

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 2412(16 Del.C. §2412)  
16 DE Admin. Code 4456

### FINAL

#### 4456 Hazardous Chemical Act

### ORDER

The Department of Health and Social Services (hereinafter "Department") was established to extend general supervision of the interests of the health and lives of the people of the State of Delaware.

The Department was previously authorized by 16 **Del.C.** §2412 to promulgate regulations to ensure that information regarding hazardous chemicals is accessible to employees who may be exposed to such chemicals in the workplace and to emergency service organizations whose members may be exposed to such chemical hazards during emergency situations.

This regulation was intended to address comprehensively the issue of communicating chemical hazards to employees in the non-manufacturing sector as well as the manufacturing sector until such time as the OSHA Hazard Communication Standard took effect. The State of Delaware 4456 Hazardous Chemical Act regulations are now over 25 years old and duplicate OSHA requirements to which employers must comply. Therefore, all regulations previously promulgated by the Department are hereby **repealed**.

Pursuant to 29 **Del.C.** §10113(b)(5), no public hearing or period of public comment is required for amendments to existing regulations to make them consistent with changes in basic law.

The Department **repealed** the attached amendments on July 15, 2013.

#### Summary of the Evidence and Information Submitted

No period of public comment is required for Amendments to existing regulations to make them consistent with changes in basic law. 29 **Del.C.** §10113(b)(5).

#### Findings of Fact

**WHEREAS**, the Department was previously charged with the regulation of the Hazardous Chemical Act;

**WHEREAS**, the regulations are now over 25 years old and duplicate OSHA requirements to which employers must comply;

**NOW, THEREFORE**, in consideration of these premises, and with the authority in 29 **Del.C.** §10113(b)(5), the Department hereby **repeals** the attached regulations.

#### Decision and Effective Date

The Department hereby adopts the proposed **repeal** of the regulations to be effective 10 days following final publication of this order in the Delaware *Register of Regulations*.

#### Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the repeal. This order is expected to appear in the Delaware *Register of Regulations*, Volume 17 Issue 2, August 1, 2013.

**IT IS SO ORDERED** this 15<sup>th</sup> day of July, 2013 by the Secretary of the Department of Health and Social Services.

Rita M. Landgraf, Secretary

#### 4456 Hazardous Chemical Act

#### 4.0 Preamble

~~These Regulations Are Adopted By The State Board Of Health Pursuant To The Authority Invested In The Board By 16 **Del.C.** 122 (1), (3) (B) And (J), And 16 **Del.C.** 2412. The Purpose Of These Regulations Is To Ensure That Information Regarding Hazardous Chemicals Is Accessible To Employees Who May Be Exposed To Such Chemicals In The Workplace And To Emergency Service Organizations Whose Members May Be Exposed To Such Chemical Hazards During Emergency Situations. This Regulation Is Intended To Address Comprehensively The Issue Of Communicating Chemical Hazards To Employees In The Non-manufacturing~~

Sector As Well As The Manufacturing Sector Until Such Time As The OSHA Hazard Communication Standard Takes Effect.

## 2.0 Severability

If Any Provision Or Application Of Any Provision Of These Regulations Is Held Invalid, That Invalidity Shall Not Affect Other Provisions Or Applications Of These Regulations.

## 3.0 Definitions

**"Act"** means the Hazardous Chemical Information Act as stated in 16 ~~Del.C.~~ Ch. 24.

**"Agricultural Employer"** means an employer with a workplace classified in Standard Industrial Classification (SIC) Codes 01 through 08.

**"Article"** means a manufactured item:

- Which is formed to a specific shape or design during manufacture;
  - Which has end use function (s) 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.
- "Carcinogen"** A chemical is considered to be a carcinogen if:
- It has been evaluated by the International Agency for Research on Cancer (IARC), and found to be a carcinogen or potential carcinogen; or
  - It is listed as a carcinogen or potential carcinogen in the Annual Report on Carcinogens by the National Toxicology Program (latest edition); or
  - It is regulated by OSHA as a carcinogen.

**"Chemical Manufacturer"** means an employer in Standard Industrial Classification (SIC) Codes 20 through 39 with a workplace where chemicals are produced for use or distribution.

**"Chemical Name"** means 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 (CAS) rules of nomenclature or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

**"Combustible Liquid"** means any liquid having a flash point at or above 100° F (38.8 C), but below 200° F (93.3° C), except any mixture having components with flash points of 200° F (93.3° C), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

**"Common Name"** means any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

**"Compressed Gas"** means:

- A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70° F (21.1° C); or
- A gas or mixture of gases having in a container, an absolute pressure exceeding 104 psi at 130° F (54.4° C) regardless of the pressure at 70° F (21.1° C); or
- A liquid having a vapor pressure exceeding 40 psi at 100° F (37.8° C) as determined by American Society for Testing and Materials (ASTM) D 323-72.

**"Container"** means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel storage tank, or the like that contains a hazardous chemical. For purposes of this Act, pipes or piping systems are not considered to be containers.

**"Corrosive"** A chemical that causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. For example, a chemical is considered to be corrosive if, when tested on the intact skin of albino rabbits by the method described by the U.S. Department of Transportation in Appendix A to 49 CFR Part 173, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of four hours.

**"Designated Representative"** means the individual or organization to whom an employee gives written authorization to exercise such employee's rights under this chapter. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

**"Distributor"** means any business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to purchasers.

**"Employee"** means any person who may be exposed to hazardous chemicals in his or her workplace under normal operating conditions or foreseeable emergencies. Office workers, ground maintenance, security personnel or nonresident management are not included unless their job performance routinely involves potential exposure to hazardous chemicals. For the purposes of this chapter, "employee" includes persons working for the State of Delaware and its political subdivisions, as well as members of volunteer emergency service organizations.

**"Employer"** means any individual, corporation, or association engaged in a business in Delaware that has employees, including the State and its political subdivisions. This term does not include persons who hire domestic workers or casual workers for their place of residence.

**"Explosive"** means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

**"Expose or Exposure"** means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes potential (e.g., accidental or possible) exposure.

**"Flammable"** means a chemical that falls into one of the following categories:

**"Aerosol Flammable"** means an aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

**"Gas, Flammable"** means:

- A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent by volume or less; or
- A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit.

**"Liquid Flammable"** means any liquid having a flash point below 100° F (37.8° C), except any mixture having components with flash points of 100° F (37.8° C) or higher, the total of which make up 99 percent or more of the total volume of the mixture.

**"Solid, Flammable"** means a solid, other than a blasting agent or explosive as defined in 29 CFR 1910.109(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

**"Flash Point"** means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

- Tagliabue Closed Tester (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79) for liquids with a viscosity of less than 45 Say bolt Universal Seconds (SS) at 100° F (37.8° C), that do not contain suspended solids, or that have a tendency to form a surface film under tests; or
- Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79) for liquids with a viscosity equal to or greater than 45 SUS at 100° F (37.8° C), or that contains suspended solids, or that have a tendency to form a surface film under tests; or
- Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78).
- Organic peroxides which undergo auto-accelerating thermal decomposition, are excluded from any of the flash point determination methods specified above.

**"Foreseeable Emergency"** means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which could result in an uncontrolled release of a hazardous chemical into the workplace.

**"Hazard Warning"** means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the hazards of the chemical (s) in the container (s).

**"Hazardous Chemical"** means any element, chemical compound or mixture of elements and/or compounds which is a physical hazard or health hazard.

**"Health Hazard"** means a chemical which is a carcinogen, toxic, highly toxic, an irritant, a corrosive, a sensitizer, a reproductive toxin (teratogen or mutagen), or affects a target organ such as the liver, kidney, eye, or skin, or an organ system such as the blood, or nervous system.

**"Highly Toxic"** A chemical falling within any of the following categories:

- A chemical that has a median lethal dose (LD 50) of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each;
- A chemical that has a median lethal dose (LD 50) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each; or
- A chemical that has a median lethal concentration (LC 50) in air of 200 parts per million by volume or less of gas or vapor, or 2 milligrams per liter or less of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

**"Identity"** means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross references to be made among the required Workplace Chemical List, the label and the MSDS.

**"Importer"** means the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or manufacturing purchasers within the United States.

**"Irritant"** A chemical, which is not corrosive, but which causes a reversible inflammatory effect on living tissue by chemical action at the site of contact. A chemical is a skin irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for four hours exposure or by other appropriate techniques, it results in an empirical score of five or more. A chemical is an eye irritant if so determined under the procedure listed in 16 CFR 1500.42 or other appropriate techniques.

**"Label"** means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

**"Manufacturing Employer"** means an employer with a workplace classified in SIC Codes 20 through 39 who manufactures or uses a hazardous chemical.

**"Material Safety Data Sheet (MSDS)"** means a document containing chemical hazard and safe handling information, provided that, after November requirements of the OSHA Standard for such document contained in 29 CFR 1910.1200 (g).

**"Mixture"** means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.

**"Non-manufacturing Employer"** means an employer with a workplace in a SIC Code other than 20 through 39, the State of Delaware, its political subdivisions, and all volunteer emergency service organizations.

**"OSHA Standard"** means the Hazard Communication Standard issued by the Occupational Safety and Health Administration (OSHA) in Title 29 Code of Federal Regulations (CFR) Part 1910.1200 as published in the Federal Register Vol. 48, No. 228 dated November 25, 1983.

**"Organic Peroxide"** means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

**"Oxidizer"** means a chemical other than a blasting agent or explosive as defined in 29 CFR 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

**"Physical Hazard"** means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

**"Produce"** means to manufacture, process, formulate, or repackage.

**"Pyrophoric"** means a chemical that will ignite spontaneously in air at a temperature of 130 F (54.4° C) or below.

**"Responsible Party"** means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

**"Retail Food Sale Establishments"** means a business classified in SIC Code 54 through 58.

**"Retail Trade Establishments"** means a business classified in SIC Code 52 through 59.

**"Secretary"** means the Secretary of the Department of Health and Social Services of the State of Delaware.

**"Sensitizer"** A chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

**"Specific Chemical Identity"** means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

**"Technically Qualified Individual"** means a person who, because of education, training, or experience, understands the health risks associated with hazardous chemicals, and is familiar with the protective procedures to be followed in the use and handling of such substances.

**"Toxic"** A chemical falling within any of the following categories:

- A chemical that has a median lethal dose (LD 50) of more than 50 milligrams per kilogram, but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each;
- A chemical that has a median lethal dose (LD 50) of more than 200 milligrams per kilogram, but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each;
- A chemical that has a median lethal concentration (LC 50) in air of more than 200 parts per million, but no more than 2,000 parts per million by volume of gas or vapor, or more than two milligrams per liter, but no more than 20 milligrams per liter of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

**"Trade Secret"** means any confidential formula, pattern, process, device, information or compilation of information (including chemical name or other unique chemical identifier) that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

**"Unstable (reactive)"** means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self reactive under conditions of shocks, pressure, or temperature.

**"Use"** means to package, handle, react, or transfer.

**"Water reactive"** means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

**"Work Area"** means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

**"Workplace Chemical List"** means the list of hazardous chemicals developed pursuant to Section 2.400 of these regulations.

**"Workplace"** means an establishment at one geographical location containing one or more work areas.

## **General Provisions**

### **4.0 Scope and Applications**

#### **4.1 Scope**

- 4.1.1 Chemical manufacturers or importers are required by the OSHA Hazard Communication Standard (29 CFR 1910.1200(d) to assess the hazards of chemicals which they produce or import by November 25, 1985. Distributors must transmit all information on hazardous chemicals received from manufacturers and available, but no later than November 25, 1985. All employers are required to provide information to their employees about the hazardous chemicals to which they are exposed by means of posters, labels and other forms of warning, material safety data sheets (MSDS) and training.
- 4.1.2 Employees who may be exposed to hazardous chemicals are guaranteed certain rights as specified in 16 Del.C. 2415 of the Delaware Code.
- 4.1.3 Compliance with the provisions of the Act shall not affect the liability of an employer with regard to the health and safety of employees or other persons exposed to hazardous chemicals, nor the employer's responsibility to take action to prevent occupational disease as may be required under any provision of law. Furthermore, providing information to an employee shall not affect the responsibility of a manufacturer, producer or formulator to warn the ultimate users of a hazardous chemical under any other provision of law.

#### **4.2 Application**

- 4.2.1 These regulations apply to any hazardous chemical which is known to be present in the workplace in such a way that employees may be exposed under normal conditions of use or in a foreseeable emergency or to which Emergency Service Organization personnel may be exposed in an emergency at the workplace.
- 4.2.2 These regulations apply to all non-manufacturing employers. Those non-manufacturing employers that adopt and comply with the OSHA Standard may be certified in compliance with these regulations except

for Sections 5.3 and 5.4; 7.4, 7.7 and 7.8; and 8.2.4 and 8.2.5 by submitting a written request to the Bureau of Environmental Health.

- 4.2.3 ~~These regulations apply to all manufacturing employers, importers and distributors until such time as the OSHA Standard goes into effect. Once in compliance with the OSHA Standard, manufacturers, importers and distributors regulated by OSHA will be exempt from these regulations except for Sections 5.3 and 5.4; 6.2.1, 8.1.3 and 8.1.4; and 8.2.4 and 8.2.5.~~
- 4.2.4 ~~These regulations do not apply to the chemicals used in laboratories (research and development, commercial, and academic) provided that:~~
  - 4.2.4.1 ~~The laboratory is under the direct supervision or guidance of a technically qualified individual;~~
  - 4.2.4.2 ~~Labels on containers of incoming chemicals are not removed or defaced.~~
  - 4.2.4.3 ~~MSDS's received are maintained and kept readily accessible to employees and students;~~
  - 4.2.4.4 ~~Employees and students are informed of the hazards of the chemicals in the laboratory in accordance with Section 9.0.~~
  - 4.2.4.5 ~~A notice is posted informing employees and students of their rights under the act~~
  - 4.2.4.6 ~~The laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes.~~
  - 4.2.4.7 ~~The laboratory provides the Emergency Information specified in 5.3 and 5.4.~~
- 4.2.5 ~~These regulations do not apply to chemicals in the following:~~
  - 4.2.5.1 ~~Any manufactured article.~~
  - 4.2.5.2 ~~Food, drugs or cosmetics intended for personal consumption.~~
  - 4.2.5.3 ~~Retail food establishments.~~
  - 4.2.5.4 ~~Retail trade establishments except for repair and processing areas.~~
  - 4.2.5.5 ~~A workplace where hazardous chemicals are received in sealed packages and are kept less than five working days in the sealed package in which they are received provided that the following provisions are satisfied:~~
    - 4.2.5.5.1 ~~The Fire Chief with jurisdiction over the workplace and the Bureau of Environmental Health, Division of Public Health are provided in writing with the name(s) and telephone number(s) of a knowledgeable representative (s) of the company who can be contacted in an emergency; and,~~
    - 4.2.5.5.2 ~~An employee education program is established according to the requirements of Section 9.0 of these regulations.~~
  - 4.2.5.6 ~~Any food, food additive, color additive, drug or cosmetic as defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et. seq.) and regulations issued under the Act.~~
  - 4.2.5.7 ~~Any distilled spirits (beverage alcohol's), wine or malt beverage intended for non-industrial use as defined in the Federal Alcohol Administration Act (27 U.S.C. et seq.) and regulations issued under the Act.~~
  - 4.2.5.8 ~~The workplace of an agricultural employer or employer group provided the Secretary of the Department of Agriculture certifies that the chemicals are covered by regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act (40 CFR parts 162-180) or chemical not covered by the above laws or regulations are covered by these regulations.~~
  - 4.2.5.9 ~~Consumer products packaged for distribution to, and use by the general public. This includes any product purchased by an employer and used by an employee in the same physical form, concentration, and manner as used by consumers, and to which, in the employer's knowledge, when used according to the manufacturers instructions the employee exposure is not significantly greater than that of the consumer in the foreseeable consumer uses of the product.~~

## **5.0 Hazard Communication**

- 5.1 ~~All employers shall establish by January 1, 1986 a hazard communication program for their workplaces which shall include the following:~~
  - 5.1.1 ~~A poster informing employees of their rights under the Act (to be posted July 1, 1985);~~
  - 5.1.2 ~~The method the employer will use to ensure that all hazardous chemicals will be properly labeled-~~
  - 5.1.3 ~~An employee education and training program (to be started on July 1, 1985);~~
  - 5.1.4 ~~The method an employer and a contractor will use to exchange information on any hazardous chemical their respective employees may be exposed to while performing their work and any suggestions for appropriate protective measures.~~

- 5.2 In addition to the above items, employers that use hazardous chemicals in quantities which exceed 55 gallons or 500 pounds (in aggregate quantity), employers shall also provide the following:
- 5.2.1 To employees:
    - 5.2.1.1 A Workplace chemical List;
    - 5.2.1.2 An MSDS file for each chemical listed on the Workplace Chemical List;
  - 5.2.2 To the Fire Chief with jurisdiction over the workplace the following:
    - 5.2.2.1 In writing, after January 1, 1985, the name(s) and telephone number(s) of responsible company representative(s) who can be contacted in the event of an emergency at the workplace, and shall update this information in writing at least annually;
    - 5.2.2.2 A copy of the Workplace Place List if requested after January 1, 1986;
    - 5.2.2.3 A copy of the MSDS for each chemical on the Workplace Chemical List if requested after January 1, 1986; and,
    - 5.2.2.4 Permission for an on-site inspection of the work areas where the hazardous chemicals are used, produced, or stored after January 1, 1986.
- 5.3 By January 1, 1986, employers shall provide in writing to the Bureau of Environmental Health, Division of Public Health the name(s) who can be contacted in the event of an emergency at the workplace and shall update this information in writing at least annually.
- 5.4 Employers may rely on an existing hazard communication program designed to meet the OSHA Standard to comply with these regulations.

## **6.0 Labels and Other Forms of Warning**

- 6.1 Chemical Manufacturers, Importers and Distributors
- 6.1.1 Chemical manufacturers, importers or distributors shall ensure that each container of hazardous chemical sold for use in Delaware after November 25, 1985 is labeled, tagged or marked with at least the following information:
    - 6.1.1.1 The identity of the hazardous chemical(s) which may be readily cross-referenced with the MSDS.
    - 6.1.1.2 Appropriate hazard warnings.
    - 6.1.1.3 The name and address of the chemical manufacturer, importer or other responsible party.
- 6.2 Employers
- 6.2.1 Employers who use or store hazardous chemicals shall ensure that after November 25, 1985 incoming containers of hazardous chemicals are labeled, tagged or marked with at least the following information:
    - 6.2.1.1 The identity of the hazardous chemicals which may be readily cross-referenced with the Workplace Chemical List and MSDS;
    - 6.2.1.2 Appropriate hazard warnings;
    - 6.2.1.3 The name and address of the chemical manufacturer, importer or other responsible party.
  - 6.2.2 Employers shall ensure that labels or other forms of warning provided on incoming containers are not removed or defaced.
  - 6.2.3 Employers may substitute a labeling or marking system of their choice for a hazardous chemical container as long as it provides the information specified in 6.1.1 and is permanently displayed on the container.
  - 6.2.4 Employers may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials instead of labels on stationary process containers. The alternative method must:
    - 6.2.4.1 Identify the specific containers to which the warning is applicable.
    - 6.2.4.2 Contain the information specified in 6.1.1.
    - 6.2.4.3 Must be immediately available in the work area to employees during all work shifts.
  - 6.2.5 Employers shall not require employees to work with hazardous chemicals from an unlabeled container, unless the container is a portable container which will be used during the work shift by the employee who actually performs the transfer of the hazardous chemical from a labeled container to the unlabeled portable container.
  - 6.2.6 Labels or other forms of warning shall be legible and in English. Employers having employees who speak languages other than English may add the information required in Section 6.1.1 in their language.

## **7.0 Workplace Chemical List**

- 7.1 Employers must review all chemicals used in the workplace for the existence of a hazard warning. If a warning of a health or physical hazard accompanies the chemical, it is considered hazardous for the purposes of this section.
- 7.2 Employers shall compile and maintain a Workplace Chemical List which shall contain the following information for each hazardous chemical used, handled or stored in the workplace in aggregate quantities which exceed 55 gallons or 500 pounds:
  - 7.2.1 The chemical name, the common name, or the CAS Number used on the MSDS and container label.
  - 7.2.2 The work area(s) in which the hazardous chemical is normally stored or used
- 7.3 The list may be prepared for individual work areas or the work place as a whole.
- 7.4 The employer must update the Workplace Chemical List at least annually and maintain the list for 30 years. In the event the business ceases to operate within the state, complete records shall be sent to the Bureau of Environmental Health, Division of Public Health.
- 7.5 The Workplace Chemical List must be readily accessible to employees and/or their representatives within the work area or in an area accessible to employees without the prior permission of the employer.
- 7.6 The employer shall make the Workplace Chemical List available to new or newly assigned employees prior to them working in any work area containing hazardous chemicals.
- 7.7 Employers shall provide a copy of the Workplace Chemical List to the Bureau of Environmental Health, Division of Public Health immediately upon request in an emergency or within five working days of a written request in a non-emergency situation.
- 7.8 The employer must provide a copy of the Workplace Chemical List to the Fire Chief with jurisdiction over the workplace immediately upon request in an emergency situation or within five working days of such a request in non-emergency situations.

## **8.0 Material Safety Data Sheets**

- 8.1 **Manufacturers, Distributors and Importers**
  - 8.1.1 manufacturers, distributors and imports shall provide Delaware manufacturing and non-manufacturing purchasers of hazardous chemicals the most current MSDS for each hazardous chemical purchased.
  - 8.1.2 The most current MSDS shall be provided to each purchaser prior to or at the time of the initial shipment after January 1, 1985 and with the first shipment after an MSDS has been updated.
  - 8.1.3 Each MSDS shall be in English and after November 25, 1985 contain at least the information required by the OSHA Standard in 29 CFR 1910.1200 (g) (2).
  - 8.1.4 Employers shall provide to Bureau of Environmental Health, Division of Public Health with a copy of any MSDS immediately upon request in an emergency or within five days of a written request in a non-emergency situation.
- 8.2 **Employers**
  - 8.2.1 Employers shall maintain a file of the most current MSDS's received from manufacturers, distributors, or importers for each chemical on the Workplace Chemical List.
  - 8.2.2 Employers shall request in writing from the appropriate manufacturer, distributor, or importer any MSDS which they are required to maintain, but has not been provided to or at the time of shipment of the hazardous chemical.
  - 8.2.3 MSDS's shall be readily accessible to employees or their designated representatives in the work area.
    - 8.2.3.1 MSDS must be kept in the work area where practical.
    - 8.2.3.2 Where it is not feasible to maintain an MSDS file in the work area, a copy of the MSDS requested by employees or their designated representatives shall be supplied within 2 working days of the request.
  - 8.2.4 Employers shall provide to Bureau of Environmental Health, Division of Public Health a copy of an MSDS for each hazardous chemical listed on the Workplace Chemical List immediately upon request in an emergency or within five working days of a written request in a non-emergency situation.
  - 8.2.5 Employers shall provide a copy of an MSDS for each hazardous chemical on the Workplace Chemical List to the local Fire Chief with jurisdiction over the workplace immediately upon request in an emergency or within five working days in a non-emergency situation.

## **9.0 Employee Training**

- 9.1 **Scope and Applicability**

- 9.1.1 Employers must provide a training program on hazardous chemicals to all employees who use or handle hazardous chemicals or who may be exposed in a foreseeable emergency. The reportable limit of 55 gallons or 500 pounds does not apply to the training requirement; therefore, all hazardous chemicals in the employee's work area must be covered.
- 9.1.2 Employers shall develop their own program or if eligible utilize the program or materials made available by the Right-To-Know Information Office.
- 9.1.3 Employers shall provide this program to employees during working hours or after hours with compensation.
- 9.1.4 The program shall be provided upon hire for new employees, Yukon reassignment for newly assigned employees and at least annually for all employees.
  - 9.1.4.1 All employees shall be provided with the program before January 1, 1986.
  - 9.1.4.2 Additional instruction shall be given whenever the potential for exposure is altered or new and significant information concerning the hazards of the chemical is received by the employer.

## 9.2 Content

- 9.2.1 Employee training shall include at least the following:
  - 9.2.1.1 An explanation of the contents and requirements of the Act and these Regulations.
  - 9.2.1.2 An explanation of the rights of an employee under the Act.
  - 9.2.1.3 The location, availability and content of the workplace chemical list.
  - 9.2.1.4 Inform employees of the location of hazardous chemical containers in the work area to which they are assigned. Employees assigned to more than one work area or plant-wide must be informed of each location of hazardous chemical containers.
  - 9.2.1.5 An explanation of how to read labels on incoming containers, and the labeling system to be used by the employer in the work place if different from that used on incoming containers.
  - 9.2.1.6 The location, availability and content of material safety data sheets and an explanation of how they are related to the workplace Chemical List and labels.
  - 9.2.1.7 A general overview of occupational health principles covering such things as exposure, dose, risk, and safe exposure levels.
  - 9.2.1.8 An explanation of the nature of health and physical hazards associated with the use of all hazardous chemicals (regardless of quantity) to which they may be exposed while in their work area to include:
    - 9.2.1.8.1 Areas to be covered should include, physical hazard, routes of entry, acute and chronic affects of over exposure, symptoms of over exposure, safe levels of exposure as established by OSHA, NIOSH, ACGIH, or the employer; and,
    - 9.2.1.8.2 Instruction may be given for each individual hazardous chemical or for groups of hazardous chemicals with similar health and safety risks or properties.
  - 9.2.1.9 An explanation of the proper handling, storage and disposal methods for each of the hazardous chemicals present in the work area. Areas to be covered should include at least:
    - 9.2.1.9.1 Measures taken by the employer to prevent or control exposure such as engineering controls, personal protective equipment, process changes, air monitoring, medical surveillance, emergency procedures for spills or leaks, how and where to dispose of wastes; and,
    - 9.2.1.9.2 Measures an employee shall take to prevent or control exposure such as engineering controls, personal protective equipment supplied by the employer, personal hygiene practices, and observations that may be used to detect the presence or release of a hazardous chemical.
  - 9.2.1.10 Literature or training materials provided by the manufacturer of the hazardous chemicals or the Right-To-Know Information Office may be provided to employees to satisfy the requirements of 9.2.1.7 and 9.2.1.8.
- 9.3 Records. Employers shall keep records of training sessions given to employees to include dates, names of employees present, signatures of employees, and content of training.

## 10.0 Protection of Trade Secrets

- 10.1 The specific chemical identity of a hazardous chemical may be withheld from disclosure under requirements of Section 2.200 (c) (2) and (3), 7.2 and 7.8, and 8.2.5 provided:
  - 10.1.1 The claim that the information withheld is a trade secret can be supported;
  - 10.1.2 MSDS'S are available to employees in the work area;
  - 10.1.3 Information on properties and hazards is provided to the Fire Chief when requested.

- 10.1.4 Specific chemical identity and other relevant information is provided to health professionals diagnosing and treating an employee exposed to the chemical in accordance with the provisions listed in Section 10.2.
- 10.2 Where a treating health professional determines that a medical emergency exists and the specific chemical identity of a hazardous chemical identity of the trade secret chemical shall be immediately disclosed to the health professional. A written statement of need and a confidentiality agreement may be requested of the health professional as soon as circumstances permit.
- 10.3 In non-emergency situations, the specific chemical identity of a hazardous chemical shall be disclosed to a health professional providing medical or other occupational health professional as soon as circumstances permit.
- 10.3.1 The request is in writing;
- 10.3.2 The request describes in detail the occupational health needs for the information;
- 10.3.3 The request explains in detail why the disclosure of the specific chemical identity is essential and why information on control measures; monitoring and analysis methods; and diagnosis and treatment methods would not satisfy the occupational health needs described in 10.3.2 above;
- 10.3.4 The request includes a description of how the disclosed information will remain confidential; and
- 10.3.5 The health professional, and the employer or contractor of the health professional's services agree in a written confidentiality agreement that the trade secret information will not be used for any other purpose than those stated in the request. The information will not be released under any circumstance, other than to OSHA or Bureau of Environmental Health, Division of Public Health except as authorized by the terms of the agreement.
- 10.4 The confidentiality agreement authorized in 10.3.5 of this section:
- 10.4.1 May restrict the use of the information to the health purposes indicated in the written statement of need.
- 10.4.2 May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of damages; and,
- 10.4.3 May not include requirements for the posting of a penalty bond.
- 10.5 If the health professional receiving the trade secret information decides that there is need to disclose it to OSHA or Bureau of Environmental Health, Division of Public Health, the provider of the information shall be informed by the health professional prior to, or at the same time of the disclosure to OSHA or Bureau of Environmental Health, Division of Public Health.
- 10.6 A denial of a request for trade secret information must be:
- 10.6.1 Delivered to the health professional within 30 days of the request;
- 10.6.2 In writing;
- 10.6.3 Supported by evidence as to the validity of the trade secret claim for the specific identity of the hazardous chemical;
- 10.6.4 Specific as to why the request is being denied; and,
- 10.6.5 Develop and maintain a training assistance program to aid employers who because of size or other practical reason cannot develop such a program themselves.
- 10.7 The health professional whose request for the information is denied may refer the request and written denial of the request to Bureau of Environmental Health, Division of Public Health for consideration.

### **Administrative And Enforcement Practices**

#### **11.0 Administration**

- 11.1 Right-To-Know Information Office
- 11.1.1 The Right-To-Know Information Office within the Bureau of Environmental Health, Division of Public Health will administer the Outreach Program mandated by the Act.
- 11.1.2 The responsibilities of the office include, but are limited to the following:
- 11.1.2.1 Produce and distribute a suitable poster for informing employees of their rights under the Act;
- 11.1.2.2 Develop and distribute printed materials explaining the duties of employers, employees rights, and the effects of hazardous chemicals;
- 11.1.2.3 Publicize the existence of the Act and the services offered by the Right To Know Information Office;
- 11.1.2.4 Provide guidelines for employee training programs;
- 11.1.2.5 Develop and maintain a training assistance program to aid employers who because of size or other practical reason cannot develop such a program themselves.

~~11.1.2.5.1 This program shall consist at a minimum of literature or other training materials which can be distributed to employees by the employer.~~

~~11.1.2.5.2 The Right-To-Know Information Office will provide up to 25 copies of any titles of printed material to an employer free of charge. For requests in excess of 25 copies, the employer will be charged a fee equal to the cost of the material to the State plus the postage.~~

~~11.1.2.6 The Right-To-Know Information Office will place printed materials as well as audio-visual materials in at least one library in each county in the State for use by employers, employees, and citizens of Delaware.~~

~~11.1.3 The Right-To-Know Information Office is required by 16 **Del.C.** 2414(e) of the Act to respond to requests for information about hazardous chemicals from the citizens of Delaware.~~

~~11.1.3.1 A citizen of Delaware wishing general information on specific hazardous chemicals may contact the Right-To-Know Information Office by telephone or in writing to request the information.~~

~~11.1.3.2 A citizen of Delaware wanting specific information (such as a Workplace Chemical List or MSDS'S) on the hazardous chemicals used or stored by a specific employer must make the request in writing. These requests must include the following:~~

~~11.1.3.2.1 The name affiliation (if any), address and telephone number of the requester;~~

~~11.1.3.2.2 The specific information requested.~~

~~11.1.3.2.3 A description of the need for the information.~~

~~11.1.3.3 On receiving a written request for a Workplace Chemical List or MSDS for a specific manufacturer, importer, distributor or employer, Bureau of Environmental Health, Division of Public Health shall contact the company and obtain a copy of the information requested. The copy shall be sent within 5 working days of the request.~~

~~11.1.3.3.1 If trade secret information is included in the request, Bureau of Environmental Health, Division of Public Health may decide to request the manufacturer, importer or employer at that time to substantiate the trade secret claim in accordance with section 11.2.~~

~~11.1.3.3.2 If no trade secret information is included in the request, Bureau of Environmental Health, Division of Public Health, at its discretion, shall provide a copy of the material, or access to facilities to copy the information. For documents in excess of 20 pages, Bureau of Environmental Health, division of Public Health will charge the requester a fee equal to its non-labor cost to copy the material.~~

~~11.1.3.4 Bureau of Environmental Health, Division of Public Health reserves the right to refuse requests which are felt to be unreasonable because of the quantity or scope of the material requested.~~

## ~~11.2 Trade Secret Claims~~

~~11.2.1 Bureau of Environmental Health, Division of Public Health will evaluate the validity of a trade secret claim when a request is made by an employee, employee representative, Fire Chief or when Bureau of Environmental Health, Division of Public Health determines it is appropriate.~~

~~11.2.2 When a request is made by Bureau of Environmental Health, Division of Public Health, the response shall be made in writing and shall contain at least the following:~~

~~11.2.2.1 Product name;~~

~~11.2.2.2 Uses;~~

~~11.2.2.3 Name, address and telephone number of the organization requesting trade secret protection;~~

~~11.2.2.4 Name and title of an individual who may be contacted about the claim;~~

~~11.2.2.5 Identification of items to be protected by the claim and the reasons for protecting them; and,~~

~~11.2.2.6 A signed statement that the information to be protected by the request is already registered as a trade secret under a specific provision of federal law, or if not already registered, the information is related to a proprietary process which if disclosed would compromise the competitive position of the manufacturer, importer, or employer.~~

~~11.2.3 The manufacturer, importer, or employer will be given 30 days to respond to the request.~~

~~11.2.4 The manufacturer, importer, or employer shall have 30 days after notification in writing by Bureau of Environmental Health, Division of Public Health that a trade secret claim is not valid to request an administrative hearing on the determination. Such hearings shall be held in a manner similar to that provided in 29 **Del.C.** 101.~~

~~11.2.5 Bureau of Environmental Health, Division of Public Health may revoke an approved trade secrets claim if new information on the validity of the claim is received and accepted. In the event of a revocation, Section 11.4 shall apply as if the claim were rejected.~~

- 11.2.6 Any failure of a manufacturer, importer, or employer to provide the information requested by Bureau of Environmental Health, Division of Public Health shall be considered grounds for denial of the trade secret claim.
- 11.2.7 All documents submitted to Bureau of Environmental Health, Division of Public Health as part of the trade secret claim verification procedure shall be considered confidential and will be protected from disclosure provided all information to be protected is marked by the word "CONFIDENTIAL" in bold type or stamp.
- 11.2.8 All documents submitted to Bureau of Environmental Health, Division of Public Health as part of the trade secret claim verification procedure which have been marked by the word "CONFIDENTIAL" in bold type or stamp will be returned at the conclusion of the verification process.

## **12.0 Enforcement**

### **12.1 Inspections and Surveys**

- 12.1.1 After January 1, 1986, the Bureau of Environmental Health, Division of Public Health shall regularly visit the workplaces of employers to assess compliance with the Act.
- 12.1.2 Employers shall permit during normal operating hours representatives of Bureau of Environmental Health, Division of Public Health to enter any workplace to inspect individual work areas and any records related to compliance with the Act. Items to be inspected shall include at a minimum the following:
  - 12.1.2.1 Location of Posters;
  - 12.1.2.2 Workplace Chemical List;
  - 12.1.2.3 Container Labeling;
  - 12.1.2.4 MSDS file;
  - 12.1.2.5 Training program content and records;
  - 12.1.2.6 Documentation that emergency contact information has been sent to local Fire chief;
  - 12.1.2.7 Any other documentation deemed necessary to determine compliance with the Act.
- 12.1.3 A compliance survey questionnaire will be distributed at least annually after January 1, 1986 by Bureau of Environmental Health, Division of Public Health to a sample of employers covered by Delaware's unemployment insurance law. This survey will be used to estimate overall level of compliance with the Act.
  - 12.1.3.1 The questionnaire shall be completed by the employer, signed by a responsible company official certifying the truthfulness of the information provided, and returned to Bureau of Environmental Health, Division of Public Health within 30 days of receipt.
  - 12.1.3.2 Failure to return the completed survey form to Bureau of Environmental Health, Division of Public Health within the time specified in 12.1.3.1 above shall result in an inspection of the workplace and compliance records.
  - 12.1.3.3 Bureau of Environmental Health, Division of Public Health will publish the results of the compliance survey annually no later than 90 days after the date the survey forms are due to be returned.

### **12.2 Complaints, Investigations, Hearings, and Penalties**

- 12.2.1 Written complaints from employees or their designated representatives relating to alleged violations of the Act by employers shall be investigated by Bureau of Environmental Health, Division of Public Health within 10 working days of the receipt of the written complaint.
  - 12.2.1.1 Complaints from employees of manufacturing employers will be handled by Bureau of Environmental Health, Division of Public Health, until the OSHA Standard becomes fully effective on May 25, 1986. After this time, these complaints will be referred to OSHA for investigation.
  - 12.2.1.2 All complaints from employees of non-manufacturing employers shall be handled by Bureau of Environmental Health, Division of Public Health.
- 12.2.2 Employers shall permit during normal operating hours representatives of Bureau of Environmental Health, Division of Public Health, representative must present prior credentials and written notice to the employer at the time of the inspection or investigation.
- 12.2.3 Employers found to be in violation of the Act after an investigation by Bureau of Environmental Health, Division of Public Health shall be notified by certified mail, return receipt requested, and will have 14 days from the date of receipt of the notice of violation to comply, present a reasonable schedule for compliance, or request an administrative hearing.
  - 12.2.3.1 A citable violation of the Act is defined as each incidence of non-compliance found during an inspection or investigation, or the failure by an employer to submit requested information to Bureau of Environmental Health, Division of Public Health or the local fire chief within the times specified in Sections 7.7 and 7.8, and 8.2.4 and 8.2.5.

~~12.2.3.2 An employer may request an administrative hearing of the violation determination, if such request is made in writing within 10 days of receipt of the notice of violation. The hearing will be conducted in accordance with agency procedures.~~

~~12.2.3.3 Each case decision shall be incorporated in a final order which shall include where appropriate:~~

~~12.2.3.3.1A brief summary of the evidence;~~

~~12.2.3.3.2The findings of fact based upon the evidence;~~

~~12.2.3.3.3The conclusions of law;~~

~~12.2.3.3.4A concise statement of the agencies determination or action in the case.~~

~~12.2.4 Employers who do not comply or present a reasonable schedule to Bureau of Environmental Health, Division of Public Health, for compliance shall be subject to a fine of not more than \$500 per violation.~~

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