

ASSEMBLY, No. 2198

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Assemblymen ZISA and DALTON

1 AN ACT concerning the regulation of explosives and amending
2 P.L.1985, c.403.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 3 of P.L.1985, c.403 (C.13:1K-21) is amended to read
8 as follows:

9 3. 13:1K-21. Definitions

10 As used in this act:

11 a. "Extraordinarily hazardous accident risk" means a potential for
12 release of an extraordinarily hazardous substance into the environment,
13 or a potential for an explosion caused by an extraordinarily hazardous
14 substance, which could produce a significant likelihood that persons
15 exposed or impacted may suffer acute health effects resulting in death
16 or permanent disability;

17 b. "Commissioner" means the Commissioner of the Department of
18 Environmental Protection;

19 c. "Department" means the Department of Environmental
20 Protection;

21 d. "Extraordinarily Hazardous Substance Accident Risk
22 Assessment" or "EHSARA" means a review and safety evaluation of
23 those operations in a facility which involve the generation, storage, or
24 handling of an extraordinarily hazardous substance, as provided in
25 section 6 of this act;

26 e. "Extraordinarily Hazardous Substance" means any substance or
27 chemical compound used, manufactured, stored, or capable of being
28 produced from on-site components in this State in sufficient quantities
29 at a single site such that its release into the environment, or its causing
30 an explosion, would produce a significant likelihood that persons
31 exposed or impacted will suffer acute health effects resulting in death
32 or permanent disability;

33 f. "Extraordinarily Hazardous Substance List" means the
34 substances or chemical compounds identified in subsection a. of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 section 4 of this act and adopted by regulation pursuant to subsection
2 c. of that section;

3 g. "Extraordinarily Hazardous Substance Risk Reduction Work
4 Plan" or "work plan" means the document developed by the
5 department for each facility at which is generated, stored, or handled
6 an extraordinarily hazardous substance, setting forth the scope and
7 detail of the EHSARA to which the facility will be submitted, as
8 provided in section 6 of this act;

9 h. "Facility" means a building, equipment, and contiguous area.
10 Facility shall not include a research and development laboratory, which
11 means a specially designated area used primarily for research,
12 development, and testing activity, and not primarily involved in the
13 production of goods for commercial sale, in which extraordinarily
14 hazardous substances are used by or under the supervision of a
15 technically qualified person;

16 i. "Risk management program" means the sum total of programs
17 for the purpose of minimizing extraordinarily hazardous accident risks,
18 including, but not limited to, requirements for safety review of design
19 for new and existing equipment, requirements for standard operating
20 procedures, requirements for preventive maintenance programs,
21 requirements for operator training and accident investigation
22 procedures, requirements for risk assessment for specific pieces of
23 equipment or operating alternatives, requirements for emergency
24 response planning, and internal or external audit procedures to ensure
25 programs are being executed as planned.

26 (cf: P.L.1985, c.403, s.3)

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28 2. Section 3 of P.L.1985, c.403 (C.13:1K-22) is amended to read
29 as follows:

30 3. a. The following chemicals or chemical compounds, in the
31 quantities indicated, shall constitute the initial extraordinarily
32 hazardous substance list: hydrogen chloride (HCl) and allyl chloride
33 in quantities of 2,000 pounds or more; hydrogen cyanide (HCN),
34 hydrogen fluoride (HF), chlorine (Cl₂), phosphorus trichloride, and
35 hydrogen sulfide (H₂S) in quantities of 500 pounds or more; and
36 phosgene, bromine, methyl isocyanate (MIC), and toluene-2,
37 4-diisocyanate (TDS) in quantities of 100 pounds or more.

38 b. Within 60 days of the effective date of this act, the department
39 shall develop and issue a registration form to be completed within 120
40 days of the effective date of this act, by the owner or operator of each
41 facility in the State which at any time generates, stores, or handles any
42 of the extraordinarily hazardous substances on the initial
43 extraordinarily hazardous substance list, pursuant to subsection a. of
44 this section. The registration form shall provide, in addition to any
45 other information that may be required by the department, the
46 following: an inventory of the extraordinarily hazardous substance or

1 substances generated, stored, or handled at the facility and the quantity
2 or quantities thereof, which inventory shall identify whether those
3 substances are end products, intermediate products, by-products, or
4 waste products; a general description of the processes and principal
5 equipment involved in the management of the substance or substances;
6 a profile of the area in which the facility is situated, including its
7 proximity to population and water supplies; the extent to which the
8 risks and hazards of the processes, equipment, and operations have
9 been identified, evaluated, and abated, and the expertise and affiliation
10 of the evaluators and any direct or indirect relationship between the
11 evaluators and the owner or operator of the facility; and the name or
12 names of all insurance carriers underwriting the facility's environmental
13 liability and workers' compensation insurance policies and the scope
14 of these policies, including any limitations and exclusions.

15 c. Within 18 months of the effective date of this act, the
16 Department of Environmental Protection, in consultation with the
17 Department of Health, shall develop and, after public hearing, adopt
18 as a regulation, pursuant to the "Administrative Procedure Act,"
19 P.L.1968, c.410 (C.52:14B-1 et seq.), an extraordinarily hazardous
20 substance list. The list shall correlate the substances or compounds
21 with the quantities thereof required to produce the potentially
22 catastrophic circumstance. The department shall have the power to
23 amend, by regulation, the extraordinarily hazardous substance list to
24 accommodate new chemical compounds that may be developed or
25 reflect new information or scientific data that may become available to
26 the department. Within 180 days of the effective date of P.L. __, c.
27 (now before the Legislature as this bill), the department shall adopt a
28 regulation amending the extraordinarily hazardous substance list to
29 include Class 1, Division 1.1 explosives, in quantities of 5,000 pounds
30 or more, as listed in regulations of the United States Department of
31 Transportation pursuant to 49 U.S.C. §5101 et seq. and codified at 49
32 CFR §172.101.

33 d. Within 90 days of the adoption by the department of an
34 extraordinarily hazardous substance list pursuant to subsection c. of
35 this section, or of an addition to that list, the owner or operator of
36 each facility in the State which generates, stores, or handles any of the
37 extraordinarily hazardous substances on the extraordinarily hazardous
38 substance list, not registered pursuant to subsection b. of this section,
39 shall complete the registration form developed and issued by the
40 department.

41 (cf: P.L.1985, c.403, s.4)

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43 3. Section 6 of P.L.1985, c.403 (C.13:1K-24) is amended to read
44 as follows:

45 6. Upon review of all registrations and accompanying materials
46 submitted pursuant to this section, the department shall, in cooperation

1 with the facility owner or operator, develop an Extraordinarily
2 Hazardous Substance Risk Reduction Work Plan for each registered
3 facility without a risk management program agreed upon by the facility
4 owner and the department or subject to a consent agreement or
5 administrative order entered into pursuant to section 5 of this act. The
6 work plan shall constitute the basis for any Extraordinarily Hazardous
7 Substance Accident Risk Assessment required of that facility, to be
8 performed pursuant to this section. The work plan shall require the
9 reporting of the identity and quantity of all extraordinarily hazardous
10 substances generated, stored, handled, or that could unwittingly be
11 produced in the event of an equipment breakdown, human error,
12 design defect, or procedural failure, or the imposition of an external
13 force; the nature, age, and condition of all the equipment and
14 instruments involved in the handling and management of the
15 extraordinarily hazardous substance or substances at the facility, and
16 the schedules for their testing and maintenance; the measures and
17 precautions designed to protect against the intrusions of external
18 forces and events, or to control or contain discharges and explosions
19 within the facility; the circumstances that would have to obtain in
20 order for there to result a discharge or explosion of an extraordinarily
21 hazardous substance, and the practices, procedures, and equipment
22 designed to forestall such an event; any alternative processes,
23 procedures, or equipment which might reduce the risk of a release or
24 explosion of an extraordinarily hazardous substance while yielding the
25 same or commensurate results, and the specific reasons they are not
26 employed; any training or management practices in place which impart
27 knowledge to relevant personnel regarding the dangers posed by a
28 release or explosion of an extraordinarily hazardous substance and the
29 training provided to prepare them for the safe operation of the facility
30 and for unanticipated occurrences; any other preventive maintenance
31 measure or on-site emergency response capability or other internal
32 mechanism developed to safeguard against the occurrence of an
33 accidental release or explosion of an extraordinarily hazardous
34 substance or any other aspect or component of the facility deemed
35 relevant by the department. The department may, by regulation or on
36 a case-by-case basis, limit the scope or detail of the work plan and the
37 priority or frequency of review of any facility or facility operation or
38 component thereof where it determines, in writing, that the action does
39 not remove or compromise the protection required for the public
40 interest, and enables the department to allocate its resources more
41 efficiently and effectively.

42 (cf: P.L.1985, c.403, s.6)

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44 4. This act shall take effect immediately.

STATEMENT

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3 This bill would amend the "Toxic Catastrophe Prevention Act,"
4 P.L.1985, c.403 (C.13:1K-19 et seq.) (TCPA), to include certain
5 explosives. The TCPA was enacted in 1985 to prevent extremely
6 hazardous chemicals from being released into the atmosphere and
7 which chemicals had the potential to cause serious harm or death to
8 humans from exposure. The TCPA was enacted in response to the
9 chemical release tragedy in Bhopal, India.

10 As enacted, the TCPA does not specifically include explosives but
11 rather regulates a number of chemicals that could cause harm if a
12 person were to be exposed to them. Because of the serious potential
13 danger posed to the State's population from explosives, especially
14 given the population density of this State, it is appropriate to include
15 explosives under the TCPA. This amendment would help ensure that
16 accidents at facilities that generate, store, or handle explosives would
17 be prevented and if an explosion were to occur, that the appropriate
18 emergency response would be taken.

19 The bill does not include all explosives but is limited to Class 1,
20 Division 1.1 explosives as determined by the United States Department
21 of Transportation, and only if they are generated, stored, or handled
22 in quantities of 5,000 pounds or more. These explosives are listed at
23 49 CFR §172.101. These explosives are generally defined as
24 "explosives that have a mass explosion hazard. A mass explosion is
25 one which affects almost the entire load instantaneously." 49 CFR
26 §173.50.

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31 Requires facilities that generate, store, or handle certain explosives to
32 comply with the provisions of the Toxic Catastrophe Prevention Act.