

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 1993**

---

**No. 92**

---

Introduced by Council Member Michels (by the request of the Mayor); also Council Members Leffler, Rivera, Horwitz, White and Marshall. (Passed Under a Message of Necessity from the Mayor)

**A LOCAL LAW**

**To amend the administrative code of the city of New York, in relation to the submission of risk management plans and violations of the filing requirements in relation thereto.**

*Be it enacted by the Council as follows:*

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.

§2. Subdivisions (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) and (r) of section 24-702 of the administrative code of the city of New York are relettered subdivisions (g), (i), (j), (k), (l), (m), (n), (o), (p), (q), (s), (u) and (v) respectively, and four new subdivisions, (f), (h), (r) and (t) are added to read as follows:

(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.

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

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

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

§3. Subdivision (b) of section 24-707 of the administrative code of the city of New York, as added by local law number 26 for the year 1988, is amended to read as follows:

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

§4. Subdivision (b) of section 24-709 of the administrative code of the city of New York, as added by local law number 26 for the year 1988, is amended to read as follows:

(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 [regulation] 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.

§5. Subdivision (a) of section 24-710 of the administrative code of the city of New York, as added by local law number 26 for the year 1988, is amended to read as follows:

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

§6. Subdivision (a) of section 24-713 of the administrative code of the city of New York, as added by local law number 26 for the year 1988, is amended to read as follows:

(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 one thousand dollars, or imprisonment of up to one year, or both.

§7. Subdivision (b) of section 24-713 of the administrative code of the city of New York, as amended by local law number 52 for the year 1993, is amended to read as follows:

(b) Any person who violates the requirements of sections 24-706 [or], 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 two hundred fifty nor more than two thousand five hundred dollars; (2) for a second violation, in an amount of not less than one thousand seven hundred fifty nor more than five thousand dollars; and (3) for each subsequent violation, in an amount of not less than three thousand seven hundred fifty nor more than ten 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. 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, previous violations, if any, of this chapter and any other evidence found to be relevant.

§8. Chapter 7 of title 24 of the administrative code of the city of New York is amended by adding a new section 24-718 to read as follows:

*§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.*

*(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.*

§9. This local law shall take effect immediately, except that provisions of this local law relating to regulated toxic substances shall take effect only upon the effective date of a rule promulgated by the United States environmental protection agency pursuant to 42 U.S.C. section 7412 (r) of the clean air act, as amended, which contains a list of regulated toxic substances.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on November 17, 1993, and approved by the Mayor on December 1, 1993.

CARLOS CUEVAS, City Clerk, Clerk of the Council

**CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27**

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 92 of 1993, Council Int. No. 773-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on November 17, 1993: 46 for, 0 against.

Was approved by the Mayor on December 1, 1993.

Was returned to the City Clerk on December 1, 1993.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel