

LEXSTAT N.Y. CITY ADMIN. CODE 24-703

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ADMINISTRATIVE CODE OF THE CITY OF NEW YORK
Title 24: ENVIRONMENTAL PROTECTION AND UTILITIES
Chapter 7: COMMUNITY RIGHT-TO-KNOW LAW

NYC Administrative Code § 24-701

§ 24-701 Short title.

This chapter shall be known and may be cited as the "New York city community right-to-know law."

HISTORICAL NOTES:

Footnote:

*|(Chapter added L.L. 26/1988 § -6, see note below.)
Section added L.L. 26/1988 § 6

§ 24-702 Definitions.

For the purpose of this chapter the following terms shall mean:

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

(b) "citywide facility inventory database": a compendium of information filed by responsible parties with the department in accordance with this chapter regarding the location of hazardous substances.

(c) "commissioner": the commissioner of the department of environmental protection.

(d) "department": the department of environmental protection.

(e) "disposal": the placing of any hazardous substance into any land or water so that such hazardous substances or any constituent thereof may be released into the environment.

(f) "emergency response agencies": the departments of fire, police, environmental protection, health, transportation and sanitation, and the division of emergency medical services of the health and hospitals corporation.

(g) "emergency response personnel": any member of the departments of fire, police, environmental protection, health, transportation and sanitation, the division of emergency services of health and hospitals corporation and any other government agency participating in response measures undertaken in connection with a fire, or a spill, or release or threatened release of a hazardous substance into the environment. For purposes of this chapter, the term "response measures" shall include actions taken by a city agency within the meaning of subdivision (f) of section 24-603.

(h) "extremely hazardous substance": a substance on a list of extremely hazardous substances promulgated pursuant to 42 U.S.C. section 11002 (a).

(i) "facility": all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned, leased or operated by the same person, or by any person which controls, or is controlled by or under common control with, such person, including any building, structure, installation or area involved in the processing, storage, handling, treatment, placement, disposal or use of any hazardous substance.

(j) "facility inventory form": a standard written form, developed by the department for completion by a responsible party at each privately or publicly owned facility in the city of New York.

(k) "hazardous substance": any chemical which is a physical hazard or a health hazard and which is listed on the hazardous substance list or special health hazard list. For purposes of this chapter, the term "hazardous substance" shall not include the following: (1) any food, food additive, color additive, drug, or cosmetic regulated by the federal food and drug administration; (2) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use; (3) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public; (4) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer; (5) any hazardous waste as such term is defined by the solid waste disposal act, as amended by the resource conservation and recovery act of nineteen hundred seventy-six, as amended (42 U.S.C. section 6901, et seq.); (6) tobacco or tobacco products; (7) wood or wood products; (8) articles, which for purposes of this subdivision shall mean manufactured items which (i) are formed to a specific shape or design during manufacture; (ii) which have an end use function or functions dependent in whole or in part upon their shape or design during end use; and (iii) which do not release, or otherwise result in exposure to, a hazardous substance, under normal conditions of use; (9) food, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers; (10) foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace; (11) any consumer product or hazardous substance, as those terms are defined in the consumer product safety act (15 U.S.C. section 2051, et seq.) and federal hazardous substances act (15 U.S.C. section 1261, et seq.) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use

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results in a duration and frequency of exposure which is not greater than exposures experienced by consumers; or (12) any drug, as that term is defined in the federal food, drug, and cosmetic act (*21 U.S.C. section 301*, et seq.), when it is in solid, final form for direct administration to a patient.

(=+=+=+=+=+=+=+=+=+1) "hazardous substance list": a list of hazardous substances which the commissioner shall by regulation establish in accordance with section 24-703 of this chapter. The commissioner shall at the minimum include on the original list, those hazardous substances contained on the following existing list of dangerous substances: the New Jersey Right to Know, Hazardous Substance List developed pursuant to the Worker and Community Right to Know Act (New Jersey Administrative Code, stat. 34:5A-1 et seq.) as in effect in December of nineteen hundred eighty-seven.

(m) "health hazard": a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed persons. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes.

(n) "material safety data sheet" (MSDS): written or printed material concerning a hazardous substance which is identical in form and content to the data sheet described at 29 C.F.R. part 1910.1200 and required under subdivision (a) of section three hundred eleven of the emergency planning and community right-to-know act of nineteen hundred eighty-six (*42 U.S.C. section 11001*, et seq.).

(o) "mixture": a combination of two or more substances not involving a chemical reaction.

(p) "person": any individual, trust, firm, partnership, corporation, joint stock company, association, joint venture or government entity.

(q) "physical hazard": 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.

(r) "regulated toxic substance": a substance on a list of regulated toxic substances promulgated pursuant to *42 U.S.C. section 7412* (r).

(s) "responsible party": an owner, operator, manager, or corporate officer of the person who owns, leases or operates a facility, provided that if such facility is leased, the responsible party shall be the lessee of the facility or his or her representative.

(t) "risk management plan": a plan filed by a responsible party with the commissioner pursuant to section 24-718 of this chapter.

(u) "special health hazard list": a list of hazardous substances that the commissioner may develop through regulation which would consist of substances that have been proven to be carcinogenic, mutagenic or teratogenic, as established by at least one study conducted in accordance with established scientific principles, and thereby pose a special hazard to health and safety.

(v) "treatment": any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous substance so as to neutralize such substance or so as to render such substance nonhazardous, safe to transport, amendable to recovery, amendable to storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of a hazardous substance so as to render it nonhazardous.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

Subd. (f) added L.L. 92/1993 § 2, eff. Dec. 1, 1993.

Subd. (g) relettered L.L. 92/1993 § 2, eff. Dec. 1, 1993. (formerly subd

(f))

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Subd. (h) added L.L. 92/1993 § 2, eff. Dec. 1, 1993.

Subds. (i)-(q) relettered L.L. 92/1993 § 2, eff. Dec. 1, 1993. (formerly

subds (g)-(o))

Subd. (r) added L.L. 92/1993 § 2, eff. Dec. 1, 1993.

Subd. (s) relettered L.L. 92/1993 § 2, eff. Dec. 1, 1993. (formerly subd.

(p))

Subd. (t) added L.L. 92/1993 § 2, eff. Dec. 1, 1993.

Subds. (u), (v) relettered L.L. 92/1993 § 2, eff. Dec. 1, 1993 (formerly

subds. (q), (r))

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§ 24-703 Hazardous substance list.

The commissioner by regulation shall develop a list of hazardous substances, complying with the requirements of section 24-702(=+=+=+=+=+=+=+=+=+j) of this chapter, within six months from enactment of this section provided that if the commissioner determines that any substance on the required base list, as established by section 24-702(=+=+=+=+=+=+=+=+=+j) of this chapter, should not be placed on the final promulgated list, then the commissioner shall submit a written statement to the council indicating the reason why an amendment is necessary, at least sixty days before the date the list is to take effect. The council may within thirty days following receipt of the commissioner's statement requesting an amendment either: (i) approve or disapprove such amendment or (ii) determine that an additional ten days is needed to study such amendment by the adoption of an appropriate resolution. Upon approval by the council, such amendment shall take effect immediately. If the council disapproves such amendment, the commissioner shall not be precluded from resubmitting such amendment to the council at a later date. If the council does not approve or disapprove such amendment within such thirty day period, such amendment shall take effect on the thirty-first day after submission to the council unless the council had determined by resolution that an additional ten days is needed to study such amendment, in which case, the amendment shall take effect on the forty-first day after such submission to the council unless the council has approved or disapproved such amendment prior to such forty-first day. Except for the substances contained on the special health hazard list developed pursuant to the requirements of section 24-704 of this chapter, any substance contained on the hazardous substance list shall be reported to the commissioner, if such hazardous substance has been present at a facility in an amount which exceeds five hundred pounds. For the reporting period ending on March first, nineteen hundred eighty-nine, any mixture present in a facility in an amount which exceeds five hundred pounds, shall be reported if it contains in a concentration of one percent or more any hazardous substance listed on the New Jersey Special Health Hazards List, a subcategory of the New Jersey Right-to-Know Hazardous Substance List (New Jersey Administrative Code, stat. 34:5A-1 et seq.) as in effect in December, nineteen hundred eighty-seven. For the reporting period ending March first, nineteen hundred ninety, any mixture present in a facility shall be reported in an amount which exceeds five hundred pounds if it contains in a concentration of one tenth of one percent or more of any such hazardous substance. For the reporting period ending on March first, nineteen hundred ninety-one, the commissioner shall by regulation establish a threshold reporting quantity for each hazardous substance and hazardous substances in mixture that are included on the New Jersey Special Health Hazards List shall be reported in the same concentration as required in the previous year. If the commissioner fails to set a specific threshold reporting quantity by March first, nineteen hundred ninety-one, then each of the hazardous substances without a specific threshold reporting quantity shall be reported to the commissioner if ten or more pounds are present at a facility.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

NYC Administrative Code § 24-704

§ 24-704 Special health hazard list.

(a) The commissioner may develop by regulation a special health hazard list to consist of substances otherwise included on the hazardous substances list but which, because of their proven carcinogenicity, mutagenicity, or teratogenicity, pose a special hazard to health and safety. For those substances contained on this list, any amount stored or existing at a facility shall be reported to the commissioner.

(b) The commissioner shall be authorized to include within the regulations specific requirements for the special health hazards list, in addition to those established in section 24-705 of this chapter, for the reporting, handling and labeling of these substances, as he or she deems necessary.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

NYC Administrative Code § 24-705

§ 24-705 Facility inventory form.

(a) The commissioner by regulation shall develop a facility inventory form within six months of enactment of this chapter. This form shall, at a minimum require the following information:

(1) the name and business address of the owner and operator of the facility, and if the facility is owned or operated by a legal entity, the name and business address of an appropriate executive officer;

(2) the name and address of the facility;

(3) the telephone number of the facility and its owner or operator;

(4) the names, titles, and daytime and nighttime telephone numbers of at least two persons designated as emergency contacts for the facility;

(5) the chemical name or the common name of each hazardous substance present at the facility as provided on the material safety data sheet and the CAS identification* number for each hazardous substance;

(6) an estimate, in ranges of the maximum amount and average daily amount, of the number of days located at the facility, and the specific location of each hazardous substance present at the facility at any time during the preceding calendar year;

(7) a brief description of the manner of storage of each hazardous substance present at the facility; and

(8) an indication of whether the responsible party elects to withhold location information of a specific hazardous substance from disclosure to the public pursuant to subdivision (b) of this section.

(b) A person submitting information for a facility pursuant to this chapter may request the commissioner to withhold from disclosure to the public the location of any specific hazardous substance required to be reported on a facility inventory form.

HISTORICAL NOTES:

Footnote:

*|So in original. Section added L.L. 26/1988 § 6

§ 24-706 Facility inventory reporting.

(a) A responsible party of a facility shall file a completed facility inventory form for such facility with the department for each substance on the hazardous substance list or the special health hazard list present within a facility that has been present in the preceding calendar year in a quantity which exceeds the threshold reporting quantity established under section 24-703 of this chapter, on or before March first of each year, beginning in nineteen hundred eighty-nine. A responsible party of a facility shall also be required to file with the department a facility inventory update, on a form approved by the department through regulation, if a previously unreported hazardous substance is added at a facility or if an already reported quantity of a hazardous substance increases by twenty-five percent or more, within thirty days of the occurrence of such event.

(b) A responsible party of a facility shall also be required to file a completed material safety data sheet for each hazardous substance at the facility with the department and with the fire department on or before March first of each year, beginning in nineteen hundred eighty-nine.

(c) A responsible party shall make copies of all information filed with the department pursuant to this section available at the facility to emergency response personnel undertaking response measures at such facility.

(d) On or before December thirty-first, nineteen hundred ninety-three, the commissioner shall by rule establish a schedule of fees that shall be paid upon the filing of the facility inventory form required by this chapter. Such fees shall be based on the amount of hazardous substances present, the number of different hazardous substances present and the type of hazardous substances present, including the presence or absence of substances classified as extremely hazardous in rules and regulations promulgated by The United States environmental protection agency pursuant to *42 U.S.C. section 11001*, et seq.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

Subd. (d) added L.L. 54/1993 § 2, eff. June 30, 1993. (See Note 1)

NOTES:

1. Provisions of L.L. 54/1993 § 1:

Section 1. Legislative findings. The Council finds that filing fees for facilities submitting facility inventory forms to the city's department of environmental protection are necessary to create revenue for funding of the department's "community right-to-know program". That program, established pursuant to local law number 26 for the year 1988, is currently supported by tax levy funds. Such fees, based upon the amount of hazardous substances present, number of different hazardous substances present and type of hazardous substances present, will defray the administrative costs of the department's right-to-know program, and will allow for restoration of the program's critically needed inspectional staff.

NYC Administrative Code § 24-707

§ 24-707 Compilation of citywide facility inventory data.

(a) The commissioner, on or before July first, nineteen hundred eighty-eight, shall develop and publish in the City Record plans for a comprehensive notification program for all facilities as described in this chapter.

(b) The commissioner shall produce a citywide facility inventory database, on or before September first, nineteen hundred eighty-nine.

(c) The commissioner shall maintain and update, the citywide facility inventory database, and shall, on an annual basis produce the data from such database in printed form.

(d) For those substances which have been exempt from reporting pursuant to section 24-708(c), the commissioner shall acquire from the fire department, data regarding the issuance of permits or licenses for the manufacture, storage or transporting of fossil fuels, petroleum products, and combustible or flammable substances so that these locations can be included in the citywide facility inventory database.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

Subd. (b) amended L.L. 92/1993 § 3, eff. Dec. 1, 1993.

NYC Administrative Code § 24-708

§ 24-708 Exemptions.

The following persons, facilities and hazardous substances shall be exempt from the requirements of section 24-706 and 24-711: (a) facilities where the only hazardous substances, except for those substances on the special health hazard list pursuant to section 24-704, were present during the preceding calendar year in mixtures in which the total content of the hazardous substance was of one percent or less by weight or volume per container unless such hazardous substance was present at the facility in an aggregate amount of five hundred pounds or more; (b) owners or tenants of residential buildings that contain no commercial or manufacturing enterprise; or (c) fossil fuels, petroleum products, and combustible or flammable chemicals or materials, the manufacture, transportation, or storage of which is subject to the jurisdiction of the fire department pursuant to title twenty-seven of the code.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

NYC Administrative Code § 24-709

§ 24-709 Trade Secrets.

(a) Any person required under section 24-706 to submit information to the department may withhold from such submittal the specific chemical identity of a hazardous substance, including the chemical name and other specific identification, if such information has been withheld as a trade secret pursuant to section three hundred twenty-two of the emergency planning and community right-to-know act of nineteen hundred eighty-six (*42 U.S.C. section 11001*, et seq.), article forty-eight of the public health law or article twenty-eight of the labor law. No person shall be entitled to withhold such trade secret information from such submittal unless such person demonstrates to the satisfaction of the commissioner that such information has been so determined to be a trade secret and that such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures. The commissioner may grant a temporary extension of not more than thirty days from the reporting requirements of section 24-706 for the purpose of allowing such person to make such demonstration.

(b) With respect to any information not withheld as a trade secret in the manner described by subdivision (a) of this section, the commissioner may withhold from disclosure, pursuant to article six of the public officers law, (i) specific chemical identities, including chemical names and other specific information, which are trade secrets which if disclosed would cause substantial injury to the competitive position of a commercial enterprise or (ii) methods or processes described in plans filed pursuant to section 24-718 of this chapter entitled to protection as trade secrets. The commissioner shall promulgate by rule a procedure for implementing the provisions of this subdivision. The subdivision shall not be construed to affect, limit or modify in any manner the reporting requirements of section 24-706.

(c) 1. Notwithstanding any other provision of this section, in a response to an emergency caused by the presence or release of a hazardous substance, the commissioner shall make trade secret information about such hazardous substance available, upon request, to emergency response personnel responding to such an emergency.

2. Notwithstanding any other provision of this section, for the purpose of medical diagnosis or treatment of an individual exposed to a hazardous substance, where the commissioner has withheld any information from disclosure pursuant to subdivision (b) of this section, the person submitting such information to the department shall upon request disclose such information to medical personnel, including doctors and nurses, treating such an individual.

(d) Except as is necessary for the internal administration of the department or as is otherwise provided by subdivision (c) of this section, or by federal, state or local law, no person shall disclose to any other person any information, record or portions thereof received by the department pursuant to this chapter and determined by the commissioner to be a trade secret pursuant to subdivision (b) of this section. Each person having access to such information or records, including persons receiving such information or records pursuant to subdivision (c) of this section, shall, in a written confidentiality agreement with the person submitting such information to the department, agree that he or she will not use the information, record or portion thereof for any purpose other than internal administration of the department, response to an emergency caused by the presence or release of a hazardous substance, or medical diagnosis or treatment. In the case of a medical emergency, a written confidentiality agreement is not required as a precondition of disclosure pursuant to subdivision (c) of this section, but shall be entered into by the person receiving the information as soon as circumstances permit.

(e) Nothing in this section shall be constructed to affect, limit or modify in any manner the disclosure of any information to a health professional to the extent such disclosure is required or authorized pursuant to section three hundred twenty-three of the emergency planning and community right-to-know act of nineteen hundred eighty-six (*42 U.S.C. section 11001*, et seq.).

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

Subd. (b) amended L.L. 92/1993 § 4, eff. Dec. 1, 1993.

NYC Administrative Code § 24-710

§ 24-710 Access to hazardous substance information.

(a) The commissioner shall upon request make available to emergency response personnel the information filed pursuant to section 24-706, the data compiled pursuant to section 24-707, and the risk management plan filed pursuant to section 24-718.

(b) The commissioner shall make available to the public, in such form and manner as may be prescribed by regulation, the information filed pursuant to section 24-706 and the data compiled pursuant to section 24-707, during normal working hours, at the location or locations designated by the commissioner. Within thirty days after the annual completion of the compilation of citywide facility inventory data pursuant to section 24-707 of this chapter, the commissioner shall publish a notice in the City Record that such information shall be available for inspection by the public at the location or locations specified in the notice.

(c) Any person may submit a written request to the commissioner for any information filed with the department pursuant to section 24-706 of this chapter with respect to a specific facility. The commissioner shall make the requested information available to the person making the request within ten business days after the receipt of the request.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

Subd. (a) amended L.L. 92/1993 § 5, eff. Dec. 1, 1993.

NYC Administrative Code § 24-711

§ 24-711 Labeling requirements.

Within thirty days after a facility inventory form is first required to be filed for a facility, all hazardous substances present at such facility shall be clearly marked with a label showing the chemical name and CAS identification number of the hazardous substance. The information set forth on the label shall be in accordance with a recognized hazardous substances labeling system, accepted by the commissioner. In the case of a substance protected under the "trade secrets" provision contained in section 24-709 of this chapter, the label should bear the specific code assigned by the commissioner for such substance.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

NYC Administrative Code § 24-712

§ 24-712 Inspections of a facility.

(a) The department, upon providing prior notice, shall have the authority to inspect any facility during normal business hours. However, whenever there is a reason to believe that a facility is in violation of the requirements of this chapter, the department shall be authorized to inspect the facility without prior notice. Any reasonable party who refuses to allow an authorized employee or representative of the department to conduct an inspection of the facility after appropriate credentials are presented shall be in violation of this chapter and shall be subject to the penalties provided in subdivision c of section 24-713 of this chapter.

(b) Within twenty business days of receipt of a written complaint in such form as may be prescribed by the commissioner, alleging a violation of any of the provisions of this chapter, the department shall investigate such complaint and shall inform the complainant of the results of such investigation.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

NYC Administrative Code § 24-713

§ 24-713 Violations.

(a) Any person who knowingly or recklessly makes any false statement, representation or certification on a facility inventory form, risk management plan, or any other document filed with the department, or on any label required, pursuant to this chapter, shall, upon conviction, be subject to a fine of not more than two thousand dollars, or imprisonment of up to one year, or both. In addition to its application to any other person, the penalty provided for in this subdivision shall be deemed a special fine for a corporation within the meaning of section 80.10 of the penal law of the state of New York.

(b) Any person who violates the requirements of sections 24-706, 24-711 or 24-718 of this chapter shall be liable for a civil penalty, as follows: (1) for a first violation, in an amount of not less than five hundred nor more than five thousand dollars; (2) for a second violation, in an amount of not less than three thousand five hundred nor more than ten thousand dollars; and (3) for each subsequent violation, in an amount of not less than seven thousand five hundred nor more than twenty thousand dollars. For purposes of this section, the second and any subsequent violation shall only occur after notice of the first violation has been properly served and an opportunity to cure said violation has been provided to the violator, provided that such opportunity to cure shall not exceed thirty days. For purposes of this section, a second or subsequent violation shall occur where a person violates section 24-706, 24-711 or 24-718 of this chapter within five years of having been found to have violated this chapter. Such penalties may be recovered in a civil action brought in the name of the commissioner or in a proceeding before the environmental control board. In determining the civil penalty, the hearing officer or judge shall consider any evidence presented by the defendant showing a good faith effort to comply with relevant requirements of this chapter, the nature and seriousness of the defendant's violation of the chapter, whether the violation was voluntarily disclosed, previous violations, if any, of this chapter and any other evidence found to be relevant.

(c) Any person who without justification refuses to allow an inspection of a facility pursuant to section 24-712 of this chapter shall be subject to a civil penalty, returnable before the environmental control board or in civil court in the name of the commissioner, in an amount not to exceed twenty thousand dollars.

HISTORICAL NOTES:

Section amended L.L. 82/2003 § 1, eff. Feb. 20, 2004.

Section added L.L. 26/1988 § 6

Subd. (a) amended L.L. 92/1993 § 6, eff. Dec. 1, 1993.

Subd. (b) amended L.L. 92/1993 § 7, eff. Dec. 1, 1993.

Subd. (b) amended L.L. 52/1993 § 1, eff. Sept. 28, 1993.

NYC Administrative Code § 24-714

§ 24-714 Private right of action.

(a) Except as provided in subdivision (c) of this section, any person may commence an action in a court of competent jurisdiction on his or her own behalf against a responsible party of a facility for failure to file any information required to be filed with the department or fire department pursuant to section 24-706 of this chapter. Such action shall be brought in the county in which the alleged violation occurred or where the complainant resides. The court may impose the civil penalty provided for violation of this chapter.

(b) No action may be commenced under subdivision (a) of this section prior to sixty days after the plaintiff has given notice of the alleged violation to the commissioner and the alleged violator. Notice required under this subdivision shall be given in such manner as may be prescribed by the commissioner.

(c) No action may be commenced under subdivision (a) if the commissioner has commenced and is diligently pursuing an administrative or civil action concerning the facility which would be the subject of such action to enforce the reporting requirements of this chapter or to impose any civil penalty for violation of such reporting requirements.

(d) The court, in issuing any final order in any section brought pursuant to this section, may award costs of litigation, including reasonable attorney's and expert witness fees, to the prevailing party whenever the court determines such an award is appropriate.

(e) In any action brought pursuant to this section, the commissioner, may intervene as a matter of right.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

NYC Administrative Code § 24-715

§ 24-715 Annual report.

(a) The commissioner shall annually review the facility inventory forms and material safety data sheets filed with the department pursuant to this chapter and citywide facility inventory data. Upon making this annual review, the commissioner shall forward a report to the mayor and the council no later than October first of each year. Such annual report shall, at a minimum, provide the following information: the number of facilities for which facility inventory forms have been filed pursuant to this chapter; the number of complaints received; the number of civilian complaints filed; the number of inspections performed pursuant to this chapter; the number of notices of violation issued pursuant to this chapter and chapter six of this title; the number of orders issued by the commissioner pursuant to subdivision a of section 24-608 of this title and the nature of such orders; the number of civil actions and administrative proceedings commenced under this chapter and chapter six of this title and the dispositions thereof; the number of incidents in which the department participated in response measures undertaken in connection with hazardous substances; the number of releases of hazardous substances reported to, or otherwise documented by the department; the number of emergency response personnel in each city agency which performs functions in connection with emergencies involving hazardous substances; and the average response time and cost of each member of the city's emergency response personnel.

(b) By March first, nineteen hundred ninety the commissioner shall report to the Council the status of the development of the threshold reporting quantities for hazardous substances that will become effective on March first, nineteen hundred ninety-one.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

Subd. (a) amended L.L. 76/2003 § 1, eff. Dec. 22, 2003.

NYC Administrative Code § 24-716

§ 24-716 Regulations.

The commissioner shall have the power to promulgate such rules and regulations as may be necessary to carry out the purposes of this chapter.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

NYC Administrative Code § 24-717

§ 24-717 Hazardous substance advisory board.

(a) There is hereby created a "hazardous substance advisory board" hereinafter referred to as the board. Such board shall consist of seven members who shall be appointed within ninety days from the enactment of this chapter.

(b) The board shall consist of the commissioner, who shall serve as the board's chairman, plus four members to be appointed by the mayor and four to be appointed by the council. Each member shall hold office for a three year term or until such time as the board shall cease to exist or until such member shall resign or is removed from office for good cause shown. Each member appointed shall have a working knowledge of emergency response procedures or in managing hazardous substances.

(c) Any vacancy on the board shall be filled by appointment pursuant to subdivision b of this section.

(d) The members of the board shall serve without compensation for their services as board members except that each shall be allowed reimbursement for the necessary and actual expenses which such member shall incur in the performance of his or her duties under this section.

(e) The board shall be authorized and responsible to: (1) serve as a working forum for the exchange of views, concerns, ideas, information and recommendations relating to the management of hazardous substances and the planning of emergency response measures; (2) review existing hazardous substances emergency response training programs; (3) review existing requirements for handling extremely hazardous substances emergency response situations as established under the emergency planning and community right-to-know act of nineteen hundred eighty-six; (4) review the annual summary of incident reports as required pursuant to section 24-715 of this chapter; and (5) assist the commissioner in the development, review and revision of the hazardous substance list and corresponding threshold levels where appropriate.

(f) The board shall meet at least four times per year at least once every quarter, keep a record of its deliberations and determine its own rules of procedure.

HISTORICAL NOTES:

Section added L.L. 26/1988 § 6

Subd. (b) amended L.L. 24/1989 § 1

§ 24-718 Risk management plan.

(a) On or before March first of each year beginning in nineteen hundred ninety-five, a responsible party of a facility where an extremely hazardous substance or a regulated toxic substance is present in an amount that equals or exceeds the threshold planning quantities established by the United States environmental protection agency in regulations promulgated pursuant to applicable law, shall file with the commissioner a risk management plan in accordance with the provisions of this section. Where a substance is classified as both an extremely hazardous substance and a regulated toxic substance and different threshold planning quantities have been established, the lower threshold planning quantity shall apply in determining whether such substance is present at a facility in an amount that equals or exceeds the threshold planning quantities.

(b) Review of risk management plans. (1) Within thirty days after receipt of a risk management plan, the commissioner shall determine whether such plan is complete. If the commissioner determines that the plan is incomplete, then he or she shall notify the responsible party that the plan is incomplete and identify in what respect the plan is incomplete. Within fifteen days after such notification, the responsible party shall file a revised plan consistent with the commissioner's notification. Within fifteen days after receipt of such revised plan, the commissioner shall determine whether the revised plan is complete.

(2) Within ninety days after the commissioner's determination that the responsible party has filed a complete plan, the commissioner shall approve or make modifications to such plan and shall notify the responsible party filing such plan in writing of his or her approval or modifications. The commissioner shall, within a reasonable period of time prior to approving or making modifications to such plan, submit such plan to the commissioner of the fire department and the commissioner of the fire department may recommend modifications to such plan to the commissioner.

(3) If the commissioner makes modifications to the responsible party's risk management plan, the responsible party shall incorporate such modifications into its risk management plan, provided, however, that the responsible party may, within forty-five days after receipt of such modifications, submit alternative modifications to the commissioner or explain why the commissioner's modifications are not necessary. The commissioner shall within forty-five days review the alternative modifications or explanation and shall: (i) require the responsible party to incorporate, by a date certain not to exceed forty-five days, either the commissioner's modifications, the alternative modifications or a combination of such modifications into its risk management plan, (ii) approve the unmodified plan or (iii) disapprove the plan.

(4) The commissioner shall provide a copy of each approved risk management plan to the emergency response agencies and to other governmental entities that may request an approved plan.

(c) On or before July first, nineteen hundred ninety-four, the commissioner, in consultation with the emergency response agencies, shall by rule establish the contents of a risk management plan, which shall be designed to prevent the accidental release and to minimize the consequences of any such release of any extremely hazardous or regulated toxic substance. The plan shall include but need not be limited to: (1) a site plan; (2) a safety review of design for new and existing equipment and processes; (3) an emergency response program, including an emergency response plan, emergency response training, and emergency response exercises; (4) standard operating procedures; (5) a preventive maintenance program for equipment; (6) a training program for equipment operators, including duration and type of training, and retraining; (7) accident investigation procedures; and (8) a risk assessment program, including a hazard analysis and a consideration of the use of alternate equipment and alternate substances.

(d) Preparation of risk management plan. The risk management plan shall be prepared by one or more of the following persons: an industrial hygienist certified by the American Board of Industrial Hygienists, a professional engineer licensed pursuant to section 7206 of the New York state education law, a safety professional certified by the Board of Certified Safety Professionals, or other qualified person authorized by rule of the commissioner. A plan submitted pursuant to this section shall contain proof satisfactory to the commissioner of the qualifications of the person who prepared such plan.

(e) The risk management plan shall be made available to department personnel at the time of an inspection of a facility for which a plan is required pursuant to subdivision (a) of this section.

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(f) On or before November first, nineteen hundred ninety-four, the commissioner, in consultation with emergency response agencies, shall make reasonable efforts to provide information to responsible parties regarding the requirements of this section and the rules promulgated hereunder.

HISTORICAL NOTES:

Section added L.L. 92/1993 § 8, eff. Dec. 1, 1993. (See Note 1)

NOTES:

1. Provisions of L.L. 92/1993 § 1:

Section 1. Legislative findings. The council finds that a substance listed by the United States environmental protection agency as "extremely hazardous" pursuant to *42 U.S.C. section 11002(a)* of the emergency planning and community right-to-know act or as a "regulated toxic substance" pursuant to *42 U.S.C. section 7412 (r)* of the clean air act, may pose a greater risk to human health and the environment than other hazardous substances.

The council further finds that an entity defined as a "responsible party" pursuant to the city's community right-to-know law, local law number 26 for the year 1988, as amended, has an obligation to identify hazards which may result from releases of hazardous substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of releases that do occur.

To limit the potential for exposure to extremely hazardous substances and regulated toxic substances, and to minimize the adverse effects should exposure occur through fire, explosion, spill or other accidental release, the council determines that it is appropriate for facilities storing such substances to prepare a risk management plan that will limit the potential for release of such substances and provide for a contingency plan for responding to an accidental release through fire, explosion, spill or other accidental release.