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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1236 Session of 1983

INTRODUCED BY COHEN, MANDERINO, ITKIN, J. L. WRIGHT, F. E. TAYLOR, BURNS, LETTERMAN, LASHINGER, FREEMAN, PISTELLA, MILLER, REBER, HOEFFEL, COWELL, KUKOVICH, DeWEESE, RYBAK, WIGGINS, GALLAGHER, ALDERETTE, PETRONE, FATTAH, LINTON, TRELLO, STEIGHNER, KASUNIC, BATTISTO, DeLUCA, HARPER, STEWART, McHALE, WOZNIAK, LAUGHLIN, MICHLOVIC, SEVENTY, BOOK, HOEFFEL AND KOWALYSHYN, JUNE 21, 1983

SENATOR WENGER, LABOR AND INDUSTRY, IN SENATE, AS AMENDED, SEPTEMBER 25, 1984

AN ACT

Requiring chemical identification of substances in the community and on employer premises; requiring the posting of the identity of these substances by employers and the labeling of chemicals; requiring information and safety data on chemicals to be given to the Department of Health, members of the community and employees; requiring employers to operate educational programs relating to hazardous substances; providing for further duties of the Department of ~~Health~~ <— LABOR AND INDUSTRY, for complaint procedures, for <— investigations, for compliance orders and the enforcement thereof; and providing penalties.

It is hereby declared that there exists within the Commonwealth of Pennsylvania a potential danger to employees, their families and to the general public from exposure to chemicals introduced into the workplace and into the general environment. Employees may be exposed to these substances during the course and scope of their employment and the general public may be exposed due to the transportation, use and subsequent

disposal within the community. Serious health problems may be caused to individuals because of this exposure. Due to the nature of these substances, these health problems may not become evident until many years after initial exposure.

It is therefore declared to be the policy of the Commonwealth that employers within the Commonwealth and chemical suppliers doing business within the Commonwealth have a duty to make available to employees and to the general public the identity of chemicals used in the workplace, and to make information available as to the known or suspected health hazards posed by the use of or exposure to hazardous substances. Employees, their families and the general public have a right to know the identity of chemicals they may be exposed to, the potential health hazards that exist and the symptoms that may be experienced because of exposure. It is further declared that employees and the general public themselves are frequently in the best position to discover serious health problems, provided that they are aware of the chemical identity and the nature of the substances to which they are exposed. Employees, their families and the general public have an inherent right to know about the known and suspected health hazards which may result from exposure to hazardous substances, so that they may make knowledgeable and reasoned decisions with respect to the continued personal costs of their employment or residence at a particular place and the need for corrective action.

It is further declared that, because of close or continuing contact with hazardous substances, the workplace often provides an early warning mechanism for the rest of the environment and the general public. It is therefore the intent of this Legislature to ensure that employees, their families and the

general public be given current information concerning the nature of the hazardous substances with which they may come in contact and full information concerning the health hazards of these hazardous substances.

It is further declared that availability of detailed information concerning the identity and nature of chemicals to local police, fire and health officials will greatly aid such authorities in responding to local emergencies such as chemical fires, accidental spills, industrial accidents and outbreaks of health problems among members of the public.

It is further declared that the swift and effective enforcement of the provisions of this act is vital to ensure that the health and safety of employees and members of the public is protected.

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

Section 1. Short title.

This act shall be known and may be cited as the Worker and Community Right to Know Act.

Section 2. Definitions.

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

"Article." A manufactured item which is formed to a specific shape or design during manufacture, which has end use functions dependent in whole or in part upon its shape or design during end use and which does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

"Chemical." Any element, substance, chemical compound or mixture of elements, substances or compounds, but shall not include an article as defined herein, food, DRUGS OR COSMETICS <— as defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), cosmetics, tobacco or products which are primarily intended for sale on the retail market to the general public and are sealed in the packages to be used therewith.

"Chemical Abstracts Service number." The unique identification number assigned by the Chemical Abstracts Service to chemicals.

"Chemical identification sheet or CIS." A written document, prepared in accordance with the requirements of this act, which contains, in the case of a hazardous mixture, the identity by chemical name, common name and Chemical Abstracts Service number, all special hazardous substances COMPRISING 0.01% OR MORE OF THE MIXTURE AND all hazardous substances comprising 1% or more of the mixture and all other substances comprising 3% or more of the mixture. <——

"Chemical name." The scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service rules or nomenclature.

"Common name." Any designation or identification other than a chemical name or trade name, by which a substance is generally known, such as a nonsystematic scientific name, which clearly identifies a single chemical or mixture and which is unique to that specific chemical or mixture.

"Container." A receptacle used to hold a liquid, solid or gaseous substance including, but not limited to, bottles, ~~pipeline valves,~~ vats, barrels, boxes, cans, cylinders, drums, cartons, vessels, vats and stationary tanks. The term does not include containers ~~of ten gallons or less~~ into which substances are transferred by the employee from labeled containers and which are intended only for the immediate use by the employee who performs the transfer, or containers which are primarily designed to be sold on the retail market for use by the general public. <—— <——

"Department." The Department of ~~Health~~ LABOR AND INDUSTRY. <—

"Employee." Any person currently or formerly working for an employer, except domestic or casual laborers employed at the employer's place of residence. A FORMER EMPLOYEE SHALL BE CONSIDERED AN EMPLOYEE HEREUNDER, EXCEPT THAT THE FORMER EMPLOYER'S RIGHTS HEREUNDER SHALL BE SUBJECT TO A REQUEST MADE BY THE FORMER EMPLOYEE AND RECEIVED BY THE EMPLOYER. <—

"Employee representative." An individual or organization authorized by an employee or employees to exercise his or her or their rights to request information under this act. A recognized or certified collective bargaining agent for an employee shall be considered to be an employee representative without regard to individual employee authorization.

"Employer." Any individual, partnership, corporation or association doing business in the Commonwealth, including the Commonwealth, its political subdivisions, including school districts, and any officer, board, commission, agency, authority or other instrumentality thereof.

"Environmental hazard." Any substance, emission or discharge determined by the department to be a hazardous substance and which ~~is likely to pose~~, BECAUSE OF ITS PARTICULAR OR EXTREME PROPERTIES, POSES a danger if released into the environment.~~and for which a trade secret claim shall not be made.~~ <— <—

"Exposure." Any situation arising from a workplace operation where an employee may ingest, inhale, absorb through the skin or eyes, or otherwise come into contact with a chemical or mixture.

"Hazardous mixture." Any mixture that contains one or more hazardous substances AS DEFINED HEREIN, in a concentration of 1% or greater in the mixture or any mixture that contains one or more special hazardous substances or environmental hazards in <—

~~any amount.~~ CONCENTRATIONS OF 0.01% OR GREATER IN THE MIXTURE. <—

For the purposes of this act, where a special hazardous mixture is combined with one or more chemicals or mixtures to form a new mixture, the new mixture shall be considered to be a hazardous mixture.

"Hazardous substance." Any chemical or mixture defined as hazardous pursuant to section 3. For the purposes of this act, any hazardous mixture is a hazardous substance.

"Hazardous Substance Fact Sheet or HSFS." A written document prepared by the department for the purpose of transmitting information about a hazardous substance to employers, employees or members of the general public.

"Hazard warning." Words, pictures, symbols or a combination of these appearing on a label which ~~instruct employees as to immediate action they should take for their own protection.~~ CONVEYS INFORMATION REGARDING ACTIONS OR CAUTIONS TO BE TAKEN WITH REGARD TO THE ASSOCIATED HAZARDOUS SUBSTANCE. <—

"Health professional." Any physician, NURSE, industrial hygienist, toxicologist or epidemiologist providing medical, occupational health or environmental health services. <—

"Importer." The first business within the customs territory of the United States, which handles chemicals produced in other countries and intended for sale and distribution to purchasers within the United States.

"Label." A sign, emblem, sticker or marker affixed to or stenciled into a container listing the information required pursuant to section 6.

"Manufacturer." Any individual, partnership, corporation, association or other person who provides, extracts, produces, USES or otherwise makes chemicals FOR SALE OR DISTRIBUTION. <— <—

"Material Safety Data Sheet or MSDS." A written document prepared by a ~~supplier or employer~~ MANUFACTURER, SUPPLIER OR IMPORTER in conformity with the requirements set forth in SECTION 4 OF this act for the purpose of transmitting information concerning a chemical.

"Mixture." A combination of two or more chemicals not involving a chemical reaction.

"NIOSH Registry of Toxic Effects of Chemical Substances." The on-line data base of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances.

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

"Research and development laboratory." A specially designated area used primarily for research, development, teaching ~~and~~ OR testing activity, and not primarily involved in the production of goods for commercial sale, in which chemicals are used by or under the direct supervision of a technically qualified person. FOR THE PURPOSE OF THIS ACT, A TECHNICALLY QUALIFIED PERSON IS A PERSON WHO, BECAUSE OF EDUCATION, TRAINING OR EXPERIENCE, UNDERSTANDS THE RISKS ASSOCIATED WITH THE HAZARDOUS SUBSTANCE OR MIXTURE CONTAINING A HAZARDOUS SUBSTANCE HANDLED BY EMPLOYEES UNDER HIS OR HER SUPERVISION OR GUIDANCE.

~~"Sealed package." A package shall be in a sealed state if it is a container or vessel whose contents have been placed into it by the manufacturer or importer for the purpose of being transported from one point to another and when such a package whose contents have been placed into it by the manufacturer or importer is in the process of being so transported. A package is not sealed if it is opened for the purpose of transferring the~~

~~contents which have been placed into it by the manufacturer or importer to another container or vessel; however, opening a package to examine the contents for emergency or safety reasons shall be allowed.~~

"SEALED PACKAGE." A PORTABLE CONTAINER INTO WHICH THE MANUFACTURER, IMPORTER OR SUPPLIER HAS PLACED A CHEMICAL OR CHEMICALS, AND WHICH IS SEALED BY SAID MANUFACTURER, IMPORTER OR SUPPLIER FOR TRANSPORT TO ANOTHER LOCATION, AND WHICH IS INTENDED TO REMAIN SEALED UNTIL REACHING ITS FINAL DESTINATION. A SEALED PACKAGE SHALL ALSO INCLUDE THOSE CONTAINERS USED TO TRANSPORT HAZARDOUS WASTES IN ACCORDANCE WITH THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (PUBLIC LAW 94-580, 42 U.S.C. 6901 ET SEQ.) OR THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980 (PUBLIC LAW 96-510, 26 U.S.C. 4611 ET SEQ. AND 42 U.S.C. 9601 ET SEQ.). <—

"Special hazardous substance." A hazardous substance so designated by the department because its particular toxicity, tumorigenicity, mutagenicity, reproductive toxicity, flammability, explosiveness, corrosivity or reactivity poses a special hazard to health and safety. ~~and for which a trade secret claim shall not be made.~~ <—

"Supplier." Any individual, partnership, corporation, association or other person, inside or outside or outside the Commonwealth, who manufactures, supplies, imports or distributes any chemical for sale, distribution or use within the Commonwealth.

"Trade name." Any designation or identification such as a code name or number, or a brand name, used by an employer or supplier to identify a chemical other than by its chemical or common name.

"Trade secret." Any formula, plan, pattern, process, production data, information or compilation of information, including chemical OR COMMON name, which is known only to an employer and a limited number of other individuals, and which is used in the fabrication and production or development of ~~an article of trade or service,~~ A PRODUCT, PROCESS OR SERVICE and which gives the employer possessing it a competitive advantage over businesses who do not possess it, or the secrecy of which is certified by an appropriate official of the Federal Government as necessary for national defense purposes.

"Workplace." Any building or work area or contiguous group of buildings or work areas AT ONE GEOGRAPHICAL LOCATION composing a plant site in the Commonwealth used by the employer on a permanent or temporary basis to conduct business.

"Work area." Any room, section of a room or ~~other immediate area~~ DEFINED SPACE within a workplace where one or more workers are based for the regular performance of their duties.

Section 3. Hazardous substance list.

(a) Hazardous substance list.--The department shall, no later than 180 days subsequent to the effective date of this act, compile a list of hazardous substances which shall include, but not be limited to, the substances found in the latest compilation or issue of any one of the following lists:

(1) Federal Environmental Protection Agency (EPA) list of toxic pollutants and hazardous substances prepared pursuant to sections 307 and 311 of the Federal Clean Water Act of 1977 (33 U.S.C. §§ 1317, 1321).

(2) EPA list of hazardous air pollutants prepared pursuant to section 112 of the Federal Clean Air Act (42 U.S.C. § 7412).

(3) EPA list of restricted use pesticides found at 40 CFR 162.30 (relating to optional procedures for classification of pesticide uses by regulation).

(4) EPA Carcinogen Assessment Group's List of Carcinogens.

(5) OSHA list of toxic and hazardous substances found in 29 CFR 1910, subpart Z (relating to toxic and hazardous substances).

(6) International Agency for Research on Cancer sublist, entitled "Substances found to have at least sufficient evidence of carcinogenicity in animals."

(7) National Toxicology Program's list of substances published in their latest Annual Report on Carcinogens.

(8) National Fire Protection Association list found in "Hazardous Chemicals Data (NFPA 49)."

(9) National Fire Protection Association list found in "Fire Hazard Properties of Flammable Liquids, Gases, Volatile Solids (NFPA 325M)," but only those substances found on sublists for health items, categories 2, 3 and 4; sublists for reactivity items, categories 3 and 4; sublists for flammability, categories 3 and 4.

(10) American Conference of Governmental Industrial Hygienists list found in Threshold Limit Value for Chemical Substances and Physical Agents in the Workplace.

(11) National Cancer Institute sublist, entitled "Carcinogens bioassays with at least evidence suggestive of carcinogenic effect," but including only those substances which satisfy criteria of the National Toxicology Program indicating significant carcinogenic effect.

The list shall further include any other substance or mixture

designated by the department as hazardous because of its known or probable adverse human or environmental effect. This list shall be updated, REDUCED or expanded by the department as necessary in light of new scientific evidence and knowledge. A copy of the list and any modifications thereof shall be transmitted to every employer ~~as necessary~~ SUBJECT TO THIS ACT.

(b) Additions to hazardous substance list.--Any chemicals which appear on any future compilation or issue of any of the lists contained in subsection 3(a) shall automatically be added to the hazardous substance list. Prior to adding any other chemicals to the list of hazardous substances enumerated in section 3(a)(1) through (11), the department shall, after giving proper notice, hold hearings on the proposed additions to allow for comment by interested parties. Upon conclusion of the hearings, the department shall, IF IT DETERMINES THE PROPRIETY OF INCLUDING THE CHEMICALS, amend its regulations to reflect additions and publish the additions thereto in the Pennsylvania Bulletin, and notify employers regarding the additions.

(C) DELETIONS TO HAZARDOUS SUBSTANCE LIST.--ANY CHEMICALS WHICH ARE REMOVED FROM ANY FUTURE COMPILATION OR ISSUE OF THE LISTS CONTAINED IN SUBSECTION (A), OR ANY CHEMICALS THAT HAVE BEEN ADDED TO THE HAZARDOUS SUBSTANCE LIST UNDER SUBSECTION (B), MAY BE DELETED FROM THE HAZARDOUS SUBSTANCE LIST. PRIOR TO DELETING ANY CHEMICAL FROM THE HAZARDOUS SUBSTANCE LIST THE DEPARTMENT SHALL, AFTER GIVING PROPER NOTICE, HOLD HEARINGS ON THE PROPOSED DELETIONS TO ALLOW FOR COMMENT BY INTERESTED PARTIES. UPON CONCLUSION OF THE HEARINGS, THE DEPARTMENT, IF IT DETERMINES THE PROPRIETY OF DELETING THE CHEMICAL, SHALL AMEND ITS REGULATIONS TO REFLECT DELETIONS AND PUBLISH THE DELETIONS THERETO IN THE PENNSYLVANIA BULLETIN, AND NOTIFY EMPLOYERS

REGARDING THE DELETIONS.

~~(c)~~ (D) Special HAZARDS and environmental hazards.--The department shall designate those hazardous substances which shall be considered special hazardous substances and those which shall be considered environmental hazards. The department shall compile separate lists of the special hazardous substances and the environmental hazards. These lists shall be updated, transmitted to employers and posted by employers in the same manner as the hazardous substance list. THE DEPARTMENT SHALL, BY REGULATION, SPECIFY THOSE SPECIAL HAZARDOUS SUBSTANCES WHICH, BECAUSE OF THEIR PARTICULAR OR EXTREME PROPERTIES, MUST BE IDENTIFIED AT CONCENTRATIONS OF LESS THAN 0.01%.

~~(d)~~ (E) Hazardous substance survey form.--Every employer shall, upon a form supplied by the department, fill out a hazardous substance survey for each workplace, providing information on the hazardous substances present during the prior year. A listing of the hazardous substances shall be posted by the employer as required by section 7. Upon the written request of any person IN PENNSYLVANIA, the department shall require the employer to forward a copy of the completed survey form to the department within 20 days. The department shall, in turn, keep a copy of the survey form on file, and shall immediately transmit a copy of the form to the original requestor. The employer shall update the hazardous substance survey for each workplace every two years.

~~(e)~~ (F) Access of police, fire and emergency response agencies.--Upon the request of a local police, fire or emergency response agency, within whose jurisdiction an employer falls, an employer shall provide a copy of its latest hazardous substance survey, ~~together with~~ AND, IF REQUESTED, copies of all relevant

Material Safety Data Sheets. The employer shall further provide, upon the request of said agency, all relevant and available information concerning any environmental hazards pertaining to the workplace in question.

~~(f)~~ (G) Environmental hazard survey.--Upon the written request of any person IN PENNSYLVANIA, the department shall require an employer to complete an environmental hazard survey for a particular workplace upon a form supplied by the department. The environmental survey shall include those substances emitted, discharged or disposed of from that workplace, and shall provide the following information to the extent that such information or reports are made under current provisions of Federal ~~and State~~, STATE, COUNTY OR MUNICIPAL law:

(1) The total known or estimated stack or point-source emissions of the substance.

(2) The total estimated fugitive or nonpoint-source emissions of the substance.

(3) The total known or estimated discharge of the substance into the surface or groundwater, the treatment methods and the known or estimated raw wastewater volume and loadings.

(4) The total known or estimated discharge of the substance into publicly owned treatment works.

(5) The known or estimated quantity and methods of disposal of any wastes containing the substance, the method of onsite storage of these wastes, the location or locations of the final disposal sites for these wastes and the identity of the hauler of the wastes.

Within 30 days of the department's request, the employer shall return the completed environmental survey form to the

department, which shall in turn keep a copy on file and shall immediately transmit a copy to the original requestor. The employer shall also keep a copy of the environmental hazard survey on file at that workplace and at its principal place of business in the Commonwealth.

~~(g) Onsite testing.--Upon request to the department, and for good cause shown, and upon consultation with the interested parties involved, the department may require an employer to use onsite testing or such other methods as will provide more exact information as requested on the environmental hazard survey. In an emergency, the secretary may empower the department to undertake said testing at the Commonwealth's expense.~~ <

(H) ONSITE TESTING.--UPON THE REQUEST TO THE DEPARTMENT, AND FOR GOOD CAUSE SHOWN AND UPON CONSULTATION WITH THE INTERESTED PARTIES INVOLVED, THE DEPARTMENT MAY CONDUCT AT ITS EXPENSE ONSITE TESTING OR USE SUCH OTHER METHODS AS WILL PROVIDE MORE EXACT INFORMATION CONCERNING THE ENVIRONMENTAL HAZARDS REPORTED IN THE ENVIRONMENTAL HAZARDS SURVEY UNDER SUBSECTION (G). THE SITE OWNER MAY CONDUCT ONSITE TESTING INSTEAD OF THE DEPARTMENT. UPON THE WRITTEN REQUEST OF THE EMPLOYER, THE DEPARTMENT SHALL DETAIL IN WRITING THE TYPE AND METHODS OF TESTING AND PROVIDE TECHNICAL ASSISTANCE TO AID THE EMPLOYER WHO CHOOSES TO CONDUCT TESTING INSTEAD OF THE DEPARTMENT. IN AN EMERGENCY, THE DEPARTMENT MAY UNDERTAKE SAID TESTING AT THE COMMONWEALTH'S EXPENSE. THE DEPARTMENT SHALL NOT CONDUCT ONSITE TESTING WHICH HAS ALREADY BEEN CONDUCTED BY OSHA. <

~~(h)~~ (I) Authority to modify filing requirements.--The department may, by regulation, require certain classes or groups of employers to automatically file with the department the completed hazardous substance survey and/or environmental hazard <

survey every two years, taking into account the nature and quantity of the hazardous substances and/or environmental hazards involved, the likely danger to the surrounding community, the number of employees affected or the importance of said information to future epidemiological or other health studies.

~~(i) Application.--Notwithstanding any language to the contrary, the provisions of this act shall not apply to hazardous substances contained in the following:~~ <—

~~(1) An article.~~

~~(2) Products intended for personal consumption by employees in the workplace; consumer products packaged in containers which are primarily designed for distribution to, and use by, the general public; and foods as defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.).~~

~~(3) A research and development laboratory, except for the provisions of sections 5, 8, 11, 13 and 14. This exemption does not include a laboratory that primarily produces hazardous substances for commercial purposes. "Technically qualified individual" means a person who, because of education, training or experience, understands the risks associated with the hazardous substance or mixture containing a hazardous substance handled by employees under his or her supervision or guidance.~~

~~(4) A workplace where a hazardous substance is received in a sealed package and is subsequently sold or transferred in that package within 20 days, if the seal remains intact while the substance is in the workplace, except for the provisions of sections 5, 8, 11, 13 and 14.~~

(j) Retention of materials.--The department shall maintain a file of all completed hazardous substance surveys and environmental hazard surveys for 30 years. The department shall also retain at least one Material Safety Data Sheet for each hazardous substance and hazardous mixture, together with revisions thereof.

Section 4. Obligation of suppliers.

(a) Labeling.--Every supplier, as condition of doing business in this Commonwealth, shall insure that the container of any chemical which is delivered to a point within this Commonwealth or which is produced within this Commonwealth is clearly labeled in the manner required by section 6.

(b) Provision of Material Safety Data Sheets.--

(1) All manufacturers, importers or suppliers, as a condition of doing business in this Commonwealth, shall prepare an MSDS for each hazardous substance or hazardous mixture they produce or import, and shall ensure that all purchasers of hazardous substances or hazardous mixtures are provided an appropriate MSDS with their initial shipment, and with the first shipment after an MSDS is updated. The manufacturer, importer or supplier shall further provide an MSDS for any other chemical delivered to a point within the Commonwealth, if the manufacturer, importer or supplier produces or possesses such an MSDS.

(2) Distributors shall ensure that MSDS's are provided to all purchasers of hazardous substances or hazardous mixtures. Manufacturers, importers, suppliers and distributors shall notify the recipient of the hazardous substance or hazardous mixture that such substance is subject to the provisions of this act. In lieu of physically

attaching MSDS's to containers shipped, the manufacturer, importer, supplier or distributor may mail the MSDS to the purchaser at the time of the shipment.

(3) Employers shall obtain and maintain MSDS's for each hazardous substance or hazardous mixture in their workplace. If an MSDS is not provided with the shipment, the employer shall obtain one from the manufacturer, importer, supplier or distributor.

(4) Manufacturers, importers or suppliers shall ensure that one copy of an MSDS for each hazardous substance or hazardous mixture which they produce within or deliver to a point within this Commonwealth shall be mailed to the department at the same time as their initial shipment to an employer within this Commonwealth. In addition, the manufacturer, importer or supplier shall mail to the department one copy of an MSDS for any other chemical for which they produce or possess an MSDS, at the time of the initial shipment of the chemical to an employer within this Commonwealth. An additional submission of an MSDS shall be made at the time of the first shipment to an employer within this Commonwealth after an MSDS is updated. In this manner, or upon its own initiative, the department shall compile a complete file of all MSDS's for each hazardous substance, hazardous mixture and appropriate chemical that is produced or distributed within this Commonwealth, and shall keep the complete MSDS file updated as new information becomes available.

~~(c) Contents of Material Safety Data Sheets.--Subject to the trade secret provisions covered in section 11, the information in the Material Safety Data Sheets shall be at least as complete~~ <—

~~as that maintained both by the National Library of Medicine computer files and the latest edition of the National Fire Protection Association's Fire Protection Guide on Hazardous Materials. It shall include, but not be limited to, the following information:~~

(C) CONTENTS OF MATERIAL SAFETY DATA SHEETS.--THE INFORMATION IN THE MATERIAL SAFETY DATA SHEETS SHALL REFLECT THE CONTENTS OF THE RELEVANT NATIONAL LIBRARY OF MEDICINE COMPUTER FILES AND THE LATEST EDITION OF THE NATIONAL FIRE ASSOCIATION'S FIRE PROTECTION GUIDE ON HAZARDOUS MATERIALS. SUBJECT TO THE TRADE SECRET PROVISIONS OF SECTION 11, IT SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION: <——

(1) The chemical name, the Chemical Abstracts Service number, the trade name, common names and any other names under which said substance is regulated by another State or Federal agency.

(2) The chemical name, common name and Chemical Abstracts Service number of every chemical contained in the substance which comprises 3% or more of the substance except that hazardous substances shall be listed if they comprise 1% or more of the substance, and all special hazardous substances WHICH COMPRISE 0.01% OR MORE OF THE SUBSTANCE shall be listed. <——

(3) A reference to all relevant information on the hazardous substance from the NIOSH Registry of Toxic Effects of Chemical Substances.

(4) The boiling point, vapor pressure, vapor density, solubility in water, specific gravity, melting point, physical state, color and odorous properties at standard conditions of temperature and pressure.

(5) The flash point, auto ignition temperature, percentage of volume of flammable limits, the recommended fire extinguishing media, any special firefighting procedure and any other unusual fire or explosion hazards.

(6) The hazards, if any, posed by the substance, including its toxicity, tumorigenicity, mutagenicity, reproductive toxicity, flammability, explosiveness, corrosivity and reactivity, including specific information on its reactivity with water.

(7) A description, in nontechnical language, of the acute and chronic health effects of exposure to the substance, including the signs and symptoms of exposure, and medical conditions ~~that might be~~ WHICH ARE GENERALLY RECOGNIZED AS BEING aggravated by exposure TO THE SUBSTANCE. <—— <——

(8) The permissible exposure level, threshold limit value, short-term, ceiling and other established limit values as set by OSHA, National Institute of Occupational Safety and Health, American Industrial Hygiene Association and American Conference of Governmental Industrial Hygienists.

(9) The potential routes and symptoms of exposure to the hazardous substances.

(10) Emergency first aid procedures in case of inhalation, swallowing, eye splashes and skin contamination, including a telephone number to be called day or night in an emergency and any special information needed by medical practitioners treating persons.

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

(12) Recommended waste disposal method if applicable.

(13) Personal protective equipment to be worn or used when handling or otherwise coming in contact with the substance and any special precautions, recommended engineering controls or work practices to be used in handling the substance.

(14) A description of the extent of testing performed on the substance. ~~and an indication of what aspects have not been tested.~~ <—

(15) A description of the known ~~or possible~~ synergistic or additive effects ~~caused~~ REASONABLY ANTICIPATED by exposure to this substance and to other substances over the same period of time. <—

(16) For mixtures, a description of any KNOWN dangers or hazards created by the mixture that are greater than and would not be otherwise disclosed by the Hazardous Substance Fact Sheets for the constituent chemical substances. <—

(17) The name, address and telephone number of the manufacturer of the chemical.

(18) Date of preparation or last revision of the sheet.

NOTWITHSTANDING THE ABOVE, ANY MSDS WHICH CONTAINS THE INFORMATION REQUESTED IN PARAGRAPHS (1) AND (2), AND WHICH OTHERWISE CONTAINS THE INFORMATION REQUIRED BY 29 CFR § 1900.1200(G)(2), AS OF NOVEMBER 25, 1983, SHALL BE CONSIDERED TO HAVE MET THE REQUIREMENTS OF THIS SECTION. <—

(d) Chemical identification sheet.--An employer or supplier may, for convenience, provide the information requested in subsection (c)(2) by affixing a chemical identification sheet containing said information to an already existing MSDS and it shall be considered an integral part of the MSDS.

(e) Similar substances.--Where hazardous mixtures have

similar contents and hazards, but vary in specific composition, the supplier or employer may prepare one Material Safety Data Sheet to apply to all of the similar mixtures: Provided, That the Material Safety Data Sheet identifies all the various mixtures by the names to which it applies, is correct in all respects and correctly states the constituent chemicals in all of the mixtures. IT IS NOT NECESSARY TO PRODUCE A NEW MSDS WHEN A HAZARDOUS SUBSTANCE IS DILUTED WITH WATER. <—

(f) No duty to test.--This section shall not be construed to mean that an employer or supplier must conduct studies to develop new information.

(G) AGRICULTURAL MIXTURES.--WHEN A FARM SUPPLIER COMBINES ONE OR MORE CHEMICALS FOR AGRICULTURAL USE, THE FARM SUPPLIER MAY SUBSTITUTE ALL MATERIAL SAFETY DATA SHEETS FOR THE INGREDIENTS IN THE MIXTURE IN LIEU OF PREPARING A NEW MSDS. <—

Section 5. Availability of information.

(a) Dissemination to local agencies.--The department shall ensure that each of its regional offices makes available to the public the MSDS's and other information required under this act. The department shall further make immediately available any MSDS's and any completed hazardous substance or environmental hazard surveys for a particular county to the appropriate local police, fire or other emergency response agency, upon said agency's request, if the same has not already been obtained.

(b) New information.--Whenever a supplier receives or discovers any relevant new information regarding a hazardous substance, the supplier shall make such information available to the department and to all employers to which the supplier provides said substance. The employer shall, in turn, make such information available to employees and the employees'

representatives, upon receipt of such new information.

(c) Copy of data available to employees.--An employer shall furnish, upon the request of an employee or employee representative, any of the following:

(1) Any of the lists or survey forms generated under section 3.

(2) Any Material Safety Data Sheet for any hazardous substance or hazardous mixture present in any of the employer's workplaces.

~~(d) Furnishing information.--Upon the written request of an employee or employee representative, the employer shall furnish a copy of the MSDS or the HSFS to said employee within five days of receipt of the written request, if the requested MSDS or HSFS is in the possession of the employer. If the employer possesses said information, and fails to give said information to the employee or employee representative within five days, the employee shall have the right to refuse to work with the specific hazardous substance until such time as the information requested is provided, without penalty to said employee. If the requested information is not in the possession of the employer, the employer shall notify, in writing, said employee within five days of the receipt of the written request, that the information is not in his possession. Within 15 days of the date of written notification to the employee, the employer shall obtain the requested information from either the manufacturer, supplier or the department. If the employer fails to supply the employee the requested information within 15 days of the date of the written notification to said employee, said employee shall then have the right to refuse to work with the said hazardous substance, until such time as the employer supplies the requested information, at~~

~~no penalty to said employee.~~

(D) FURNISHING INFORMATION.--UPON THE WRITTEN REQUEST OF AN <—
EMPLOYEE OR EMPLOYEE REPRESENTATIVE, THE EMPLOYER SHALL FURNISH A COPY OF THE REQUESTED MSDS OR THE HSFS TO SAID EMPLOYEE WITHIN FIVE DAYS OF RECEIPT OF THE WRITTEN REQUEST. IF THE REQUESTED MSDS OR HSFS IS IN THE POSSESSION OF THE EMPLOYER AND THE EMPLOYER FAILS TO GIVE SAID INFORMATION TO THE EMPLOYEE OR EMPLOYEE REPRESENTATIVE WITHIN FIVE DAYS, THE EMPLOYEE SHALL HAVE THE RIGHT TO REFUSE TO WORK WITH THE SPECIFIC HAZARDOUS SUBSTANCE WITHOUT PENALTY TO SAID EMPLOYEE UNTIL SUCH TIME AS THE INFORMATION REQUESTED IS PROVIDED. IF THE REQUESTED INFORMATION IS NOT IN THE POSSESSION OF THE EMPLOYER, THE EMPLOYER SHALL NOTIFY, IN WRITING, SAID EMPLOYEE WITHIN FIVE DAYS OF THE RECEIPT OF THE EMPLOYEE'S WRITTEN REQUEST THAT THE INFORMATION IS NOT IN THE EMPLOYER'S POSSESSION. WITHIN 15 DAYS OF THE EMPLOYER'S WRITTEN NOTIFICATION TO THE EMPLOYEE, THE EMPLOYER SHALL ATTEMPT TO OBTAIN THE REQUESTED INFORMATION FROM THE SUPPLIER AND THE DEPARTMENT AND SHALL DOCUMENT SUCH ATTEMPTS. UPON RECEIPT OF THE EMPLOYER'S REQUEST, THE DEPARTMENT SHALL IMMEDIATELY ATTEMPT TO OBTAIN THE REQUESTED INFORMATION FROM THE SUPPLIER AND NOTIFY THE EMPLOYER OF THAT ATTEMPT. IF, AT THE END OF THE 15-DAY PERIOD, THE SUPPLIER DOES NOT RESPOND TO THE EMPLOYER'S AND THE DEPARTMENT'S REQUEST, THE EMPLOYER AND THE DEPARTMENT SHALL GIVE TO THE EMPLOYEE ALL HAZARDOUS SUBSTANCE INFORMATION REQUIRED BY THIS ACT IN THE EMPLOYER'S OR DEPARTMENT'S POSSESSION. THE EMPLOYEE SHALL HAVE THE RIGHT TO REFUSE TO WORK WITHOUT PENALTY UNTIL THE REQUESTED INFORMATION IS FURNISHED UNLESS THE EMPLOYER AND THE DEPARTMENT HAVE TAKEN ALL ACTIONS PRESCRIBED BY THIS SECTION. REASSIGNMENT OF AN EMPLOYEE TO OTHER WORK, AT EQUAL PAY AND BENEFITS, SHALL NOT BE

CONSIDERED A PENALTY UNDER THIS SUBSECTION.

(e) Information in the work area.--Every employer shall ~~post~~ <—
MAKE READILY AVAILABLE, in every work area, the Material Safety <—
Data Sheet for every hazardous substance or hazardous mixture to which the employees working in said work area may be exposed. ~~This posting shall be~~ THE MATERIAL SAFETY DATA SHEETS SHALL BE <—
MADE AVAILABLE in such a manner and in such numbers as to give every employee in that work area easy and unhindered access to the Material Safety Data Sheets without permission or intervention of management or any supervisor.

(f) Limitation on fees.--All Material Safety Data Sheets, educational and other materials shall be furnished by an employer to an employee or employee representative at no cost to the employee or employee representative. If the employee making the request has requested and received the same information about the same substance within the preceding 12 months, the employer may impose a reasonable charge not to exceed the costs of reproduction for that information. No fee shall be charged if that employee's job assignment has changed or there is new information available concerning any of the subjects about which information is required to be provided. In no event shall the employer charge fees pursuant to requests by a certified or recognized bargaining agent.

(g) Public access.--Any person LIVING OR WORKING IN <—
PENNSYLVANIA AND WHO IS NOT A COMPETITOR may request from the department a copy of the lists or forms required in section 3 which are present in a particular workplace, and any Material Safety Data Sheet or Hazardous Substance Fact Sheet on file and the department shall transmit the requested material within 45 days. Any request shall be treated by the department as

confidential as to the name and address of the requestor. The department shall also make materials for its respective regions immediately available during business hours from its regional offices. Materials shall be available at a fee not to exceed the cost of reproducing them.

Section 6. Labeling.

(a) Labeling of container.--

(1) The employer shall ensure that each container of a hazardous substance is labeled, tagged or marked with the chemical name or common name, a hazard warning as provided in subsection (f), and the name, address and telephone number of the manufacturer of the substance.

(2) The employer shall ensure that each container of a hazardous mixture is labeled, tagged or marked with the common name of the mixture where one exists, or the trade name of the mixture, if no common name exists, the chemical or common name of all special hazardous substances ~~in the mixture~~ COMPRISING 0.01% OR MORE OF THE MIXTURE, the chemical or common name of all hazardous substances constituting 1% or more of the mixture, a hazard warning as provided in subsection (f), and the name, address and telephone number of the manufacturer of the substance.

(3) The employer shall ensure that each container of a single chemical is labeled, tagged or marked with the chemical name or common name, a hazard warning as provided in subsection (f), if appropriate, and the name, address and telephone number of the manufacturer of the chemical.

(4) The employer shall ensure that each container of a mixture is labeled, tagged or marked with the common name of the mixture where one exists, or the trade name of the

mixture if no common name exists, a hazard warning as provided in subsection (f), if appropriate, and the name, address and telephone number of the manufacturer. In addition, the employer shall ensure that either the top five substances by volume or those substances constituting 5% or more of the mixture, be labeled by chemical name or common name.

(5) The employer is not required to label any container ~~of ten gallons or less in volume~~ into which a chemical or mixture is transferred by the employee from labeled containers and which is intended only for the immediate use by the employee who performs the transfer. <—

(6) The employer shall ensure that each container of hazardous substances, hazardous mixtures, or chemicals leaving the workplace is labeled, tagged or marked with the appropriate information as required in subsection (a)(1), (2), (3) or (4).

(7) THE EMPLOYER MAY CALL UPON THE MANUFACTURER OR SUPPLIER FOR ASSISTANCE IN LABELING. <—

The employer shall ensure that each label is prominently affixed to the container or the piping system and displayed in such a manner that employees can easily identify the chemical in that container. These labeling requirements may be altered only in accordance with subsections (b), (d) and (f) or section 11. The employer shall not remove or deface existing labels on incoming containers of chemicals unless the container is immediately relabeled with the required information. The employer need not affix new labels to comply with this section if existing labels already convey the required information that the chemical or common name on the container is the same as that listed on the

MSDS and can be used by the employee as a cross-reference to the MSDS. ANY LABEL MAY CONTAIN OTHER INFORMATION, INCLUDING TRADE OR BRAND NAME, PROVIDED THE INFORMATION REQUIRED BY THIS SECTION IS CLEARLY LEGIBLE. NOTHING IN THIS SECTION SHALL REQUIRE AN EMPLOYER TO TEST ANY CHEMICAL TO DETERMINE THE ACCURACY OF THE LABEL. <—

(B) COMMON NAME USAGE.--A COMMON NAME OR TRADE NAME MAY BE USED FOR THE PURPOSE OF SUBSECTION (A)(1), (2), (3) AND (4), ONLY IF THE USE OF SUCH NAME MORE EASILY OR READILY IDENTIFIES THE TRUE NATURE OF A CHEMICAL OR MIXTURE. WHERE A CHEMICAL NAME OR CHEMICAL ABSTRACTS SERVICE NUMBER EXISTS, BUT THE CONTAINER IS NOT LABELED WITH EITHER, AN EMPLOYEE SHALL HAVE THE RIGHT TO REQUEST, IN WRITING, THE CHEMICAL NAME OR CHEMICAL ABSTRACTS SERVICE NUMBER OF THE SUBSTANCE, AND THE EMPLOYER SHALL HAVE FIVE WORKING DAYS TO GIVE THE REQUIRED INFORMATION TO SAID EMPLOYEE, IF A CHEMICAL NAME OR CHEMICAL ABSTRACT SERVICE NUMBER IS IN THE POSSESSION OF THE EMPLOYER. IF NO CHEMICAL NAME OR CHEMICAL ABSTRACTS SERVICE NUMBER IS IN THE POSSESSION OF THE EMPLOYER, THE EMPLOYER SHALL NOTIFY THE REQUESTING EMPLOYEE, IN WRITING, WITHIN FIVE WORKING DAYS OF THE INITIAL EMPLOYEE REQUEST AND THE EMPLOYEE SHALL HAVE THE RIGHT TO REQUEST THE DEPARTMENT TO SUPPLY SAID CHEMICAL NAME OR CHEMICAL ABSTRACTS SERVICE NUMBER.

~~(c) Pipelines.--The content of a pipeline system shall be identified by labels applied at or near all ports. In those cases in which more than a single substance may pass through such ports involved in any manufacturing process at any given moment, the employer shall develop methods to adequately apprise anyone potentially having access to such ports as to the contents therein prior to opening such ports. This requirement~~ <—

~~of this subsection shall not be applicable to effluents, water discharges and/or emissions through stacks or discharge conduits.~~

(C) PIPELINES.--THE CONTENT OF A PIPELINE SYSTEM SHALL BE IDENTIFIED BY LABELS APPLIED AT OR NEAR ALL PORTS. AS USED IN THIS SUBSECTION, "PORTS" SHALL MEAN A POINT OF ACCESS, WHICH MAY BE OPENED TO THE ENVIRONMENT, USED FOR CHARGING OR DISCHARGING A SYSTEM, AT WHICH AN EMPLOYEE MAY COME INTO DIRECT CONTACT WITH A CHEMICAL UNDER NORMAL CONDITIONS OF USE. IN THOSE CASES IN WHICH A PIPELINE IS USED TO CONVEY DIFFERENT CHEMICALS AT DIFFERENT TIMES, AND IN THE CASE OF AN ENVIRONMENTAL HEALTH AND PEST CONTROL SYSTEM OR OTHER SYSTEM DESIGNED TO AUTOMATICALLY DISCHARGE A CHEMICAL FROM SPRAY-TYPE PORTS, THE EMPLOYER MAY DEVELOP ALTERNATIVE METHODS TO ADEQUATELY APPRISE ANYONE WHO MAY BE POTENTIALLY EXPOSED AT ANY PORT OF THE CONTENTS OF THE PIPELINE. THE REQUIREMENTS OF THIS SUBSECTION SHALL NOT BE APPLICABLE TO EFFLUENTS, WATER DISCHARGES OR EMISSIONS THROUGH STACKS, DISCHARGE CONDUITS OR TO FIRE SPRINKLER SYSTEMS CONTAINING ONLY WATER.

(d) Display of label.--The employer shall ensure that each label, sign, placard, or other operating instructions required by this section is legible and prominently affixed in and displayed to the container or port in such a manner that employees can easily identify the substance or mixture present therein. The employer may use signs, placards, operating procedures or other such printed materials as alternatives to individual labels on stationary equipment, AGRICULTURAL IMPLEMENTS, AND PORTABLE OR MOBILE MACHINERY USED IN OUTDOOR OR TEMPORARY WORKSITES, as long as the alternatives used indicates the appropriate chemical or common name and hazard warnings and

is readily ~~accessible~~ AVAILABLE to employees. ~~in their work area.~~ <—

(e) Cross-reference to MSDS.--The employer shall ensure that the chemical or common name used on the container to identify a hazardous substance or mixture is the same as the chemical or common names used on the MSDS or Hazardous Substance Fact Sheet, if that is the information available for the hazardous substance or mixture, and that the MSDS or Hazardous Substance Fact Sheet is readily available to the employee in his work area.

(f) Hazard warnings.--Each employer shall ensure that container labels provide a warning as to the specific nature of hazard arising from the substance in the container. The hazard warnings shall be given in conformity with one of the nationally recognized and accepted systems of providing such warnings and shall be consistent throughout the workplace.

(g) Exemptions.--When containers are labeled as required under applicable Federal laws and regulations, this section does not require labeling of containers which contain:

(1) Any pesticides as such terms are defined in the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 135 et seq.).

(2) Any food, drug or cosmetic as such terms are defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.).

(3) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. § 201 et seq.).

(4) HAZARDOUS WASTE FROM SPILLS AND DISPOSAL SITE <—
REHABILITATION PROJECTS HANDLED PURSUANT TO THE RESOURCE

CONSERVATION AND RECOVERY ACT OF 1976 (PUBLIC LAW 94-580, 42 U.S.C. 6901 ET SEQ.) OR THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (PUBLIC LAW 96-510, 26 U.S.C. 4611 ET SEQ. AND 42 U.S.C. 9601 ET SEQ.).

Section 7. Notice.

(A) WORKPLACE POSTINGS.--Every employer shall prominently post in every workplace, in a location or locations where notices to employees are normally posted: <—

(1) Lists of all hazardous substances and special hazardous substances found in that workplace and all environmental hazards emitted or discharged therefrom. In addition, upon request, an employer shall furnish to an employee, a list of the hazardous substances used or produced in that employee's work area. A new or newly assigned employee shall be offered a list when assigned to a work area. Such lists shall be updated as necessary but at least annually.

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

(3) All other notices required by the department to be posted.

(B) OUTDOOR AND TEMPORARY WORKSITES.--IN THE CASE OF OUTDOOR OR TEMPORARY WORKSITES WHICH ARE NOT CONTIGUOUS TO A BUILDING REGULARLY USED BY THE EMPLOYER AS A WORKPLACE, ALL POSTINGS OF NOTICES, MATERIAL SAFETY DATA SHEETS, AND OTHER MATERIALS SHALL BE IN A LOCATION WHERE EMPLOYEES, DURING A COURSE OF A NORMAL DAY OF WORK, HAVE ACCESS WHICH DOES NOT DEPEND ON THE PERMISSION OR INTERVENTION OF MANAGEMENT OR ANY SUPERVISOR. <—

Section 8. Employer educational program.

(a) Requirement.--Every employer shall provide at ~~least~~ A <—

MINIMUM an annual education and training program for employees exposed to hazardous substances or hazardous mixtures with respect to the hazardous substance or mixture found in their normal work area. Additional instruction shall be provided whenever the potential for exposure to the hazardous substance is altered or whenever new and significant information is received by the employer concerning the hazards of the substance or mixture.

(b) Content of program.--Employers shall furnish employees who are using or handling hazardous substances or hazardous mixtures with information on the contents of a Material Safety Data Sheet, label or equivalent information either in written form or through training programs which may be generic to the extent appropriate and related to the job. Content of the program shall include, as appropriate, the following information concerning the hazardous substances or hazardous mixtures:

(1) The location.

(2) The properties.

(3) The chemical and common name.

(4) The acute and chronic effects.

(5) The symptoms arising from exposure.

(6) The potential for flammability, explosivity and reactivity.

(7) Appropriate emergency treatment.

(8) Appropriate personal protective equipment and proper conditions for safe use.

(9) Emergency procedures for spills, leaks, fires, pipeline breakdowns or other accidents.

(c) Education and training assistance program.--As part of its outreach program, the department shall develop and maintain

an education and training assistance program to aid employers who because of size or other practical considerations, are unable to develop such programs by themselves. Such a program would be available to the employer on request.

Section 9. Health and exposure records.

(a) General rule.--Upon request by the department, employers shall provide copies of employee health and exposure records maintained by the employer, including, but not limited to, those records maintained and supplied to the Federal Government by employers as mandated under applicable State and Federal statutes and regulations except as access by third parties is limited by said statutes and regulations.

(b) Certain information confidential.--The department shall not release any information in a way that identifies individuals. The department may, however, publish analysis of reports and information for scientific and public health purposes if the identities of the individuals concerned cannot be ascertained and if information protected by applicable trade secret law is not divulged.

(c) Records retention requirement.--The department shall require an employer to keep records of his employees' exposure to specific chemical substances to the extent that such are required under 29 CFR 1910.20(g) (relating to employee information).

(d) Employee access.--Employees under this act shall have the right of access to exposure and medical records in the manner set forth by OSHA pursuant to 29 CFR 1910.20 (relating to access to employee exposure and medical records), as effective August 21, 1980.

Section 10. Outreach programs.

(a) Duty of the department.--The department shall develop and implement outreach programs to inform employees and the general public of their respective rights under this act and to educate and inform employers, employees and the public, concerning hazardous and other dangerous substances, including, but not limited to, their dangers, their proper handling and disposal and emergency treatment. The department shall prepare this information in a clear and concise manner using words with common and everyday meanings. The department shall also ensure that all written materials are available in Spanish, including departmental notices, Hazardous Substance Fact Sheets, education and public information materials.

(b) Contracts with other agencies to develop program.--The department may contract with public and private organizations to develop and implement the outreach and employee education programs established pursuant to this act.

(c) Public information.--As part of the outreach programs, the department shall develop and maintain a supply of informational leaflets in public buildings, including employment services, offices of the Office of Employment Security, institutions and facilities under the supervision or control of the department, hospitals, union halls, community centers, schools and local agencies providing services to employers and employees. The department shall mail these leaflets to employers and shall periodically distribute public service announcements to newspapers, television and radio stations throughout the Commonwealth to further the goals of the outreach program.

(d) Hazardous Substance Fact Sheets.--The department may produce and disseminate to the public a Hazardous Substance Fact Sheet for any hazardous substance. The categories of information

contained therein shall include, but not be limited to, the information contained in a Material Safety Data Sheet. The department may require employers to supply the Hazardous Substance Fact Sheet to requesting employees instead of the supplier's Material Safety Data Sheet.

Section 11. Trade secrets.

(a) Trade secret claims.--Any importer, employer, manufacturer or supplier may withhold the chemical name or other specific identification of a chemical as a trade secret, provided that:

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

(2) The material safety data sheet discloses the information concerning the properties and effects of the chemical, if said chemical is a hazardous substance or mixture.

(3) The label and material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret AND SPECIFICALLY NOTES THAT A TRADE SECRET FOR A SPECIAL HAZARDOUS SUBSTANCE IS BEING CLAIMED. <——

(4) The specific chemical identity is made available to health professionals in accordance with this section.

(5) The person making the claim files a notice of said claim with the department. Said notice shall not require the person making the claim to disclose the information which is claimed to be a trade secret.

(b) Disclosure to treating physicians and nurses.--Notwithstanding any other provision of this act, an employer, manufacturer, importer or supplier shall disclose the chemical identification or other information claimed as a trade secret to

a treating physician or nurse when such information is needed for medical diagnosis or treatment of an exposed person. The employer, manufacturer, importer or supplier may require the physician or nurse to sign a confidentiality agreement before disclosing the trade secret. In the case of a medical emergency, the employer, manufacturer, importer or supplier shall first disclose the trade secret to the treating physician or nurse but may later require a confidentiality agreement when circumstances permit.

(c) Disclosure to other health professionals.--Upon the request of a health professional who is not a treating physician or nurse, an employer, supplier, manufacturer or importer shall disclose information which is claimed as a trade secret under the same conditions and subject to the same requirements as contained in the OSHA Hazard Communication Standard, 29 CFR Sec. 1900.1200(i)(3), (4) and (7). A health professional who is denied such information under this section may file a complaint or charge with the department. If the department concludes that the information is not a bona fide trade secret, or that it is a trade secret but the requesting health professional has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the department may find the employer, supplier, manufacturer or importer in violation of this act and order them to disclose the requested information to the health professional.

(d) Confidentiality agreement restrictions.--The confidentiality agreement authorized by subsection (b) may restrict the use of the information to providing medical or

other occupational health services to the exposed person, prohibit disclosure of the information to anyone who has not entered into a similar agreement with the consent of the person claiming the trade secret, and provide for appropriate legal remedies in the event of a breach of the agreement. No confidentiality agreement shall include requirements for the posting of a penalty bond.

(e) Request for review of trade secret claims.--Any AGGRIEVED person OR EMPLOYEE REPRESENTATIVE may request the department to review trade secret claims made hereunder: Provided, That any appeal from the decision of the department shall not give said person the right of access to any information considered confidential in subsection (f)(2). <—

(f) Review of trade secret claims.--Upon request by any ~~person,~~ AGGRIEVED PERSON OR EMPLOYEE REPRESENTATIVE, or upon its own initiative, the department ~~may~~ SHALL review trade secret claims as provided herein: <— <—

(1) Within 30 days of receipt of a request for review of a trade secret claim, the department shall notify the person making the claim and require the person to file an application and supporting evidence. All proceedings shall be in conformity with Title 1 of the Pennsylvania Code (relating to general provisions). If the department finds that the information in question is not a trade secret as defined by this act, it shall order disclosure of the information. Such order shall be a final adjudication appealable to the Commonwealth Court. Any appeal shall act as a stay to any order of the department or any court which requires disclosure.

(2) All trade secret applications, pleadings, hearing

transcripts, documents and other records filed with the department or any court pursuant to a review of trade secret claims or appeals thereof shall be confidential and shall not be disclosed to the public. The notice of claim filed with the department and any petition for review or other pleading filed with the courts which do not reveal either the trade secret or any information claimed as confidential shall be considered as public records. All records that reveal either the trade secret or any information claimed as confidential shall be sealed and held as confidential by the department or, upon request, returned to the employer, supplier, manufacturer or importer at the close of all proceedings hereunder. All hearings provided for under this section shall be closed to all persons except the employer, supplier, manufacturer or importer and the department.

(g) Penalty.--Any officer or employee of the Commonwealth, contractor to the Commonwealth, physician or employee of a county health department, local fire department or local police department who has access to any confidential information and who willingly or knowingly discloses the confidential information to any person not authorized to receive it, shall, upon conviction thereof, be guilty of a misdemeanor of the third degree. The person or institution which discloses the confidential information is liable for damages to the full extent of those damages. Violation of this section shall be prima facie evidence of trespass under Pennsylvania common law.

(h) Protection of confidential information.--Information certified to by appropriate officials of the Federal Government as "necessarily kept secret" for national defense purposes shall be accorded the full protection against disclosure as specified

by such official or in accordance with Federal law.

Section 12. Risk to public health.

If the department determines that any hazardous substance or other chemical poses a potential health risk to the general public in an area surrounding the workplace, it shall inform the nearest public health agency, hospital and fire company and shall submit to them copies of each relevant Material Safety Data Sheet or Hazardous Substance Fact Sheet.

Section 13. Protection of employees.

(a) General rule.--No employer shall discharge or cause to be discharged, or otherwise discipline or in any manner discriminate against an employee because the employee has filed a complaint, assisted the department with respect to an inspection under section 14, has instituted or caused to be instituted any proceeding under or related to this act, has testified or is amount to testify in any proceeding, has requested any information or properly refused work under section 5, or has exercised any right afforded pursuant to the provisions of this act.

(b) Burden of proof.--If the department or the employee establishes that within the six months prior to the alleged violation the employee exercised any right provided in this act, the employer shall have the burden to show just cause for his action by clear and convincing evidence.

(c) Waivers invalid.--Any waiver by an employee or applicant for employment of the benefits or requirements of this act shall be against public policy and shall be null and void. Any employer's request or requirement that an employee waive any rights under this act as a condition of employment shall constitute a violation.

Section 14. Complaints and investigations.

(a) Procedure.--The department is hereby empowered to prevent any violations of this act. All proceedings under this section will be scheduled and decisions rendered with all deliberate speed in the interests of protecting employees and members of the public from the dangers of chemical substances. Any person who believes there is a violation by an employer or supplier of this act or any part thereof, may file a complaint within 180 days of the violation with the department. The complaint shall be in writing, verified, and shall set forth the grounds for the complaint. Upon request of the complainant, his or her identity shall not be revealed. Within 30 days after receipt of the complaint, the department shall so notify the respondent in writing and permit the respondent to demonstrate compliance with this act. If such compliance has not been demonstrated by clear and convincing evidence to the department within 14 days of the mailing of the notification, and if the facts in controversy are susceptible to verification by inspection, an employee of the department shall inspect, at reasonable times, the employer's workplace and all conditions relevant to the complaint and shall, in reasonable manner, make any additional investigation deemed necessary for the full and effective determination of the employer's or supplier's compliance with this act. Whenever the representative of the department proceeding under this section is denied admission to any place of employment, he may obtain a warrant to make an inspection or investigation of the place of employment from the appropriate judicial authority upon a showing of the following:

(1) That the individual seeking the warrant is a duly authorized agent of the department.

(2) That such individual has established under oath or affirmation that the place of employment to be investigated in accordance with this section is to be inspected to determine compliance or noncompliance with the requirements of this act.

(b) Prerefusal warrant.--Upon application to the appropriate judicial authority and for good cause shown, the department may seek and obtain an inspection warrant prior to the 14-day period set forth in subsection (a) and prior to any refusal by respondent to voluntarily admit a representative of the department.

(c) Issuance and content of order.--If, upon inspection or investigation of a complaint, the department finds that a respondent has violated any requirements of this act, it shall within seven days issue to the respondent an order to comply. This order shall be in writing and shall specifically describe the nature of the violation and shall state a reasonable time period, not to exceed 90 days, within which the violation must be corrected by the employer.

(d) Civil penalties.--The department shall have authority to assess any civil penalties from $500 to $10,000 for each violation of this act, unless a greater amount is specified elsewhere in this act, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the respondent and the history of previous violations. If the violation has not been corrected within the time period, the department may levy a further civil penalty of not more than $5,000 per day for each violation. Civil penalties due under this act shall be paid to the

department for deposit into the State Treasury and may be collected by the department in a civil action brought in the appropriate court of common pleas. The penalties collected shall be used to defray the costs of the administration and enforcement of this act.

(e) Hearings.--The respondent may, in writing, request the department to provide a hearing concerning any orders to comply or penalties levied upon the employer under this section within 30 days of the respondent's receipt of notice thereof. The hearing shall be afforded in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). After the hearing, the department shall affirm, reverse or modify its original determination.

(f) Preliminary relief.--Where the department determines that reasonable cause exists to believe a violation has occurred, and that said violation may present an imminent danger to any employee or member of the public, the department shall seek a preliminary or special injunction in the appropriate court of common pleas. The courts of common pleas are hereby empowered to, and shall issue said injunctive relief upon a prima facie showing by the department of a violation and a showing by a preponderance of the evidence that an imminent danger situation is present.

(g) Interference with inspection.--Any employer or individual who willfully obstructs or impedes an authorized representative of the department from carrying out an investigation or inspection pursuant to this act or who refuses entry to an authorized representative of the department to any workplace where such inspection is authorized by a warrant, shall be assessed a civil penalty of not more than $1,000. Any

person who gives advance notice of any inspection to be conducted under this act, without authority from the department, shall be assessed a civil penalty of not more than $1,000.

Section 15. Judicial review and enforcement.

(a) Appellate review.--Any person or persons aggrieved by a final determination of the department pursuant to sections 11 and 14 may file a petition for review within 30 days of said determination in the Commonwealth Court pursuant to 42 Pa.C.S. § 763(a) (relating to direct appeals from government agencies). The decision of the department shall not be reversed or modified unless said decision is found to be arbitrary, capricious, illegal or not supported by substantial evidence.

~~(b) Original action.--Any person may bring a civil action in the appropriate court of common pleas on his own behalf against any employer or supplier for a violation of any provision of this act or any rule promulgated pursuant thereto, or may bring suit in the Commonwealth Court against the department for failure to enforce the provisions of this act or any rule promulgated pursuant thereto. Where the action involves the rights of more than one employee, any certified or recognized collective bargaining representative shall have standing to sue on behalf of said employees. The court may issue, whenever it deems appropriate, a preliminary, permanent or special injunction and award compensatory and liquidated damages, costs and expenses of litigation, including expert witness fees and reasonable attorney fees.~~ <—

(B) ORIGINAL ACTION.--ANY AGGRIEVED PERSON MAY BRING A CIVIL ACTION IN THE APPROPRIATE COURT OF COMMON PLEAS ON HIS OWN BEHALF AGAINST ANY EMPLOYER OR SUPPLIER FOR A VIOLATION OF ANY PROVISION OF THIS ACT, EXCEPT SECTION 11, OR ANY RULE <—

PROMULGATED THERETO, OR MAY BRING SUIT IN THE COMMONWEALTH COURT AGAINST THE DEPARTMENT FOR FAILURE TO ENFORCE THE PROVISIONS OF THIS ACT OR ANY RULE PROMULGATED PURSUANT THERETO. WHERE THE ACTION INVOLVES THE RIGHTS OF MORE THAN ONE EMPLOYEE, ANY CERTIFIED OR RECOGNIZED COLLECTIVE BARGAINING REPRESENTATIVE SHALL HAVE STANDING TO SUE ON BEHALF OF SAID EMPLOYEES. THE COURT MAY ISSUE, WHENEVER IT DEEMS APPROPRIATE, A PRELIMINARY, PERMANENT OR SPECIAL INJUNCTION. UNDER NO CIRCUMSTANCES MAY THIS ACT BE READ TO REQUIRE, AND UNDER NO CIRCUMSTANCES MAY A COURT AWARD, COMPENSATORY AND LIQUIDATED DAMAGES, COSTS AND EXPENSES OF LITIGATION, INCLUDING EXPERT WITNESS FEES AND REASONABLE ATTORNEY FEES.

Section 16. False statements and intentional omissions.

Any person who knowingly makes a false statement, representation or certification in any list, record or other document required to be maintained pursuant to this act or who intentionally or deliberately refrains from complying with this act shall be assessed a civil penalty of not more than $10,000, or shall be guilty of a criminal offense classed as a misdemeanor of the first degree, or both. Any employer or supplier who willfully or recklessly prepares a Material Safety Data Sheet for the purpose of withholding or falsifying relevant information concerning the nature and severity of the hazardous nature of the substance shall be assessed a civil penalty of not more than $10,000 or shall be guilty of a criminal offense classed as a misdemeanor of the first degree, or both.

Section 17. Rules and regulations.

The department shall, in the manner provided by law, promulgate such rules and regulations and provide such forms and written materials as are necessary to carry out the provisions

of this act.

SECTION 18. SPECIAL APPLICATIONS. <—

(A) EXEMPTIONS.--NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY, THE PROVISIONS OF THIS ACT SHALL NOT APPLY TO THE FOLLOWING:

(1) AN ARTICLE.

(2) PRODUCTS INTENDED FOR PERSONAL CONSUMPTION BY EMPLOYEES IN THE WORKPLACE.

(3) CONSUMER PRODUCTS PACKAGED IN CONTAINERS WHICH ARE PRIMARILY DESIGNED FOR DISTRIBUTION TO, AND USE BY, THE GENERAL PUBLIC.

(4) FOODS, DRUGS AND COSMETICS AS DEFINED IN THE FEDERAL FOOD, DRUG AND COSMETIC ACT, (21 U.S.C. § 301 ET SEQ.).

(B) RESEARCH AND DEVELOPMENT LABORATORY.--A RESEARCH AND DEVELOPMENT LABORATORY AS DEFINED IN THIS ACT SHALL NOT BE REQUIRED TO COMPLY WITH SECTIONS 3, 4, 5(B) AND (G), 6 AND 7(1). IN ADDITION, SAID RESEARCH AND DEVELOPMENT LABORATORY SHALL NOT BE REQUIRED TO DEVELOP NEW MATERIAL SAFETY DATA SHEETS FOR NEW OR EXPERIMENTAL CHEMICALS CREATED IN THE LABORATORY, BUT SHALL MAKE AVAILABLE MATERIAL SAFETY DATA SHEETS FOR CHEMICALS OTHERWISE ACQUIRED FROM MANUFACTURERS, SUPPLIERS AND IMPORTERS.

(C) HANDLING SEALED PACKAGES.--AN EMPLOYER WHICH STORES, WAREHOUSES OR TRANSPORTS SEALED PACKAGES, AND WHICH IS NOT THE MANUFACTURER, SUPPLIER OR IMPORTER OF THE CHEMICAL OR CHEMICALS CONTAINED THEREIN, SHALL NOT BE REQUIRED TO COMPLY WITH SECTIONS 3(D) AND (F), 5(E), 6 AND 7 WITH RESPECT TO SEALED PACKAGES, PROVIDED THE SEALS REMAIN INTACT WHILE THE PACKAGES ARE IN THE EMPLOYER'S POSSESSION AND CONTROL, AND SAID EMPLOYER SUBSEQUENTLY TRANSFERS POSSESSION AND CONTROL OF SAID SEALED PACKAGES TO ANOTHER PERSON WITHIN 20 DAYS. A SEALED PACKAGE MAY

BE OPENED TO EXAMINE THE CONTENTS FOR EMERGENCY OR SAFETY REASONS, AND FEDERAL AUTHORITIES MAY OPEN THE SEALED PACKAGE FOR EXAMINATION.

(D) EMPLOYERS WITHOUT EMPLOYEES.--AN EMPLOYER SHALL NOT BE REQUIRED TO COMPLY WITH THE REQUIREMENTS OF SECTIONS 3(D), 5(E), 6(A)(1) THROUGH (5), 6(B) THROUGH (G), 7 AND 8 FOR ANY PERIOD OF TIME DURING WHICH THE EMPLOYER DOES NOT HAVE ANY PRESENT EMPLOYEES.

(E) PROTECTION OF PROPRIETARY INFORMATION.--NOTHING IN THIS ACT SHALL BE CONSTRUED AS REQUIRING THE DISCLOSURE OF PROCESS OR PERCENTAGE OF MIXTURE INFORMATION WHICH IS A TRADE SECRET.

Section ~~18~~ 19. Construction of act. <—

(a) No release from liability.--Nothing in this act shall in any way relieve an employer or supplier from liability with regard to the health and safety of an employee or other persons exposed to any substances, nor shall it relieve an employer or supplier from any other duty or responsibility under any other provision of law.

(b) Construction with Federal law.--This act is to be read in conjunction with any provision of Federal law providing for the identification, labeling or providing of information concerning hazardous substances and is intended to supplement such Federal regulation in the interests of protecting the health and safety of citizens of the Commonwealth.

~~(c) Local ordinances.--This act shall not preempt or supersede any local ordinance or rule concerning the subject matter of this act, except to the extent that said local ordinance or rule directly conflicts with the provisions herein.~~ <—

(C) LOCAL ORDINANCES.--THIS ACT SHALL PREEMPT AND SUPERSEDE ANY LOCAL ORDINANCE OR RULE CONCERNING THE SUBJECT MATTER OF <—

THIS ACT.

(D) REVIEW OF PREEMPTION.--SHOULD FEDERAL GOVERNMENT PREEMPTION BE FINALLY ADJUDICATED AND RESULT IN LESSENING THE BURDEN ON ANY EMPLOYER TO MEET THE REQUIREMENTS OF THIS ACT, IT IS THE INTENT THAT THE GENERAL ASSEMBLY REEXAMINE THIS ACT SO THAT ALL EMPLOYERS HEREUNDER SHALL BE REEXAMINED AS TO REQUIREMENTS NECESSARY IN MEETING THE STANDARDS OF THIS ACT SO AS TO TREAT ALL EMPLOYERS FAIRLY AND EQUITABLY.

Section ~~19~~ 20. Severability. <——

The provisions of this act are severable. If any provision of this act or its application to any person or circumstances held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section ~~20~~ 21. Appropriation. <——

The sum of $2,900,000, or as much thereof as may be necessary, is hereby appropriated from the General Fund to the Department of ~~Health~~ LABOR AND INDUSTRY to carry out the purpose of this act. <——

~~Section 21. Emergency information.~~ <——

~~An employer, distributor or importer who has over 110 gallons or 1,000 pounds of hazardous substances within his workplace, shall inform police, fire and emergency officials of the political subdivisions in which the workplace is located of the presence of these hazardous substances and the name and telephone number of two responsible representatives of the employer (for example, manager or foreman) who can be contacted in case of an emergency. Upon request, the employer or importer shall also provide further information to these officials concerning these hazardous substances, including their average~~

~~approximate quantities, their location within the workplace and an MSDS for each hazardous substance. These police, fire and emergency officials shall also be allowed to tour any workplace during business hours so that an appropriate emergency response plan can be developed.~~

Section 22. Effective date.

(a) Section 3 shall take effect in 180 days.

(b) Sections 4(b), 5(c)(2) and (d) and 6(a)(1) and (2) shall take effect one year after the promulgation of regulations.

(c) Section 6(a)(3) and (4) shall take effect two years after the promulgation of regulations.

(d) The obligation of the department to create lists of hazardous substances and the power of the department to make rules and regulations shall take effect immediately, and the department shall mail to each employer copies of said lists within six months.

(e) The remainder of this act shall take effect in one year.