

# SENATE, No. 2739

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 2, 2022

**Sponsored by:**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**SYNOPSIS**

Requires submission to DEP of consequence analyses by employers regulated under "Worker and Community Right to Know Act"; requires municipal and county Emergency Operations Plan consider local risks and hazards.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the storage and transport of hazardous  
2 substances and emergency planning for risks therefrom,  
3 amending and supplementing P.L.1983, c.315, supplementing  
4 chapter 9 of Appendix A, and amending P.L.1989, c.222.

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

8  
9 1. Section 3 of P.L.1983, c.315 (C.34:5A-3) is amended to read  
10 as follows:

11 3. As used in **[this act]** P.L.1983, c.315 (C.34:5A-1 et seq.):

12 a. "Chemical Abstracts Service number" means the unique  
13 identification number assigned by the Chemical Abstracts Service  
14 to chemicals.

15 b. "Chemical name" means the scientific designation of a  
16 chemical in accordance with the nomenclature system developed by  
17 the International Union of Pure and Applied Chemistry or the  
18 Chemical Abstracts Service rules of nomenclature.

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

22 d. "Container" means a receptacle used to hold a liquid, solid, or  
23 gaseous substance, including, but not limited to, bottles, pipelines,  
24 bags, barrels, boxes, cans, cylinders, drums, cartons, vessels, vats,  
25 and stationary or mobile storage tanks. "Container" shall not  
26 include process containers.

27 e. "Council" means the Right to Know Advisory Council created  
28 pursuant to section 18 of this act.

29 f. "County health department" means a county health agency  
30 established pursuant to P.L.1975, c.329 (C.26:3A2-1 et seq.), or the  
31 office of a county clerk in a county which has not established a  
32 department.

33 g. "Employee representative" means a certified collective  
34 bargaining agent or an attorney whom an employee authorizes to  
35 exercise **[his]** the employee's rights to request information  
36 pursuant to the provisions of this act, or a parent or legal guardian  
37 of a minor employee.

38 h. "Employer" means any person or corporation in the State  
39 engaged in business operations which has a Standard Industrial  
40 Classification, as designated in the Standard Industrial  
41 Classification Manual prepared by the federal Office of  
42 Management and Budget, within the following Major Group  
43 Numbers, Group Numbers, or Industry Numbers, as the case may  
44 be, except as otherwise provided herein: Major Group Number 07  
45 (Agricultural Services), only Industry Number 0782--Lawn and

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

**Matter underlined thus is new matter.**

1 garden services; Major Group Numbers 20 through 39 inclusive  
2 (manufacturing industries); Major Group Number 45  
3 (Transportation by Air), only Industry Number 4511--Air  
4 Transportation, certified carriers, and Group Number 458--Air  
5 Transportation Services; Major Group Number 46 (Pipelines,  
6 Except Natural Gas); Major Group Number 47 (Transportation  
7 Services), only Group Numbers 471--Freight Forwarding, 474--  
8 Rental of Railroad Cars, and 478--Miscellaneous Services  
9 Incidental to Transportation; Major Group Number 48  
10 (Communication), only Group Numbers 481--Telephone  
11 Communication, and 482--Telegraph Communication; Major Group  
12 Number 49 (Electric, Gas and Sanitary Services); Major Group  
13 Number 50 (Wholesale Trade--Durable Goods), only Industry  
14 Numbers 5085--Industrial Supplies, 5087--Service Establishment  
15 Equipment and Supplies, and 5093--Scrap and Waste Materials;  
16 Major Group Number 51 (Wholesale trade, nondurable goods), only  
17 Group Numbers 512--Drugs, Drug Proprietaries and Druggist's  
18 Sundries, 516--Chemicals and Allied Products, 517--Petroleum and  
19 petroleum products, 518--Beer, Wine and Distilled Alcoholic  
20 Beverages, and 519--Miscellaneous Nondurable Goods; Major  
21 Group Number 55 (Automobile Dealers and Gasoline Service  
22 Stations), only Group Numbers 551--Motor Vehicle Dealers (New  
23 and Used), 552--Motor Vehicle Dealers (Used only), and 554--  
24 Gasoline Service Stations; Major Group Number 72 (Personal  
25 Services), only Industry Numbers 7216--Dry Cleaning Plants,  
26 Except Rug Cleaning, 7217--Carpet and Upholstery Cleaning, and  
27 7218--Industrial Launderers; Major Group Number 73 (Business  
28 Services), only Industry Number 7397 Commercial testing  
29 laboratories; Major Group Number 75 (automotive repair, services,  
30 and garages), only Group Number 753--Automotive Repair Shops;  
31 Major Group Number 76 (miscellaneous repair services), only  
32 Industry Number 7692--Welding Repair; Major Group Number 80  
33 (health services), only Group Number 806--Hospitals; and Major  
34 Group Number 82 (educational services), only Group Numbers 821-  
35 -Elementary and Secondary Schools and 822--Colleges and  
36 Universities, and Industry Number 8249--Vocational Schools.  
37 Except for the purposes of section 26 of this act, "employer" means  
38 the State and local governments, or any agency, authority,  
39 department, bureau, or instrumentality thereof, or any non-profit,  
40 non-public school, college or university.

41 i. "Environmental hazardous substance" means any substance on  
42 the environmental hazardous substance list.

43 j. "Environmental hazardous substance list" means the list of  
44 environmental hazardous substances developed by the Department  
45 of Environmental Protection pursuant to section 4 of this act.

46 k. "Environmental survey" means a written form prepared by the  
47 Department of Environmental Protection and transmitted to an  
48 employer, on which the employer shall provide certain information

1 concerning each of the environmental hazardous substances at **[his]**  
2 the facility, including, but not limited to, the following:

3 (1) The chemical name and Chemical Abstracts Service number  
4 of the environmental hazardous substance;

5 (2) A description of the use of the environmental hazardous  
6 substance at the facility;

7 (3) The quantity of the environmental hazardous substance  
8 produced at the facility;

9 (4) The quantity of the environmental hazardous substance  
10 brought into the facility;

11 (5) The quantity of the environmental hazardous substance  
12 consumed at the facility;

13 (6) The quantity of the environmental hazardous substance  
14 shipped out of the facility as or in products;

15 (7) The maximum inventory of the environmental hazardous  
16 substance stored at the facility, the method of storage, and the  
17 frequency and methods of transfer;

18 (8) The total stack or point-source emissions of the  
19 environmental hazardous substance;

20 (9) The total estimated fugitive or nonpoint-source emissions of  
21 the environmental hazardous substance;

22 (10) The total discharge of the environmental hazardous  
23 substance into the surface or groundwater, the treatment methods,  
24 and the raw wastewater volume and loadings;

25 (11) The total discharge of the environmental hazardous  
26 substance into publicly owned treatment works;

27 (12) The quantity, and methods of disposal, of any wastes  
28 containing an environmental hazardous substance, the method of  
29 on-site storage of these wastes, the location or locations of the final  
30 disposal site for these wastes, and the identity of the hauler of the  
31 wastes;

32 (13) The total quantity of environmental hazardous substances  
33 generated at the facility, including hazardous substances generated  
34 as nonproduct output;

35 (14) The quantity of environmental hazardous substances  
36 recycled on-site and off-site; **[and]**

37 (15) Information pertaining to pollution prevention activities at  
38 the facility; and

39 (16) A consequence analysis that conforms to the provisions of  
40 section 2 of P.L. , c. (C. ) (pending before the Legislature  
41 as this bill).

42 As used in this subsection, "pollution prevention" and  
43 "nonproduct output" shall have the same meaning as set forth in  
44 section 3 of P.L.1991, c.235 (C.13:1D-37).

45 1. "Facility" means the building, equipment and contiguous area  
46 at a single location used for the conduct of business. Except for the  
47 purposes of subsection c. of section 13, section 14, and subsection

- 1 b. of section 25 of this act, "facility" shall not include a research  
2 and development laboratory.
- 3 m. "Hazardous substance" means any substance, or substance  
4 contained in a mixture, included on the workplace hazardous  
5 substance list developed by the Department of Health pursuant to  
6 section 5 of this act, introduced by an employer to be used, studied,  
7 produced, or otherwise handled at a facility. "Hazardous substance"  
8 shall not include:
- 9 (1) Any article containing a hazardous substance if the hazardous  
10 substance is present in a solid form which does not pose any acute  
11 or chronic health hazard to an employee exposed to it;
- 12 (2) Any hazardous substance constituting less than 1【%】 percent  
13 of a mixture unless the hazardous substance is present in an  
14 aggregate amount of 500 pounds or more at a facility;
- 15 (3) Any hazardous substance which is a special health hazard  
16 substance constituting less than the threshold percentage established  
17 by the Department of Health for that special health hazard  
18 substance when present in a mixture; or
- 19 (4) Any hazardous substance present in the same form and  
20 concentration as a product packaged for distribution and use by the  
21 general public to which an employee's exposure during handling is  
22 not significantly greater than a consumer's exposure during the  
23 principal use of the toxic substance.
- 24 n. "Hazardous substance fact sheet" means a written document  
25 prepared by the Department of Health for each hazardous substance  
26 and transmitted by the department to employers pursuant to the  
27 provisions of this act, which shall include, but not be limited to, the  
28 following information:
- 29 (1) The chemical name, the Chemical Abstracts Service number,  
30 the trade name, and common names of the hazardous substance;
- 31 (2) A reference to all relevant information on the hazardous  
32 substance from the most recent edition of the National Institute for  
33 Occupational Safety and Health's Registry of Toxic Effects of  
34 Chemical Substances;
- 35 (3) The hazardous substance's solubility in water, vapor pressure  
36 at standard conditions of temperature and pressure, and flash point;
- 37 (4) The hazard posed by the hazardous substance, including its  
38 toxicity, carcinogenicity, mutagenicity, teratogenicity,  
39 flammability, explosiveness, corrosivity and reactivity, including  
40 specific information on its reactivity with water;
- 41 (5) A description, in nontechnical language, of the acute and  
42 chronic health effects of exposure to the hazardous substance,  
43 including the medical conditions that might be aggravated by  
44 exposure, and any permissible exposure limits established by the  
45 federal Occupational Safety and Health Administration;
- 46 (6) The potential routes and symptoms of exposure to the  
47 hazardous substance;

- 1 (7) The proper precautions, practices, necessary personal  
2 protective equipment, recommended engineering controls, and any  
3 other necessary and appropriate measures for the safe handling of  
4 the hazardous substance, including specific information on how to  
5 extinguish or control a fire that involves the hazardous substance;  
6 and
- 7 (8) The appropriate emergency and first aid procedures for spills,  
8 fires, potential explosions, and accidental or unplanned emissions  
9 involving the hazardous substance.
- 10 o. "Label" means a sign, emblem, sticker, or marker affixed to  
11 or stenciled onto a container listing the information required  
12 pursuant to section 14 of this act.
- 13 p. "Mixture" means a combination of two or more substances  
14 not involving a chemical reaction.
- 15 q. "Process container" means a container, excluding a pipeline,  
16 the content of which is changed frequently; a container of 10  
17 gallons or less in capacity, into which substances are transferred  
18 from labeled containers, and which is intended only for the  
19 immediate use of the employee who performs the transfer; a  
20 container on which a label would be obscured by heat, spillage or  
21 other factors; or a test tube, beaker, vial, or other container which is  
22 routinely used and reused.
- 23 r. "Research and development laboratory" means a specially  
24 designated area used primarily for research, development, and  
25 testing activity, and not primarily involved in the production of  
26 goods for commercial sale, in which hazardous substances or  
27 environmental hazardous substances are used by or under the direct  
28 supervision of a technically qualified person.
- 29 s. "Special health hazard substance" means any hazardous  
30 substance on the special health hazard substance list.
- 31 t. "Special health hazard substance list" means the list of special  
32 health hazard substances developed by the Department of Health  
33 pursuant to section 5 of this act for which an employer may not  
34 make a trade secret claim.
- 35 u. "Trade secret" means any formula, plan, pattern, process,  
36 production data, information, or compilation of information, which  
37 is not patented, which is known only to an employer and certain  
38 other individuals, and which is used in the fabrication and  
39 production of an article of trade or service, and which gives the  
40 employer possessing it a competitive advantage over businesses  
41 who do not possess it, or the secrecy of which is certified by an  
42 appropriate official of the federal government as necessary for  
43 national defense purposes. The chemical name and Chemical  
44 Abstracts Service number of a substance shall be considered a trade  
45 secret only if the employer can establish that the substance is  
46 unknown to competitors. In determining whether a trade secret is  
47 valid pursuant to section 15 of this act, the Department of Health, or  
48 the Department of Environmental Protection, as the case may be,

1 shall consider material provided by the employer concerning (1) the  
2 extent to which the information for which the trade secret claim is  
3 made is known outside the employer's business; (2) the extent to  
4 which the information is known by employees and others involved  
5 in the employer's business; (3) the extent of measures taken by the  
6 employer to guard the secrecy of the information; (4) the value of  
7 the information, to the employer or the employer's competitor; (5)  
8 the amount of effort or money expended by the employer in  
9 developing the information; and (6) the ease or difficulty with  
10 which the information could be disclosed by analytical techniques,  
11 laboratory procedures, or other means.

12 v. "Trade secret registry number" means a code number  
13 temporarily or permanently assigned to the identity of a substance  
14 in a container by the Department of Health pursuant to section 15 of  
15 this act.

16 w. "Trade secret claim" means a written request, made by an  
17 employer pursuant to section 15 of this act, to withhold the public  
18 disclosure of information on the grounds that the disclosure would  
19 reveal a trade secret.

20 x. "Workplace hazardous substance list" means the list of  
21 hazardous substances developed by the Department of Health  
22 pursuant to section 5 of this act.

23 y. "Workplace survey" means a written document, prepared by  
24 the Department of Health and completed by an employer pursuant  
25 to this act, on which the employer shall report each hazardous  
26 substance present at **[his]** the facility.

27 (cf: P.L.1991, c.235, s.17)

28

29 2. (New section) a. Beginning two years after the effective date  
30 of P.L. , c. (C. ) (pending before the Legislature as this  
31 bill), each time an employer returns an environmental survey to the  
32 department, the survey response shall include a consequence  
33 analysis. The purpose of the consequence analysis shall be to  
34 provide information to the public about the possible consequences  
35 of a spill of any or all of the hazardous substances stored at the  
36 facility. The consequence analysis shall:

37 (1) estimate the potential consequences of a spill, fire, explosion,  
38 or other incident at the facility;

39 (2) identify the potential populations exposed to a hazardous  
40 substance in the case of spill, fire, explosion, or other incident,  
41 through the use of a map or geographic information system data,  
42 which identification shall take into account the physical and  
43 chemical states and properties of each hazardous substance, the  
44 release scenario, and the geographical, topographical, geological,  
45 and meteorological characteristics of the environment;

46 (3) be comprehensible to the general public, to the maximum  
47 extent practicable; and

1 (4) contain any other information deemed to be in the public  
2 interest by the department.

3 b. The department shall post each consequence analysis it  
4 receives on its Internet website, in a manner that makes the analysis  
5 locatable through an Internet search engine. The department shall  
6 redact any information in the consequence analysis it deems to be a  
7 trade secret prior to posting the analysis. The department shall  
8 update the consequence analysis, and remove the outdated analysis,  
9 for each facility each time it receives such an update.

10 c. In order to avoid duplicative reporting requirements, the  
11 department shall, to the maximum extent practicable, consolidate  
12 the requirements of this section with those of other State and federal  
13 laws, including, but not limited to, the "Toxic Catastrophe  
14 Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.) and the  
15 federal "Emergency Planning and Community Right-To-Know Act  
16 of 1986," 42 U.S.C. s.11001 et seq.

17 d. The department may adopt, pursuant to the "Administrative  
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
19 regulations as may be necessary to implement the provisions of this  
20 section.

21

22 3. (New section) The State Office of Emergency Management  
23 shall develop risk and hazard assessment criteria, which shall be  
24 used by counties and municipalities in creating their Emergency  
25 Operations Plan. The assessment criteria shall be developed in  
26 conjunction with experts in the field of risk and hazard planning to  
27 assess those risks and hazards specific to that county or  
28 municipality. The risk and hazard assessment criteria, shall include,  
29 but not be limited to, criteria for determining the risk that may be  
30 posed by hazardous materials being stored or transported through  
31 the county or municipality.

32

33 4. Section 19 of P.L.1989, c.222 (App.A:9-43.2) is amended to  
34 read as follows:

35 19. Each county and municipality in the State shall prepare a  
36 written Emergency Operations Plan, which adheres to the risk and  
37 hazard assessment criteria provided to the county or municipality by  
38 the State Office of Emergency Management, with all appropriate  
39 annexes necessary to implement the plan. The development of all  
40 plans shall be coordinated with the Emergency Operations Plans of  
41 the State, county and neighboring municipalities to ensure a  
42 regional coordinated response and the efficient use of resources.

43 a. These plans shall include, but not be limited to, provisions  
44 which shall be developed in consultation with:

45 (1) the Department of Agriculture, to support the needs of  
46 animals and individuals with an animal under their care, including  
47 domestic livestock, a domesticated animal, or a service animal, in a  
48 major disaster or emergency; **[and]**



1 (2) the Department of Health and Senior Services to evaluate the  
2 evacuation procedures of hospitals and other health care facilities  
3 located in each county and municipality, alternative sources of care  
4 for evacuated patients, and proposed sites of temporary shelter in  
5 the event of an emergency~~]. ]~~; and

6 (3) the Department of Environmental Protection to evaluate the  
7 dangers posed by hazardous material that may be located in each  
8 county and municipality, that may be transported through each  
9 county and municipality, or that are identified by the consequence  
10 analysis prepared pursuant to section 2 of P.L. , c. (C. )  
11 (pending in the Legislature as this bill).

12 b. Each plan shall include provisions that specifically address  
13 the need for the safe and timely evacuation of the families and  
14 dependents of the emergency responders rendering major disaster or  
15 emergency services.

16 c. Each Emergency Operations Plan shall be adopted no later  
17 than one year after the State Emergency Planning Guidelines have  
18 been adopted by the State Office of Emergency Management and  
19 shall be evaluated at such subsequent scheduled review of the State  
20 Emergency Operations Plan.

21 (cf: P.L.2011, c.178, s.9)

22

23 5. Section 20 of P.L.1989, c.222 (App.A:9-43.3) is amended to  
24 read as follows:

25 20. Each county and municipal Emergency Operations Plan shall  
26 conform to all relevant federal and State statutes, rules, and  
27 regulations concerning emergency operations, and the State Office  
28 of Emergency Management risk and hazard assessment criteria, and  
29 shall include the identification of significant hazards affecting the  
30 jurisdiction. Each county and municipal Emergency Operations  
31 Plan shall be based upon planning criteria, objectives, requirements,  
32 responsibilities and concepts of operation for the implementation of  
33 all necessary and appropriate protective or remedial measures to be  
34 taken in response to an actual or threatened emergency as  
35 determined by the State Director of Emergency Management. Each  
36 Emergency Operations Plan shall provide for a command structure  
37 that affords appropriate command support for the incident  
38 commander. Deputy chiefs and battalion chiefs and company  
39 officers shall be included in the county fire mutual aid plan to  
40 respond to any emergency to supply command support or be  
41 assigned to the command structure. Each county and municipal  
42 Emergency Operations Plan shall be reviewed and updated at least  
43 every two years.

44 (cf: P.L.2000, c.177, s.1)

45

46 6. Section 21 of P.L.1989, c.222 (App.A:9-43.4) is amended to  
47 read as follows:

1 21. Each county and municipality shall submit an Emergency  
2 Operations Plan to the State Office of Emergency Management  
3 when the plan is initially developed and whenever the plan is  
4 reviewed and updated pursuant to the provisions of section 20 of  
5 P.L.1989, c.222 (App.A:9-43.3), which may be submitted in a  
6 secure electronic form by way of any electronic means capable of  
7 sending, submitting, or presenting confidential information. No  
8 Emergency Operations Plan shall take effect without approval by  
9 the State Office of Emergency Management. The State Office of  
10 Emergency Management shall review the plans and determine their  
11 compatibility with the State Emergency Operations Plan Guidelines  
12 and whether the plan adequately addresses hazards unique to that  
13 county and municipality through proper utilization of the risk and  
14 hazard assessment criteria developed pursuant to section 3  
15 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
16 and shall either approve, conditionally approve, or disapprove the  
17 plan. The State Office of Emergency Management shall set forth in  
18 writing its reasons for disapproval of any plan or, in the case of the  
19 issuance of a conditional approval, shall specify the necessary  
20 amendments to the plan. If the State Office of Emergency  
21 Management fails to approve, conditionally approve, or disapprove  
22 an Emergency Operations Plan within 60 days of receipt of the plan,  
23 it shall be considered approved by the State Office of Emergency  
24 Management. The State Office of Emergency Management may  
25 audit any county or municipal Emergency Operations Plan in order  
26 to determine whether the Emergency Operations Plan is appropriate  
27 and responsive to risks and hazards that are unique to that county or  
28 municipality.  
29 (cf: P.L.2010, c.66, s.2)

30

31 7. This act shall take effect immediately.

32

33

34

## STATEMENT

35

36 This bill would require facilities regulated under the "Worker  
37 and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et  
38 seq.), to include a consequence analysis that describes potential  
39 outcomes of spills, fires, explosions, and other incidents at the  
40 facility, as part of the environmental survey the facilities are  
41 required to submit to the Department of Environmental Protection  
42 (DEP) under that act.

43 Under the bill, the consequence analysis would be required to

44 (1) estimate the potential consequences of a spill, fire, explosion,  
45 or other incident at the facility;46 (2) identify the potential populations exposed to a hazardous  
47 substance in the case of spill, fire, explosion, or other incident,

1 through the use of a map or geographic information system (GIS)  
2 data;

3 (3) be comprehensible to the general public, to the maximum  
4 extent practicable; and

5 (4) contain any other information deemed to be in the public  
6 interest by the DEP.

7 The DEP would be required to post each consequence analysis it  
8 receives on its website. The DEP would also be required to redact  
9 any trade secrets from the consequence analysis prior to posting the  
10 analysis.

11 The bill would also require all county and municipal Emergency  
12 Operations Plans to consider local risks and hazards. Under the  
13 bill, the State Office of Emergency Management is required to  
14 develop risk and hazard assessment criteria to be used by counties  
15 and municipalities when creating its Emergency Operations Plan.  
16 The risk and hazard assessment criteria is to be developed in  
17 conjunction with experts in the field of risk and hazard planning to  
18 assess those risks and hazards specific to the county or  
19 municipality, including, but not limited to, criteria for determining  
20 the risk posed by hazardous materials being stored or transported  
21 through the county or municipality.

22 The bill provides that each county and municipality Emergency  
23 Operations Plan would be required adhere to the risk and hazard  
24 assessment criteria developed by the State Office of Emergency  
25 Management. In addition, the plan is to include provisions  
26 developed in consultation with the DEP to evaluate the dangers  
27 posed by hazardous material that may be located in each county and  
28 municipality, that may be transported through each county and  
29 municipality, or that are identified in the consequence analysis  
30 prepared pursuant to section 2 of the bill.

31 Under current law, every county and municipality Emergency  
32 Operations Plan is to be reviewed and approved by the State Office  
33 of Emergency Management before it can take effect. Counties and  
34 municipalities are required to review and update their Emergency  
35 Operations Plan at least every two years. The bill requires the State  
36 Office of Emergency Management to review and approve a county  
37 or municipal Emergency Operations Plan before it can take effect  
38 and anytime the plan is reviewed and updated.

39 Finally, the bill authorizes the State Office of Emergency  
40 Management to audit any county or municipal Emergency  
41 Operations Plan in order to determine whether the plan is  
42 appropriate and responsive to the risks and hazards that are unique  
43 to that county or municipality.