

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 489
HOUSE BILL 649

AN ACT TO MAKE CERTAIN AMENDMENTS TO THE RIGHT TO KNOW ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-174(i) reads as rewritten:

"(i) ~~'Fire Company' shall mean the company or firehouse or other administrative unit within the Fire Department located closest to the facility.~~"

Sec. 2. G.S.95-174(r) reads as rewritten:

"(r) 'NCOSHA Standard' shall mean the currently adopted Hazard Communication Standard adopted by the Occupational Safety and Health Division of North Carolina Department of Labor in 13 North Carolina Administrative Code 7C .0101(a)(99) ~~and in effect on April 24, 1985, as amended.~~"

Sec. 3. G.S. 95-191 reads as rewritten:

"§ 95-191. **Hazardous Substance List.**—(a) All employers who manufacture, process, use, store, or produce hazardous chemicals, shall compile and maintain a Hazardous Substance List which shall contain the following information for each hazardous chemical ~~normally used or stored~~ in the facility in quantities of 55 gallons or 500 pounds, whichever is greater:

- (1) The chemical name or the common name used on the MSDS or container label;
- (2) ~~The approximate range of quantity of the chemical usually stored at the facility~~ The maximum amount of the chemical stored at the facility at any time during a year, using the following ranges:

Class A, which shall include quantities of less than 55 gallons or 500 pounds;

Class B, which shall include quantities of between 55 gallons to 550 gallons, and quantities of between 500 pounds and 5,000 pounds; and

Class C, which shall include quantities of between 550 gallons and 5500 gallons, and quantities between 5,000 pounds and 50,000 pounds; and

Class D, which shall include quantities of greater than 5500 gallons or 50,000 pounds; and

- (3) The area in the facility in which the hazardous chemical is normally stored and to what extent the chemical may be stored at altered temperature or pressure.

(b) The Hazardous Substance List shall be updated quarterly if necessary, but not less often than annually; however, if a chemical is deleted from, or added to, the Hazardous Substance List, or if the quantity changes sufficiently to cause the chemical to be in a different class as defined in subsection (a) of this section, the employer shall

update the Hazardous Substance List to reflect those changes as soon as practicable, but in any event within 30 days of such change.

(b1) In lieu of the information required by subdivisions (a)(1) through (a)(3), employers may substitute the information specified in section 312(d)(2) of the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499.

(c) The Hazardous Substance List may be prepared for the facility as a whole, or for each area in a facility where hazardous chemicals are stored, at the option of the employer but shall include only chemicals used or stored in North Carolina."

Sec. 4. G.S. 95-194(a) reads as rewritten:

"(a) An employer who normally stores at a facility any hazardous chemical in an amount of at least 55 gallons or 500 pounds, whichever is greater, shall provide the Fire Chief of the Fire Department having jurisdiction over the facility, in writing, (i) the name(s) and telephone number(s) of knowledgeable representative(s) of the employer who can be contacted for further information or in case of an emergency, ~~(ii) in municipalities with populations of less than 10,000 advise him of the availability of the Hazardous Substance List upon written request, and (iii) in municipalities with populations of 10,000 or more, and~~ (ii) a copy of the Hazardous Substance List."

Sec. 5. G.S. 95-194(b) reads as rewritten:

"(b) Each employer shall provide a copy of the Hazardous Substance List to the Fire Chief, ~~in accordance with the provisions of G.S. 95-194(a).~~ The employer shall notify the Fire Chief in writing of any updates that occur in the previously submitted Hazardous Substance List as provided in G.S. 95-191(b)."

Sec. 6. G.S. 95-194(f) reads as rewritten:

"(f) The Fire Chief shall, ~~in consultation with the employer,~~ make information from the Hazardous Substance List, the emergency response plan, and MSDS's available to members of the ~~Fire Company~~ Fire Department having jurisdiction over the facility and to personnel responsible for preplanning emergency response, police, medical or fire activities, but shall not otherwise distribute or disclose (or allow the disclosure of) information not available to the public under G.S. 95-208. Such persons receiving such information shall not disclose the information received and shall use such information only for the purpose of preplanning emergency response, police, medical or fire activities."

Sec. 7. G.S. 95-195 reads as rewritten:

"§ 95-195. Complaints, investigations, penalties.—(a) Complaints of violations of this Part shall be filed in writing with the Commissioner of Labor. Such complaints received in writing from any Fire Chief relating to alleged violations of this Part shall be investigated in a timely manner by the Commissioner of Labor or his designated representative.

(b) Duly designated representatives of the Commissioner of Labor, upon presentation of appropriate credentials to the employer, shall have the right of entry into any facility at reasonable times to inspect and investigate complaints within reasonable limits, and in a reasonable manner. Following the investigation, the Commissioner shall make appropriate findings. Either the employer or the person complaining of a violation may request an administrative hearing pursuant to Chapter 150B of the General

Statutes. This request for an administrative hearing shall be submitted to the Commissioner of Labor within 14 days following the Commissioner making his findings. The Commissioner shall within 30 days of receiving the request hold an administrative hearing in accordance with Article 3 of Chapter 150B of the General Statutes."

(c) ~~Employers found to be in violation of this Article shall be given 14 days following receipt of written notification of the violation to comply. If the Commissioner of Labor finds that the employer violated this Article, the Commissioner shall order the employer to comply within 14 days following receipt of written notification of the violation.~~ Employers not complying within 14 days following receipt of written notification of a violation shall be subject to civil penalties of not more than one thousand dollars (\$1,000) per violation imposed by the Commissioner of Labor, ~~after a hearing and an opportunity to be heard.~~ There shall be a separate offense for each day the violation continues.

(d) Any order by the Commissioner under subsection (b) or (c) of this section shall be subject to judicial review as provided under Article 4 of Chapter 150B of the General Statutes."

Sec. 8. G.S. 95-216 reads as rewritten:

"**§ 95-216. Exemptions.**—Notwithstanding any language to the contrary, the provisions of this Article shall not apply to chemicals in or on the following:

(1) Hazardous substances while being transported in interstate commerce into or through this State;

(2) Products intended for personal consumption by employees in the facilities;

(3) Retail food sale establishments and all other retail trade establishments in Standard Industrial Classification Codes 53 through 59, exclusive of processing and repair areas, except that the employer must comply with the provisions of G.S. 95-194(a)(i);

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

(5) A laboratory under the direct supervision or guidance of a technically qualified individual provided that:

a. Labels on containers of incoming chemicals shall not be removed or defaced;

b. MSDS's received by the laboratory shall be maintained and made accessible to employees and students;

c. The laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes; and

d. ~~The laboratory is an independent operation not affiliated with a manufacturing or nonmanufacturing facility and the operator complies with the provisions of G.S. 95-194(a) (i);~~

(6) Any farming operation which employs 10 or fewer full-time employees, except that if any hazardous chemical in an amount in excess of 55 gallons or 500 pounds, whichever is greater, is normally stored at the farming operation, the employer must comply with the provisions of G.S. 95-194(a) (i); and

- (7) Any distilled spirits, tobacco, and untreated wood products; and
- (8) Medicines used directly in patient care in health care facilities and health care facility laboratories ~~are exempt from this Article.~~"

Sec. 9. G.S. 95-217 reads as rewritten:

"§ 95-217. Preemption of local regulations.—It is the intent of the General Assembly to prescribe this uniform system for the disclosure of information regarding the use or storage of hazardous chemicals. To that end, all units of local government in the State are preempted from exercising their powers to require disclosure, directly or indirectly, of information regarding the use or storage of hazardous chemicals by employers to any members of the public, or to any branch or agent of State or local government in any manner other than as provided for in this Article. This section does not preempt the enforcement of the provisions of any nationally recognized fire code that may be adopted by a unit of local government."

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1987.