

FE
GRACE

Ch. J. Bettach
Construction Products Division

TO: Mass State Regulations File
FROM: S. Verne
SUBJECT: Mass Right-To-Know Regulations

DATE: June 29, 1984

cc: R. C. Ericson
R. J. Marion
J. S. Teller
D. J. Walsh
D. J. Wrightman
RECEIVED
JUN 30 1984
file: Mass State Regs.

PLAINTIFF'S
EXHIBIT
WRG-948

The Massachusetts Right-To-Know Regulations, as finalized the week of 6/26/84, will directly impact vermiculite labels and Material Safety Data Sheets. Deadline for compliance is 9/26/84.

The original proposed regulations raised two major concerns:

1) the Regulations would have required listing all ingredients by name on product labels, and by name and percentage on Material Safety Data Sheets, and 2) the Regulations would have designated all known or suspect carcinogens present in 1 ppm, as extraordinarily hazardous substances.

The final Regulations require labels and Material Safety Data Sheets to identify chemicals which are included on the Massachusetts Hazardous Substance List only. Nonhazardous ingredients do not have to be listed. The final Regulations still consider carcinogens present in 1 ppm to be extraordinarily hazardous substances. These have been specifically identified on the Hazardous Substance List with a "C" notation.

Labelling and MSDS requirements are exempt if the hazardous substance is 1) intentionally added at <1%, 2) present as an impurity at < 2%, and 3) present at <1 ppm if it is an "extraordinarily" hazardous substance.

This will require that all vermiculite-containing products (straight vermiculite, Monokote, Metro-Mix, etc...) list tremolite on the labels. It is not necessary to identify any hazards associated with tremolite on the label. It is possible to include qualifying statements about potential exposure and amounts present. I would recommend using the following statement: "contains less than 0.005% tremolite fiber. Refer to the Material Safety Data Sheet for additional information."

Reference to tremolite is also required on all Material Safety Data Sheets for these products. The supplemental information section on MSDS #Z-801 appears to satisfy this requirement for the most part. A revision to include the CAS Number for tremolite is necessary however.

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It is an OSHA requirement to provide an MSDS to all employees. Since references to tremolite is already included in the vermiculite MSDS, and expected to be added to the MSDS's for mixed products including the same reference on the labels does not tell the users any more than they would be told otherwise.

Attached is a breakdown of all existing Right-To-Know Laws (State and Federal) indicating supplier labeling requirements for carcinogens. A decision is needed as soon as possible on the label for Massachusetts only or for all states. To appear on the labels and MSDS designed to satisfy both OSHA and Massachusetts would satisfy the current Right-To-Know Laws.

S. Venuti
S. Venuti

SV:dm

Attachment

Footnote:

When the original proposed regulations were issued, A.I.M. suggested that they would be challenged in court if significant changes were not made. Apparently, A.I.M. is happy with the final regulations. At a seminar - 6/26/84, W. McCarthy, Vice-President and General Counsel for A.I.M. commented that the 1 ppm level for carcinogens is "very low but probably appropriate."

I also spoke with R. Mastrangelo, Associate Counsel for A.I.M. He voiced the opinion that the 1 ppm level designated for carcinogens is based on a sound foundation and consistent with the authority granted the commissioner of public health under the Act. He further indicated that A.I.M. had no interest in challenging this point in court.

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RIGHT-TO-KNOW CARCINOGEN LABELLING BY SUPPLIER

Concentration Requiring MSDS or Label Reference

State	MSDS	Label	Limit No. 1 Intentional Specified	2 Unintentional	0.1% 1 ppm
California	X				X
Connecticut	X	X	X		
Florida	X				X
Illinois	X	X			
Iowa	X				
Maine	X				
Maryland	X	X			X
Massachusetts	X	X			X
Minnesota	X	X	X		
New Hampshire	X		X		
New Jersey	X			1%	
New York	X		X		
Rhode Island	X	X			X
West Virginia	X		X		
Wisconsin	X			X	
OSHA	X	X			X
<u>TOTALS</u>	16	9	6	4	5 1

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Right to Know

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MAY 8 1984

DATE: 5/1/84

TO: A. M. Bakeman/Grace-TV
R. J. Bettacchi
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A. Eichenbach
J. Frohlich
J. G. Walsh
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FROM: K. L. Cheetham

SOURCE: Grace statement on proposed
Massachusetts Right-to-Know
legislation, 4/20/84

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GRACE

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April 20, 1984

Comments on DPH Draft Regulation 105 CMR 670.000 and
670.010(c)(1)
Implementing the Right-to-Know Act

1 M. R. Grace & Co. has already testified at the Right-to-Know hearings. We wish to reaffirm our concerns with the proposed DPH regulations particularly as they apply to laboratory exemptions and trade secrets. The proposed processes are needlessly convoluted and will not aid in furthering the goals of the Right to Know Act. We would, however, like to take this opportunity to present some additional comments on the subject of Extraordinarily Hazardous Substances.

Section 4 of the Massachusetts Right-to-Know law provides that: "For the purposes of this chapter, a toxic or hazardous substance is present in any mixture if it is one per cent or more of the mixture or two per cent if the toxic or hazardous substance exists as an impurity in the mixture; provided, however, that the commissioner of DPH may, by regulation, raise the concentration requirement for a toxic or hazardous substance which he or she finds is not toxic or hazardous at the threshold levels; and may lower the concentration requirement for a toxic or hazardous substance including carcinogens, mutagens, teratogens, and neurotoxins for which there is valid and substantial scientific evidence that the substance is extraordinarily hazardous."

We fully recognize the need to establish higher or lower concentration limits based upon toxicity and support the granting of such authority to the Commissioner of Public Health. We feel strongly, however, that the implementation of this authority as proposed in the Department of Public Health draft regulations goes beyond what the legislation intended. The draft regulation states that: "Extraordinarily Hazardous Substance means a substance which is a human carcinogen pursuant to 670.010(C)(1)." (Substances found on either the NCI, NTP or IARC lists)...and that "An extraordinarily hazardous substance shall be deemed to be present in a mixture if the concentration of such substance is greater than one milligram per kilogram (1 ppm by weight)."

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There is a statutory impediment to defining all carcinogens as "extraordinarily hazardous" in the proposed regulations. Section (d) of the Act allows the Commissioner of DPH to "lower the concentration requirement for a toxic or hazardous substance including carcinogens... for which there is valid and substantial scientific evidence that the substance is extraordinarily hazardous." Thus, the Commissioner must make a finding for each specific substance that, based upon available evidence, it is extraordinarily hazardous, rather than establish a generic classification. The statutory language is clear in linking the need for a specific finding to each toxic or hazardous substance for which a lower concentration is to be established. If the legislative intent had been otherwise, a separate generic statutory classification for carcinogens would have been established as was done in the Illinois Right-to-Know legislation, and in the OSHA standard.

In addition, there are equitable and practical problems with establishing a generic level of 1 ppm for suspect carcinogenic components without any relation to potential exposures and dose-response relationships.

Components are generally not purposefully added to products at levels between 1 ppm and 1%. Thus most substances covered by the draft generic standard would be residuals, byproducts, or impurities generated in the manufacturing process. The result of this rule would be to penalize those companies with the analytical expertise and willingness to detect substances at this level.

While a 1 ppm standard has been recommended as a suggested exposure level for some workplace substances this has no relation to 1 ppm as a component in a product which may result in virtually no exposure. A case in point is benzene. Benzene is ubiquitous in the environment and is found naturally in fruits, fish, vegetables, nuts, dairy products, beverages and eggs. It is also present in gasoline at 20,000-40,000 ppm. Naturally occurring benzene is also present in the ambient air. As a major petroleum distillate benzene is present in traces in many industrial, commercial, and consumer products yet exposure levels are minimal or non-existent and both the Consumer Product Safety Commission and the Environmental Protection Agency have declined to regulate any such potential exposures.

Applying a generic standard to all components will
result in needless burden for both employers and the
government and result in a plea of disability which in
the end be counterproductive since it will lead to a devaluing
of all ratings including those present for valid reasons.

MA

1st Lt. Counsel

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COMMENTS ON PROPOSED
RIGHT-TO-KNOW REGULATIONS

Good afternoon. My name is Mark Stoler, and I am a lawyer with W. R. Grace & Co., on whose behalf I am submitting these comments for your consideration. W. R. Grace & Co. has eight manufacturing facilities in the Commonwealth and many of our out-of-state operations sell products within the Commonwealth, so we have reviewed the draft regulations very carefully.

W. R. Grace & Co. supported Chapter 111F as enacted by the General Court in 1983. Based upon the Act we had anticipated the implementation of an orderly compliance program. However, when the Right to Know regulations appeared in draft form we were surprised, and somewhat dismayed, that in many cases they did not track the language of the Act and provided for unnecessary paperwork not directly connected with the concerns that had prompted the original passage of the bill. While we have many concerns about the regulations, particularly those proposed by the Department of Public Health and Department of Labor and Industries, I would like to confine my comments today to a few central issues.

1. DLI 21.06. Manufactured Mixture and Workplace MSDS.

(a) The regulation states that for each MSDS "ingredients shall be listed in descending order determined by the relative amounts present in the

10046194

ingredient." I would like to query whether "ingredient" means hazardous or toxic substances. According to our conversations with DLI officials, the term "ingredient" is meant to cover non-hazardous as well as hazardous components. If so, this provision is clearly outside the scope of the statute and as such should be struck from the regulations. There is no justification for requiring a list of non-hazardous ingredients. Furthermore, the DPH Trade Secret provisions are only applicable to hazardous substances leading to a situation where the MSDS requirement is triggered by the presence of a hazardous substance, the identity of which can be withheld as a trade secret, but containing non-hazardous substances which must be identified.

(b) "Required MSDS". The first sentence of this section is in accordance with the statute allowing the employer the option of providing a mixture MSDS or an MSDS on each hazardous or toxic constituent element of a mixture. However, the second sentence then undoes the intent of the statutory language by potentially requiring the employer to provide both the mixture MSDS and the individual constituent MSDS, thus making the first sentence virtually meaningless as a practical matter.

(c) In both the manufacture mixture and workplace MSDS sections there are requirements that all ingredients be listed in descending order and that the percentages

46195

ingredient be shown in the MSDS neither of which are required by Chapter 141A. Since the main concern is to inform from the use of hazardous substance should be dealt with by those sections that require hazard information on the mixture itself. It is hazard information not ingredient identification which is the purpose of the statute. Thus there is no practical purpose for requiring the list of ingredients and percentages.

2. DLR 21.05 Labeling. The draft regulation on labeling of containers containing mixtures which requires labeling with the chemical name of each toxic or hazardous substance in the mixture, appears to be both contrary to Section 7A of the statute and, as a practical matter, in conflict with and negates any value in using mixture MSDSs as described in Section 21.06.

Section 21.05 also addresses specific labeling requirements which exceed both the federal Hazard Communication rules and the conditions of Section 7 of the Act.

The "container" should bear the name of the product used without the addition of components from the Mass. Hazardous Materials list. The specific details as to the presence of toxic or hazardous constituents should be addressed on the Material Safety Data Sheet. The rationale for such an approach is covered in the Federal Register of November 25, 1983, pages 53300 through 53304. To require

...to carry numerous labels make conscientious
...extremely difficult, diminish the impact of
...hazard warning labels, presents significant
...of product confusion, and since the chemical name
...does not mean much to most people, it does not convey
...additional hazard information.

Since the desired chemical composition information
is to be included on the MSDS, the information will be
available.

DPH 670.015. Research Laboratories. The intent of
the statute was that research laboratories would be eligible
for an exemption from Chapter 111F. The draft regulation
establishes a procedure which would in effect revoke that
potential exemption. Section B, which includes the review
criteria for the department, includes criteria that are
quite clearly covered by the Occupational Safety and Health
Administration, such as adequate ventilation, firefighting,
and safety equipment. Section C, which describes the
material which must be submitted with the exemption applica-
tion, is much too broad and requires much more information
than is necessary for the Department to make a decision as
to whether an applicant is eligible for an exemption. These
excessive items include 4, 6, 7, 13, 14, and 15. Section H(3)
establishes a procedure which would require additional
submission of information on a periodic basis by the company
holding a research exemption. This appears to be unnecessary

10046197

since the Department has the opportunity to conduct inspections of research laboratories and is requiring submission of information regarding changed circumstances.

4. Section 670.020. Trade Secrets: This section as written is so onerous it is hard to know where to begin making comments.

According to the definition of "trade secret" in Chapter III, there are two components to a trade secret:

(1) it must give the employer or manufacturer an opportunity to obtain an advantage over competitors; and (2) the competitor must not know or use the trade secret. The Department has added a statement which must be made under pains of penalties and perjury by the applicant certifying that the information contained in this form is accurate and complete. Some basic inquiries attached with a statement as to whether in fact an advantage is gained and whether the competitor knows or uses the trade secret should be sufficient to meet the statutory criteria. There is no need to obtain most of the information suggested. Repeated inclusion of the adjective "detailed" in front of "explanation" should be struck. An "explanation" is that which is sufficient to describe. The addition of the word "detailed" is just a justification for continuing to request continuing submissions of additional information by the employer. I would predict that because of the uncertainty of the trade secret process as proposed the Department will receive more claims for trade secrets than would otherwise be sought.

OSHA 670.010 (D) Concentration limits for Extraordinary
Hazardous Substances. As a practical matter, the listed
suspect carcinogens that are present in the industrial
workplace are also regulated by the OSHA regulations of
1968 1910.1000 which sets workplace exposure limits
to set a generic level of 1 ppm for suspect carcinogen
exposure without any relation to potential exposures and
dose response relationships is unjustified. The 1 ppm rule
penalizes those companies with the analytical expertise and
willingness to detect substances at this level. Components
are not added for product purposes at 1 ppm levels and are
more likely to be residuals or byproducts.

To list a chemical as hazardous because it contains
some component at 1 ppm will probably result in a large
number of mixtures falling within the regulations. When
everything becomes labeled a hazard, then the truly hazardous
materials will not receive proper respect and concern.
Hazard warnings will be trivialized.

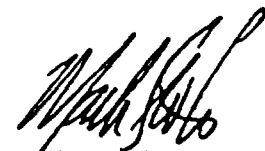
As a simple issue of comparative risks, the use of
gasoline at a service station involves a product with a
suspect carcinogenic component at levels of 20-30,000 ppm.

6. Department of Environmental Quality Engineering,
MSDS Advisory. We would like to advise DEQE not to require
a distinct Massachusetts MSDS. Grace, along with many other
companies, is currently trying to resolve the inherent
conflicts between the numerous state Right To Know Laws and

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the new federal regulations. A distinct state format will only further fragment this process and will make compliance more, not less, difficult.

We strongly urge the Departments to take our comments, and those of other interested companies, into account in considering whether the regulations should be redrafted. These regulations as proposed, particularly those of the Department of Labor and Industries and the Department of Public Health, would result in a massive increase in paperwork along with attendant bureaucracy in both the government and in those companies subject to the regulations without commensurate improvements in worker safety or health. The Right To Know Bill as enacted last year, with regulations that adhere to the meaning and the spirit of that bill, will do the job it was intended to do. However, the regulations as now drafted are more of an obstacle than a help towards obtaining the goal of Chapter 111F. Thank you.



Mark Stoler
Assistant Counsel

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