

GRACE

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

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mixture." 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

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of each ingredient be shown in the MSDS neither of which are required by Chapter 111F. Since the main concerns arising from the use of hazardous substances 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. DLI 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

each container to carry numerous labels makes conscientious compliance extremely difficult, diminishes the impact of significant hazard warning labels, presents significant danger of product confusion, and since the chemical name itself does not mean much to most people, it does not convey any additional hazard information.

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

3. 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 application, 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

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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 111F, 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.

5. DPH 670.010(D). Concentration Limits for Extraordinarily 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 29CFR 1910.1000 which sets workplace exposure limits. To set a generic level of 1 ppm for suspect carcinogen component 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.

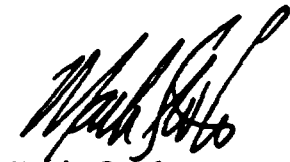
As a simple issue of comparative risks, the use of gasoline at a service station involves a product with a suspect carcinogenic component at levels of 20-30,000 ppm.

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 regulation. 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.



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