
THE GENERAL ASSEMBLY OF PENNSYLVANIA

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No. 2468

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INTRODUCED BY PITTS, LETTERMAN, RYAN, BIRMELIN, SALOOM, BLACK, BOOK, BUNT, CHADWICK, CLYMER, CORNELL, COSLETT, DAVIES, DIETZ, DISTLER, DORR, FARGO, FOSTER, FOX, GALLEN, GEIST, GODSHALL, GREENWOOD, BROUJOS, HAYES, STAIRS, E. Z. TAYLOR, HERMAN, HERSHEY, JOHNSON, KENNEDY, LANGTRY, BALDWIN, MACKOWSKI, McCLATCHY, MOEHLMANN, NAHILL, J. L. WRIGHT, VROON, NOYE, PHILLIPS, PUNT, FREIND, MERRY, BOWSER, BOYES, COY, ROBBINS, REINARD, SCHEETZ, SCHULER, SIRIANNI, D. W. SNYDER, JACKSON, SAURMAN, HONAMAN, BARLEY, FLICK, COLE, MORRIS, SHOWERS AND BRANDT, MAY 7, 1986

REFERRED TO COMMITTEE ON LABOR RELATIONS, MAY 7, 1986

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.

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

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

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

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

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

28 "Designated representative." An individual or organization
29 to whom an employee or former employee gives written
30 authorization to exercise the employee's rights under this

1 chapter. A recognized or certified collective bargaining agent
2 shall be treated automatically as a designated representative
3 without regard to written employee authorization.

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

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

16 "Employer." A nonmanufacturing employer.

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

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

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

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

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

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

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

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

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

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

29 "Mixture." A combination of two or more chemicals if the
30 combination is not, in whole or in part, the result of a

1 chemical reaction.

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

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

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

11 "Political subdivision." A county, city, borough,
12 incorporated town or township.

13 "Port." A point of access, which may be opened to the
14 environment, used for charging or discharging a system and at
15 which an employee may come into direct contact with a hazardous
16 substance under normal conditions of use.

17 "Responsible party." Someone who can provide additional
18 information on the hazardous substance and appropriate emergency
19 procedures, if necessary.

20 "Secretary." The Secretary of Labor and Industry of the
21 Commonwealth.

22 "SIC." Standard Industrial Code, as designated in the
23 Standard Industrial Classification Manual prepared by the
24 Federal Office of Management and Budget.

25 "Trade secret." A minimally novel and commercially valued
26 formula, pattern, process, device, information or compilation of
27 information (including chemical name or other unique chemical
28 identifier) that is used in an employer's business, that the
29 employer keeps secret from the public and competitors and that
30 gives the employer an opportunity to obtain an advantage over

1 competitors who do not know or use it.

2 "Use." Handle, react, process, package or repackage, or
3 transport within a plant.

4 "Work area." A room or defined space in an establishment
5 where hazardous substances are produced or used and where
6 employees are present.

7 "Workplace." An establishment at one geographical location
8 containing one or more work areas.

9 Section 203. Notice.

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

13 ATTENTION

14 THE FOLLOWING IS A LIST OF SUBSTANCES WHICH YOU MAY
15 BE EXPOSED TO DURING WORK AT THIS FACILITY WHICH ARE
16 HAZARDOUS.

17 (List of all hazardous substances present at that
18 workplace.)

19 YOU ARE ALLOWED BY LAW (ACT NO.) TO RECEIVE
20 INFORMATION CONCERNING THESE SUBSTANCES, INCLUDING
21 THEIR CHEMICAL IDENTITY AND THEIR HAZARDOUS AND TOXIC
22 PROPERTIES, FROM YOUR EMPLOYER IN THE FORM OF A
23 MATERIAL SAFETY DATA SHEET (MSDS). YOU MAY OBTAIN A
24 COPY BY MAKING A WRITTEN REQUEST TO YOUR EMPLOYER. A
25 COPY MUST ALSO BE AVAILABLE FOR REFERENCE AT YOUR
26 WORKPLACE. THIS AND ADDITIONAL INFORMATION MAY ALSO
27 BE OBTAINED BY CALLING THE DEPARTMENT OF LABOR AND
28 INDUSTRY AT (TELEPHONE NO.) OR THE FEDERAL
29 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AT
30 (TELEPHONE NO.). IN ADDITION YOUR EMPLOYER IS

1 REQUIRED TO PROVIDE TRAINING CONCERNING THE HAZARDOUS
2 SUBSTANCES WITH WHICH YOU WORK; TO LABEL CONTAINERS
3 OF THESE SUBSTANCES; AND TO PROVIDE, UPON WRITTEN
4 REQUEST, THE CHEMICAL IDENTITY AND MAKEUP OF ANY
5 CHEMICAL SUBSTANCE WITH WHICH YOU WORK. IF YOU FEEL
6 YOUR EMPLOYER IS NOT DOING SO YOU SHOULD CALL YOUR
7 LOCAL DEPARTMENT OF LABOR AND INDUSTRY OFFICE.

8 NOTE: SIMPLY BECAUSE A SUBSTANCE IS NOT COVERED
9 UNDER THIS ACT DOES NOT MEAN THAT IT IS SAFE IN ALL
10 CIRCUMSTANCES. ALL CHEMICALS, NO MATTER WHAT THEIR
11 SUSPECTED HEALTH EFFECTS, SHOULD BE HANDLED IN A SAFE
12 AND CONSCIENTIOUS MANNER.

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

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

28 (d) Inspection.--The list of hazardous substances required
29 by subsection (a) shall be made available to the department upon
30 request.

(e) Retention.--The list of hazardous substances required by subsection (a) shall be maintained by the employer for 30 years. Complete records shall be sent to the secretary if a business ceases to operate within this Commonwealth.

Section 204. Materials.

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

Section 205. Material safety data sheets.

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

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

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

(d) Availability.--Upon request, copies of material safety data sheets, as well as the list of hazardous substances used in 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. Labeling.

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

9 (b) Immediate use.--

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

14 (2) If a nonmanufacturing employer transfers a hazardous
15 substance into an unlabeled storage container, the
16 nonmanufacturing employer shall label, tag or mark that
17 container with a hazard warning and the substance's identity.
18 The nonmanufacturing employer may call upon the chemical
19 manufacturer, distributor or importer for assistance in
20 complying with this paragraph.

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

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

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

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

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

6 (2) A food, food additive, color additive, drug or
7 cosmetic, including materials intended for use as ingredients
8 in such products (for example, flavors and fragrances), as
9 such terms are defined in the Federal, Food, Drug and
10 Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.) and
11 regulations issued under that act when they are subject to
12 the labeling requirements of that act and labeling
13 regulations issued under that act by the Food and Drug
14 Administration.

15 (3) Distilled spirits (beverage alcohols), wine or malt
16 beverage intended for nonindustrial use, as such terms are
17 defined in the Federal Alcohol Administration Act (49 Stat.
18 977, 27 U.S.C. § 201 et seq.) and regulations issued under
19 that act when subject to the labeling requirements of that
20 act and labeling regulations issued under that act by the
21 Bureau of Alcohol, Tobacco and Firearms.

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

29 Section 207. Protection of employees.

30 (a) Punitive action prohibited.--No person may discharge or

1 discriminate against an employee because the employee has filed
2 a complaint under this chapter, has instituted or caused to be
3 instituted a proceeding under this chapter, has testified or is
4 about to testify in a proceeding under this act or has exercised
5 on behalf of the employee or others a right afforded by this
6 act.

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

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

24 Section 208. Employee training.

25 (a) Employers.--Employers shall provide employees with
26 information and training on hazardous substances in their work
27 area at the time of their initial assignment; whenever a new
28 hazard is introduced into their work area; and at regular
29 intervals throughout the employees' employment, at least once
30 every year. During this training program, employees shall be

1 informed of:

2 (1) The requirements of this act.

3 (2) Operations in the work area where hazardous
4 substances are present.

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

7 (4) Methods and observations the employee may use to
8 detect the presence or release of a hazardous substance in
9 the work area.

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

12 (6) The measures employees can take to protect
13 themselves from the hazards, including specific procedures
14 the employer has implemented to protect employees from
15 exposure to hazardous substances, such as appropriate work
16 practices, emergency procedures and personal protective
17 equipment to be used.

18 (7) The details of the hazard communication program
19 developed by the employer, including an explanation of the
20 labeling system and the MSDS and how employees can obtain and
21 use the appropriate hazard information.

22 (b) Department.--As part of its outreach program, the
23 department shall develop and maintain an education and training
24 assistance program to aid employers who, because of size or
25 other practical considerations, are unable to develop programs
26 by themselves. The program shall be available to employers on
27 request.

28 Section 209. Powers and duties of department.

29 (a) Inspections.--For purposes of enforcement of this
30 chapter, officers and employees of the department, with written

1 notice and upon presentation of credentials to the employer,
2 shall have the right of entry into a workplace at reasonable
3 times to inspect within reasonable limits and in a reasonable
4 manner.

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

8 (c) Notices.--The department shall notify employers of their
9 rights and responsibilities under this chapter by first class
10 mailing to all affected employers.

11 Section 210. Trade secrets.

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

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

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

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

23 (4) The specific chemical identity is made available to
24 health professionals, employees and designated
25 representatives in accordance with the applicable provisions
26 of this section.

27 (b) Emergencies.--Where a physician or nurse treating an
28 employee determines that a medical emergency exists and the
29 specific chemical identity of a hazardous substance is necessary
30 for emergency or first aid treatment, the nonmanufacturing

1 employer shall immediately disclose the specific chemical
2 identity of a trade secret substance to that treating physician
3 or nurse regardless of the existence of a written statement of
4 need or a confidentiality agreement. The nonmanufacturing
5 employer may require a written statement of need and
6 confidentiality agreement under subsections (c) and (d) as soon
7 as circumstances permit.

8 (c) Nonemergencies.--In nonemergency situations, an employer
9 shall, upon request, disclose a specific chemical identity
10 otherwise permitted to be withheld under subsection (a) to a
11 health professional providing services to exposed employees and
12 to employees and designated representatives if:

13 (1) The request is in writing.

14 (2) The request describes with reasonable detail one or
15 more of the following occupational health needs for the
16 information:

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

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

21 (iii) To conduct preassignment or periodic medical
22 surveillance of exposed employees.

23 (iv) To provide medical treatment to exposed
24 employees.

25 (v) To select or assess appropriate personal
26 protective equipment for exposed employees.

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

29 (vii) To conduct studies to determine the health
30 effects of exposure.

1 (3) The request explains in detail why the disclosure of
2 the specific chemical identity is essential and that, in lieu
3 of the disclosure of the specific chemical identity, the
4 disclosure of the following information would not enable the
5 health professional, employee or designated representative to
6 meet the occupational health needs described in paragraph
7 (2):

8 (i) Properties and effects of the chemical.

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

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

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

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

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

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

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

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

8 (3) May not include requirements for the posting of a
9 penalty bond.

10 (e) Other remedies.--Nothing in this chapter precludes the
11 parties from pursuing noncontractual remedies to the extent
12 permitted by law.

13 (f) Notice to provider.--If the health professional,
14 employee or designated representative receiving the trade secret
15 information decides that there is a need to disclose it to the
16 Department of Health, the department, or OSHA, the employer who
17 provided the information shall be informed prior to, or at the
18 same time as, the disclosure.

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

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

24 (2) Be in writing.

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

27 (4) State the specific reasons why the request is being
28 denied.

29 (5) Indicate any alternatives the chemical manufacturer,
30 distributor, importer or employer may wish to suggest to

1 satisfy the specific medical, occupational health, or public
2 health need without revealing the specific chemical identity.

3 (h) Department consideration.--

4 (1) The health professional, employee or designated
5 representative whose request for information is denied under
6 subsection (c) may refer the request and the written denial
7 of the request to the department for consideration.

8 (2) When a health professional, employee or designated
9 representative refers the denial to the department, the
10 department shall consider the evidence to determine if:

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

13 (ii) The health professional, employee or designated
14 representative has supported the claim that there is a
15 medical, occupational health, or real and immediate
16 public health need for the information.

17 (iii) The health professional, employee or
18 designated representative has demonstrated adequate means
19 to protect the confidentiality.

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

30 (4) If a chemical manufacturer, importer or employer

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

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

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

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

Section 211. Complaints and investigations.

(a) Procedure.--An employee or a representative of employees who believes that there is a violation by the employees' employer of this chapter may request an inspection by filing a complaint of the violation with the department. The complaint

1 shall be in writing, shall be signed and shall set forth with
2 reasonable particularity the grounds for the complaint. Within a
3 reasonable period of time after receipt of the complaint, the
4 department shall notify the employer of the complaint in writing
5 by certified mail and permit the employer to demonstrate
6 compliance with this chapter. If compliance has not been
7 demonstrated to the satisfaction of the department within 14
8 days of the mailing of the notification, an employee of the
9 department shall inspect, at reasonable times, the employer's
10 workplace and conditions pertinent to the grounds of the
11 complaint and shall, in a reasonable manner, make additional
12 investigation deemed necessary for the determination of the
13 employer's compliance with this chapter. If an agent or employee
14 of the department proceeding under this section is denied
15 admission to a place of employment, the agent or employee may
16 apply for a search warrant to a Commonwealth judicial officer
17 authorized to issue a search warrant for the purposes of
18 inspecting or examining a property, building, premise, place,
19 book, record or other physical evidence; of conducting tests; or
20 of taking samples of a chemical. The warrant shall be issued
21 upon probable cause. It shall be sufficient probable cause to
22 show any of the following:

23 (1) The inspection, examination, test or sampling is
24 pursuant to a general administrative plan to determine
25 compliance with this chapter.

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

28 (3) The agent or employee has been refused access to the
29 property, building, premises, place, book, record or physical
30 evidence or has been prevented from conducting tests or

1 taking samples.

2 (b) Discretion of department.--The department shall have
3 authority to assess civil penalties provided in this section,
4 giving due consideration to the appropriateness of the penalty
5 with respect to the size of the business of the employer being
6 charged, the gravity of the violation, the good faith of the
7 employer and the history of previous violations.

8 (c) Disposition of penalties.--Civil penalties owed under
9 this section shall be paid to the department for deposit into
10 the State Treasury and may be recovered in a civil action
11 brought in the court of common pleas for the judicial district
12 where the violation is alleged to have occurred or where the
13 employer had a principal office. The penalties collected shall
14 be used to defray the costs of enforcement of this section.

15 Section 212. Compliance order and penalties.

16 (a) Issuance and content of order.--If, upon inspection or
17 investigation of a complaint, the department finds that an
18 employer has violated this chapter, it shall, with reasonable
19 promptness, issue to the employer an order to comply. This order
20 shall be in writing, shall be sent by certified mail, shall
21 specifically describe the nature of the violation and shall
22 state a reasonable time period within which the violation must
23 be corrected by the employer.

24 (b) Public nuisance.--A violation of this chapter or a,
25 regulation or an order of the department under this chapter
26 constitutes a public nuisance.

27 (c) Enforcement orders.--The department may issue orders to
28 persons as it deems necessary to aid in the enforcement of this
29 chapter. An order issued under this chapter shall take effect
30 upon notice unless the order specifies otherwise. An appeal to

1 the Environmental Hearing Board shall not act as a supersedeas.
2 The power of the department to issue an order under this chapter
3 is in addition to any other remedy which may be afforded to the
4 department under this act or any other statute.

5 (d) Duty to comply with orders of the department.--It shall
6 be the duty of a person to proceed diligently to comply with any
7 order issued under subsection (c). If the person fails to
8 proceed diligently, or fails to comply with the order within the
9 time, if any, specified, the department may enforce the order in
10 Commonwealth Court under 42 Pa.C.S. § 761(a)(2) (relating to
11 original jurisdiction).

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

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

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

24 (h) Criminal penalty.--An employer who repeatedly violates a
25 requirement for which a civil penalty has been assessed, an
26 employer who fails to provide information required under section
27 210(b) or a person who intentionally discloses information
28 claimed as a trade secret except as authorized by section 210 or
29 nondisclosure agreements executed under section 210 commits a
30 misdemeanor of the second degree and shall, upon conviction, be

1 sentenced to pay a fine of not more than \$20,000 or to undergo a
2 term of imprisonment of not more than two years, or both.

3 Section 213. Exemptions.

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

6 (1) Employers shall ensure that existing labels on
7 incoming containers of hazardous substances are not removed
8 or defaced.

9 (2) Employers shall maintain material safety data sheets
10 that are received with incoming shipments of hazardous
11 substances and ensure they are accessible to laboratory
12 employees.

13 (3) Employers shall ensure that laboratory employees are
14 apprised of the hazards of the substances in their workplaces
15 under section 208.

16 (4) Employers are subject to sections 211 and 212.

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

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

21 (2) A hazardous waste as defined in section 103 of the
22 act of July 7, 1980 (P.L.380, No.97), known as the Solid
23 Waste Management Act.

24 (3) Tobacco or tobacco products.

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

26 (5) An article.

27 Section 214. Construction.

28 The provision of information to an employee shall not affect
29 the liability of an employer with regard to the health and
30 safety of an employee or other persons exposed to hazardous

1 substances, nor shall it affect the employer's responsibility to
2 take an action to prevent the occurrence of occupational disease
3 as required under any other provision of law. The provision of
4 information to an employee shall not affect any other duty or
5 responsibility of a manufacturer, producer or formulator to warn
6 ultimate users of a hazardous substance under any other
7 provision of law.

8 Section 215. Preemption.

9 (a) Local action.--It is the intent of the General Assembly
10 that the program established by this chapter for the disclosure
11 of information concerning hazardous substances to employees
12 constitutes the principal program in this Commonwealth. To this
13 end, no political subdivision may enact an ordinance requiring
14 the disclosure of information or the identification of hazardous
15 substances in the workplace or the environment. This act
16 preempts local ordinances or rules concerning the subject matter
17 of this chapter.

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

22 Section 216. Relationship to OSHA Standard.

23 (a) Mandatory compliance.--Manufacturing employers,
24 distributors and importers that are regulated by and complying
25 with the provisions of the OSHA Standard shall be exempt from
26 the provisions of this chapter except sections 203(d) and (e),
27 205(b) and (d), 206(d) and 207.

28 (b) Voluntary compliance.--Nonmanufacturing employers that
29 adopt and comply with the provisions of the OSHA Standard may be
30 certified by the secretary as in compliance with this chapter.

1 This subsection does not apply to section 203(d) or (e), 205(b)
2 or (d) or 207.

3 Section 217. Waiver.

4 A waiver by an endorsee of a benefit or provision of this
5 chapter shall be void as against public policy. An employer who
6 requests or requires a waiver violates this act and shall be
7 subject to section 212.

8 CHAPTER 3

9 COMMUNITY

10 Section 301. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) A potential danger exists to the general public when
13 hazardous substances normally contained within a workplace
14 become environmental hazards because they are released into
15 the environment through accidental release or must be handled
16 in emergency situations.

17 (2) Employers within this Commonwealth whose businesses
18 require the use of hazardous substances have a duty to inform
19 local emergency personnel and political subdivision officials
20 of the presence and dangers posed by these hazardous
21 substances so that proper action can be taken should an
22 emergency occur.

23 (3) It is the duty of the Commonwealth to organize in a
24 fast, efficient manner a hazardous substance communication
25 network so that public officials and the general public can
26 obtain available information concerning hazardous substances
27 found in the workplace which might be emitted from the
28 workplace.

29 Section 302. Definitions.

30 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Department." The Department of Labor and Industry of the
4 Commonwealth.

5 "Employer." Any individual, partnership, corporation or
6 association doing business in this Commonwealth. The term
7 includes the Commonwealth and political subdivisions and
8 officers, boards, commissions, agencies, authorities or
9 instrumentalities of the Commonwealth or a political
10 subdivision.

11 "Environmental hazard." A hazardous substance defined by
12 this section.

13 "Hazardous substance."

14 (1) A substance:

15 (i) contained in the United States Department of
16 Transportation Hazardous Materials List;

17 (ii) contained in the Federal Occupational Safety
18 and Health Standard, 29 C.F.R. Part 1910, Subpart Z,
19 Toxic and Hazardous Substances, General Industry
20 Standards, Occupational Safety and Health Administration;

21 (iii) contained in the list of Threshold Limit
22 Values for Chemical Substances and Physical Agents in the
23 Work Environment, American Conference of Governmental
24 Industrial Hygienists (Latest Edition); or

25 (iv) listed as a carcinogen by:

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

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

30 (C) the Federal Occupational Safety and Health

Standard, 29 C.F.R. Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

(2) A mixture:

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

(ii) containing 0.1% or greater, by weight or volume, of a substance listed under paragraph (1)(iv).

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

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

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

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

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

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

"PEMA." The Pennsylvania Emergency Management Agency.

"Trade secret." A minimally novel and commercially valued formula, pattern, process, device, information or compilation of

1 information (including chemical name or other unique chemical
2 identifier) that is used in an employer's business, that the
3 employer keeps secret from the public and competitors and that
4 gives the employer an opportunity to obtain an advantage over
5 competitors who do not know or use it.

6 Section 303. Emergency information.

7 (a) Notification of officials.--An employer who has
8 hazardous substances within the employer's workplace shall
9 inform police, fire and emergency officials of the political
10 subdivision in which the workplace is located of the presence of
11 these hazardous substances and the name and telephone number of
12 two responsible representatives of the employer, such as manager
13 or foreman, who can be contacted in case of an emergency. Upon
14 request, the employer shall also provide further information to
15 these officials concerning these hazardous substances, including
16 a list of hazardous substances present at the workplace, their
17 average approximate quantities, their location within the
18 workplace and an MSDS for each hazardous substance. These
19 police, fire and emergency officials shall also be allowed to
20 tour a workplace during business hours so that an appropriate
21 emergency response plan can be developed.

22 (b) Trade secrets.--Trade secret information may be withheld
23 from emergency personnel in accordance with section 306.

24 Section 304. Obligations of employers.

25 (a) Lists.--Employers shall provide to the department a list
26 of all hazardous substances present within the workplace upon
27 request.

28 (b) Material safety data sheets.--Employers shall provide
29 material data safety sheets to the department for each hazardous
30 substance found in their workplace.

1 Section 305. Powers and duties of department.

2 (a) Public information.--

3 (1) The department may publicize information containing
4 descriptions of the toxic effects and the circumstances under
5 which these effects are produced for hazardous substances
6 found in a workplace. The department shall prepare this
7 information in a clear and coherent manner, using words with
8 common and everyday meanings.

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

12 (i) Assure that information concerning the possible
13 violation of this chapter or another environmental
14 statute or regulation is forwarded to the appropriate
15 officials so that proper action is taken.

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

28 (iii) Upon request by members of the general public
29 who live in proximity to the workplace of the employer,
30 obtain from that employer and provide to the requestor

1 copies of the hazardous substance lists and material
2 safety data sheets concerning these substances.

3 (iv) Publicize the information services described in
4 this subsection. This publicity shall include a telephone
5 number which members of the general public may use to
6 access the information provided under this subsection.

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

10 Section 306. Trade secrets.

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

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

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

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

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

24 (b) Emergencies.--In the case of a public health emergency
25 where the name of a hazardous substance is required immediately
26 for proper emergency action, the employer shall immediately
27 disclose the name of a trade secret substance to emergency
28 personnel, public health officials and representatives of
29 political subdivisions upon the direction of the Director of
30 PEMA or the director's designated representative. The director

1 shall reach a decision only after contacting the employer and
2 political subdivision representatives, if possible. The employer
3 may require a written statement of need and a confidentiality
4 agreement under subsections (c) and (d) as soon as circumstances
5 permit.

6 (c) Nonemergencies.--In nonemergency situations, an employer
7 shall, upon request, disclose a specific chemical identity which
8 is otherwise permitted to be withheld under subsection (a) to a
9 health professional or group of health professionals
10 representing a public health organization of a political
11 subdivision which organization has been approved by the
12 Department of Health as a legitimate public health organization
13 or to a health professional or group of health professionals
14 representing the Department of Health if:

15 (1) The request is in writing.

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

19 (3) The request explains in detail why the disclosure of
20 the specific chemical identity is essential and that, in lieu
21 of the disclosure, the following information would not enable
22 the health professional or group of health professionals to
23 meet the public health needs described in paragraph (2):

24 (i) Properties and effects of the chemical.

25 (ii) Measures for controlling the public's exposure
26 to the chemical.

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

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

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

4 (5) The members of the public health organization which
5 receives the trade secret information agree in a written
6 confidentiality agreement not to use the trade secret
7 information for a purpose other than the public health needs
8 asserted under paragraph (2) and agree not to release the
9 information other than to OSHA, the Department of Health or
10 the department as provided in subsection (f) except as
11 authorized by the terms of the agreement or by the
12 manufacturer, importer or employer.

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

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

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

20 (3) May not include requirements for the posting of a
21 penalty bond.

22 (e) Other remedies.--Nothing in this act precludes the
23 parties from pursuing noncontractual remedies to the extent
24 permitted by law.

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

30 (g) Denial.--If the employer denies a written request for

disclosure of a specific chemical identity, the denial shall:

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

(2) Be in writing.

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

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

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

(h) Department consideration.--

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

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

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

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

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

(3) The department shall order the employer to release the withheld information if the department determines that the specific chemical identity requested under subsection (c) is not a bona fide trade secret or that it is a trade secret

1 but the requesting health professional has a legitimate
2 public health need for the information, has executed a
3 written confidentiality agreement, and has shown adequate
4 means for complying with the terms of the agreement.

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

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

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

21 Section 307. Construction.

22 The provision of information to a public official or to the
23 public shall not affect the liability of an employer with regard
24 to the health and safety of persons exposed to hazardous
25 substances.

26 Section 308. Preemption.

27 It is the intent of the General Assembly that the program
28 established by this chapter for the disclosure of information
29 concerning hazardous substances to the public constitutes the
30 principal program in this Commonwealth. To this end, no

1 political subdivision may enact an ordinance requiring the
2 disclosure of information or the identification of hazardous
3 substances in the workplace or the environment. This chapter
4 preempts local ordinances or rules concerning the subject matter
5 of this chapter.

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, 1986, to June 30, 1987, 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. Effective date.

18 This act shall take effect in 90 days.