a manufacturer, producer or formulator to warn
28 ultimate users of a hazardous substance under any other
29 provision of law.

30 Section 216. Preemption.

1 (a) Local action.--It is the intent of the General Assembly
2 that the program established by this chapter for the disclosure
3 of information concerning hazardous substances to employees
4 constitutes the principal program in this Commonwealth. To this
5 end, no political subdivision may enact an ordinance requiring
6 the disclosure of information or the identification of hazardous
7 substances in the workplace or the environment. This act
8 preempts local ordinances or rules concerning the subject matter
9 of this chapter.

10 (b) Federal action.--To the extent that the OSHA standard
11 covers within its scope provisions of this chapter, the OSHA
12 standard shall, upon its effective date, take precedence over
13 and supersede such provisions of this chapter.

14 Section 217. Relationship to OSHA standard.

15 (a) Mandatory compliance.--Manufacturing employers,
16 distributors and importers that are regulated by and complying
17 with the provisions of the OSHA standard shall be exempt from
18 the provisions of this chapter except sections 203(d) and (e),
19 205(b) and (d), 206, 207(d) and 208.

20 (b) Voluntary compliance.--Nonmanufacturing employers that
21 adopt and comply with the provisions of the OSHA standard shall
22 be deemed to be in compliance with this chapter. This subsection
23 does not apply to section 203(d) or (e), 205(b) or (d), 206 or
24 208.

25 Section 218. Waiver.

26 A waiver by an endorsee of a benefit or provision of this
27 chapter shall be void as against public policy. An employer who
28 requests or requires a waiver violates this act and shall be
29 subject to section 213.

1 COMMUNITY

2 Section 301. Declaration of policy.

3 The General Assembly finds and declares as follows:

4 (1) A potential danger exists to the general public when
5 hazardous substances normally contained within a workplace
6 become environmental hazards because they are released into
7 the environment through accidental release or must be handled
8 in emergency situations.

9 (2) Employers within this Commonwealth whose businesses
10 require the use of hazardous substances have a duty to inform
11 local emergency personnel and political subdivision officials
12 of the presence and dangers posed by these hazardous
13 substances so that proper action can be taken should an
14 emergency occur.

15 (3) It is the duty of the Commonwealth to organize in a
16 fast, efficient manner a hazardous substance communication
17 network so that public officials and the general public can
18 obtain available information concerning hazardous substances
19 found in the workplace which might be emitted from the
20 workplace.

21 Section 302. Definitions.

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

25 "Department." The Department of Labor and Industry of the
26 Commonwealth.

27 "Employer." Any individual, partnership, corporation or
28 association doing business in this Commonwealth. The term
29 includes the Commonwealth and political subdivisions and
30 officers, boards, commissions, agencies, authorities or

1 instrumentalities of the Commonwealth or a political
2 subdivision.

3 "Environmental hazard." A hazardous substance defined by
4 this section.

5 "Hazardous substance."

6 (1) A substance:

7 (i) contained in the United States Department of
8 Transportation Hazardous Materials List;

9 (ii) contained in the Federal Occupational Safety
10 and Health Standard, 29 C.F.R. Part 1910, Subpart Z,
11 Toxic and Hazardous Substances, General Industry
12 Standards, Occupational Safety and Health Administration;

13 (iii) contained in the list of Threshold Limit
14 Values for Chemical Substances and Physical Agents in the
15 Work Environment, American Conference of Governmental
16 Industrial Hygienists (Latest Edition); or

17 (iv) listed as a carcinogen by:

18 (A) National Toxicology Program (NTP), "Annual
19 Report on Carcinogens" (Latest Edition);

20 (B) International Agency for Research on Cancer
21 (IARC), "Monographs" (Latest Edition); or

22 (C) the Federal Occupational Safety and Health
23 Standard, 29 C.F.R. Part 1910, Subpart Z, Toxic and
24 Hazardous Substances, Occupational Safety and Health
25 Administration.

26 (2) A mixture:

27 (i) containing 1% or greater, by weight or volume,
28 of a substance listed under paragraph (1)(i), (ii) or
29 (iii); or

30 (ii) containing 0.1% or greater, by weight or

1 volume, of a substance listed under paragraph (1)(iv).

2 (3) A substance or mixture determined by an employer,
3 chemical manufacturer or importer to be a physical or health
4 hazard as defined and required by the OSHA Standard.

5 "Health professional." A physician, nurse, industrial
6 hygienist, toxicologist or epidemiologist providing medical,
7 occupational-health or environmental-health services.

8 "Importer." The first business with employees within the
9 customs territory of the United States which receives hazardous
10 substances produced in other countries for the purpose of
11 supplying them to distributors or to employer purchasers within
12 this Commonwealth.

13 "Material safety data sheet (MSDS)." Printed material
14 concerning a hazardous substance which is prepared in accordance
15 with the OSHA standard.

16 "OSHA." The Federal Occupational Safety and Health
17 Administration.

18 "OSHA standard." Section 1910.200 of 29 C.F.R., as
19 promulgated at 48 Fed. Reg. 53280 (November 25, 1983).

20 "PEMA." The Pennsylvania Emergency Management Agency.

21 "Trade secret." A minimally novel and commercially valued
22 formula, pattern, process, device, information or compilation of
23 information (including chemical name or other unique chemical
24 identifier) that is used in an employer's business, that the
25 employer keeps secret from the public and competitors and that
26 gives the employer an opportunity to obtain an advantage over
27 competitors who do not know or use it.

28 Section 303. Emergency information.

29 (a) Notification of officials.--An employer who has
30 hazardous substances within the employer's workplace shall

1 inform police, fire and emergency officials of the political
2 subdivision in which the workplace is located of the presence of
3 these hazardous substances and the name and telephone number of
4 two responsible representatives of the employer, such as manager
5 or foreman, who can be contacted in case of an emergency. Upon
6 request, the employer shall also provide further information to
7 these officials concerning these hazardous substances, including
8 a list of hazardous substances present at the workplace, their
9 average approximate quantities, their location within the
10 workplace and an MSDS for each hazardous substance. These
11 police, fire and emergency officials shall also be allowed to
12 tour a workplace during business hours so that an appropriate
13 emergency response plan can be developed.

14 (b) Trade secrets.--Trade secret information may be withheld
15 from emergency personnel in accordance with section 306.
16 Section 304. Obligations of employers.

17 (a) Lists.--Employers shall provide to the department a list
18 of all hazardous substances present within the workplace upon
19 request.

20 (b) Material safety data sheets.--Employers shall provide,
21 upon request, material data safety sheets to the department or
22 the Pennsylvania Emergency Management Agency, or both, for each
23 hazardous substance found in their workplace.

24 Section 305. Powers and duties of department.

25 (a) Public information.--

26 (1) The department may publicize information containing
27 descriptions of the toxic effects and the circumstances under
28 which these effects are produced for hazardous substances
29 found in a workplace. The department shall prepare this
30 information in a clear and coherent manner, using words with

1 common and everyday meanings.

2 (2) The department shall establish a program to answer
3 public inquiries about hazardous substances in the workplace.
4 Under this program the department shall:

5 (i) Assure that information concerning the possible
6 violation of this chapter or another environmental
7 statute or regulation is forwarded to the appropriate
8 officials so that proper action is taken.

9 (ii) Upon request, inform the general public of the
10 methods by which they can obtain information from the
11 department concerning the environmental emissions of and
12 hazardous materials contained at any nearby employer's
13 workplace as allowed by this chapter; 5 U.S.C. § 552
14 (relating to public information; agency rules, opinions,
15 orders, records, law and proceedings), referred to as the
16 Freedom of Information Act; and the act of June 21, 1957
17 (P.L.390, No.212), referred to as the Right-to-Know Law.
18 The department shall inform and assist the general public
19 in obtaining information concerning the toxic effects of
20 these hazardous substances.

21 (iii) Upon request by members of the general public
22 who live in proximity to the workplace of the employer
23 and who are not competitors of the employer, obtain from
24 that employer and provide to the requestor copies of the
25 hazardous substance lists and material safety data sheets
26 concerning these substances.

27 (iv) Publicize the information services described in
28 this subsection. This publicity shall include a telephone
29 number which members of the general public may use to
30 access the information provided under this subsection.

(b) Regulations.--The department shall promulgate regulations and forms reasonably necessary to carry out this chapter.

Section 306. Trade secrets.

(a) General rule.--The specific chemical identity, including the chemical name and other specific identification of a chemical or hazardous substance, may be withheld by an employer if:

(1) The claim that the information withheld is a trade secret can be supported.

(2) Information contained in the MSDS concerning the properties and effects of the hazardous substance is disclosed.

(3) The MSDS indicates that the specific chemical identity is being withheld as a trade secret.

(4) The specific chemical identity is made available in accordance with the applicable provisions of this section.

(b) Emergencies.--In the case of a public health emergency where the name of a hazardous substance is required immediately for proper emergency action, the employer shall immediately disclose the name of a trade secret substance to emergency personnel, public health officials and representatives of political subdivisions upon the direction of the Director of PEMA or the director's designated representative. The director shall reach a decision only after contacting the employer and political subdivision representatives, if possible. The employer may require a written statement of need and a confidentiality agreement under subsections (c) and (d) as soon as circumstances permit.

(c) Nonemergencies.--In nonemergency situations, an employer

1 shall, upon request, disclose a specific chemical identity which
2 is otherwise permitted to be withheld under subsection (a) to a
3 health professional or group of health professionals
4 representing a public health organization of a political
5 subdivision which organization has been approved by the
6 Department of Health as a legitimate public health organization
7 or to a health professional or group of health professionals
8 representing the Department of Health if:

9 (1) The request is in writing.

10 (2) The request describes, with reasonable detail, the
11 real and immediate needs for that information in order to
12 safeguard public health.

13 (3) The request explains in detail why the disclosure of
14 the specific chemical identity is essential and that, in lieu
15 of the disclosure, the following information would not enable
16 the health professional or group of health professionals to
17 meet the public health needs described in paragraph (2):

18 (i) Properties and effects of the chemical.

19 (ii) Measures for controlling the public's exposure
20 to the chemical.

21 (iii) Methods of monitoring and analyzing the
22 public's exposure to the chemical.

23 (iv) Methods of diagnosing and treating harmful
24 exposures to the chemical.

25 (4) The request includes a description of the procedures
26 to be used to maintain the confidentiality of the disclosed
27 information.

28 (5) The members of the public health organization which
29 receives the trade secret information agree in a written
30 confidentiality agreement not to use the trade secret

1 information for a purpose other than the public health needs
2 asserted under paragraph (2) and agree not to release the
3 information other than to OSHA, the Department of Health or
4 the department as provided in subsection (f) except as
5 authorized by the terms of the agreement or by the
6 manufacturer, importer or employer.

7 (d) Provisions of agreement.--The confidentiality agreement
8 authorized by subsection (c)(5):

9 (1) May restrict the use of the information to the
10 health purposes indicated in the written statement of need.

11 (2) May provide for appropriate legal remedies in the
12 event of a breach of the agreement, including stipulation of
13 a reasonable preestimate of likely damages.

14 (3) May not include requirements for the posting of a
15 penalty bond.

16 (e) Other remedies.--Nothing in this act precludes the
17 parties from pursuing noncontractual remedies to the extent
18 permitted by law.

19 (f) Notice to provider.--If the health professional
20 receiving the trade secret information decides that there is a
21 need to disclose it to the Department of Health, the department,
22 or OSHA, the employer who provided the information shall be
23 informed prior to, or at the same time as, the disclosure.

24 (g) Denial.--If the employer denies a written request for
25 disclosure of a specific chemical identity, the denial shall:

26 (1) Be provided to the health professional within 30
27 days of request.

28 (2) Be in writing.

29 (3) Include evidence to support the claim that the
30 specific chemical identity is a trade secret.

1 (4) State the specific reasons why the request is being
2 denied.

3 (5) Indicate alternatives the employer may wish to
4 suggest to satisfy the specific public health need without
5 revealing the specific chemical identity.

6 (h) Department consideration.--

7 (1) The health professional whose request for
8 information is denied under subsection (c) may refer the
9 request and the written denial of the request to the
10 department for consideration.

11 (2) When a health professional refers the denial to the
12 department, the department shall consider the evidence to
13 determine if:

14 (i) The employer has supported the claim that the
15 specific chemical identity is a trade secret.

16 (ii) The health professional has supported the claim
17 that there is a real and immediate public health need for
18 the information.

19 (iii) The health professional has demonstrated
20 adequate means to protect the confidentiality.

21 (3) The department shall order the employer to release
22 the withheld information if the department determines that
23 the specific chemical identity requested under subsection (c)
24 is not a bona fide trade secret or that it is a trade secret
25 but the requesting health professional has a legitimate
26 public health need for the information, has executed a
27 written confidentiality agreement, and has shown adequate
28 means for complying with the terms of the agreement.

29 (i) Disclosure to department.--Notwithstanding the existence
30 of a trade secret claim, a chemical manufacturer, distributor,

1 importer or employer shall, upon request, disclose to the
2 department information which this section requires the employer
3 to make available. Where there is a trade secret claim, the
4 claim must be made no later than at the time the information is
5 provided to the department so that suitable determinations of
6 trade secret status can be made and the necessary protections
7 can be implemented.

8 (j) Protection.--Nothing in this section shall be construed
9 as requiring the disclosure of process or percentage of mixture
10 information which is a trade secret.

11 (k) Defense secrets.--Information certified by Federal
12 officials as necessarily kept secret for national defense
13 purposes shall be accorded protection against disclosure under
14 Federal law as specified by the certifying official.

15 Section 307. Construction.

16 The provision of information to a public official or to the
17 public shall not affect the liability of an employer with regard
18 to the health and safety of persons exposed to hazardous
19 substances.

20 Section 308. Preemption.

21 (a) Political subdivision.--It is the intent of the General
22 Assembly that the program established by this chapter for the
23 disclosure of information concerning hazardous substances to the
24 public constitutes the principal program in this Commonwealth.
25 To this end, no political subdivision may enact an ordinance
26 requiring the disclosure of information or the identification of
27 hazardous substances in the workplace or the environment. This
28 chapter preempts local ordinances or rules concerning the
29 subject matter of this chapter.

30 (b) Federal.--To the extent that the Emergency Planning and

1 Community Right-to-Know Act of 1986 (Title III of Public Law 99-
2 499) and regulations promulgated under it cover within their
3 scope the provisions of this act, the Federal statute and
4 regulations shall, upon their effective date, supersede the
5 provisions of this act.

6 CHAPTER 4

7 MISCELLANEOUS

8 Section 401. Appropriation.

9 The sum of \$500,000, or as much thereof as may be necessary,
10 is hereby appropriated to the Department of Labor and Industry
11 for the fiscal year July 1, 1987, to June 30, 1988, to carry out
12 the provisions of this act.

13 Section 402. Repeals.

14 The following acts and parts of acts are repealed:

15 Act of October 5, 1984 (P.L.734, No.159), known as the Worker
16 and Community Right-to-Know Act.

17 Section 403. Expiration.

18 This act shall expire December 31, 1989.

19 Section 404. Effective date.

20 This act shall take effect in 60 days.