

## CHAPTER 299K

### HAZARDOUS CHEMICAL EMERGENCY; PLANNING AND RESPONSE

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#### 299K.01 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to sections 299K.01 to 299K.10.

Subd. 2. **Commission.** "Commission" means the Emergency Response Commission established in section 299K.03.

Subd. 3. **Emergency response organization.** "Emergency response organization" means a firefighting, law enforcement, emergency management, emergency medical services, health, or local environmental organization, or a hospital.

Subd. 4. **Facility.** "Facility" means the buildings, equipment, structures, and other stationary items that:

(1) are located on a single site or on contiguous or adjacent sites; and

(2) are owned or operated by one person, or are under the sole or common control of one person.

Subd. 5. **Federal act.** "Federal act" means the federal Emergency Planning and Community Right To Know Act, United States Code, title 42, sections 11001 to 11046.

Subd. 6. **Person.** "Person" means any individual, partnership, association, public or private corporation, or other entity including the United States government, any interstate body, the state and any agency, department, or political subdivision of the state.

**History:** 1989 c 315 s 1

#### 299K.02 OFFICE OF EMERGENCY RESPONSE.

The Office of Emergency Response is established in the Department of Public Safety, consisting of the Emergency Response Commission and its staff, to coordinate state compliance with the federal act.

**History:** 1989 c 315 s 2

#### 299K.03 EMERGENCY RESPONSE COMMISSION.

Subdivision 1. **Establishment.** The Emergency Response Commission is established to comply with and administer the federal act.

Subd. 2. **Agency members.** The commission consists of the commissioners of the Department of Public Safety, the Pollution Control Agency, the Department of Health, and the Department of Agriculture.

Subd. 3. **Appointed members.** (a) The governor shall appoint 18 additional members to the commission.

(b) The 18 appointed members must include one representative each of fire chiefs, professional firefighters, volunteer firefighters, fire marshals, law enforcement personnel, emergency medical personnel, health professionals, wastewater treatment operators, labor, emergency managers, and local elected officials, three representatives of community groups or the public, and four representatives from business and industry, at least one of whom must represent small business.

(c) At least four of the appointed members must reside outside the metropolitan area, as defined in section 473.121, subdivision 2.

(d) The appointed members must be appointed, serve, and be compensated in the manner provided in section 15.059.

Subd. 4. [Repealed, 2001 c 161 s 58]

Subd. 5. **Duties of commission.** The commission shall carry out all requirements of a commission under the federal act and may adopt rules to do so. The commission shall encourage use of and shall utilize existing emergency planning systems under section 299K.05 whenever practical.

Subd. 6. **Agreements.** The commission may cooperate and enter into necessary agreements with other state departments and agencies, political subdivisions of the state, or the federal government to perform its duties.

Subd. 7. **Cooperation.** State departments, agencies, and political subdivisions shall cooperate with the commission and its director and shall assist in the performance of the commission's duties.

**History:** 1989 c 315 s 3; 1994 c 584 s 1

#### **299K.04 REGIONAL REVIEW COMMITTEE.**

Subdivision 1. **Membership.** (a) The commission shall establish emergency planning districts and appoint and supervise a regional review committee for each district. The regional review committee shall serve as the local emergency planning committee under the federal act, except where a local emergency planning committee has been established by one or more political subdivisions.

(b) Each regional review committee must have nine members consisting of:

(1) three representatives of facilities regulated under the federal act;

(2) three representatives of emergency response organizations; and

(3) three representatives of the public including community groups, broadcast and print media, and elected officials.

Subd. 2. **Compensation.** Regional review committee members shall be compensated in the manner provided in section 15.059.

Subd. 3. **Duties of regional review committee.** Regional review committees shall:

(1) review emergency operations plans prepared by political subdivisions within their emergency planning district to determine whether they meet the requirements of section 11003(c) of the federal act;

(2) consult and coordinate with the regional program coordinators of the Division of Emergency Management of the Department of Public Safety and with local and county organizations for civil defense designated under section 12.25;

- (3) submit emergency plans to the commission for review and recommendations;
- (4) establish procedures for receiving and processing requests from the public for information available under the federal act; and
- (5) perform any other duties specified in the federal act.

**History:** 1989 c 315 s 4

#### **299K.05 LOCAL EMERGENCY PLAN.**

Subdivision 1. **Preparation.** Political subdivisions should prepare emergency plans that adequately address the requirements contained in section 11003 of the federal act. The emergency plan may be a part of a plan prepared by a political subdivision in accordance with chapter 12. County organizations, through the county director designated under section 12.25, shall receive the plans for review, shall coordinate the emergency planning required under the federal act for political subdivisions within the county, and shall submit the plans to the regional office of the Division of Emergency Management. The Division of Emergency Management shall submit the plans to the regional review committee.

Subd. 2. **Local emergency planning committee.** A political subdivision or two or more political subdivisions that are contiguous may request the commission to establish a local emergency planning committee for the political subdivision or subdivisions. A local emergency planning committee established by the commission shall carry out all requirements specified under sections 11001 to 11046 of the federal act.

Subd. 3. **Planning advisory committee.** A political subdivision or two or more political subdivisions that are contiguous may establish, in lieu of a local emergency planning committee, a planning advisory committee to prepare an emergency plan under section 11003 of the federal act.

**History:** 1989 c 315 s 5

#### **299K.06 PUBLIC INFORMATION DEPOSITORY.**

Subdivision 1. **County designation of library.** Each county shall designate a library in the county for maintaining updated information on the facilities subject to the federal act that are located in the county and a copy of the emergency response plan for the county.

Subd. 2. **Information provided.** When the commission develops a computerized information system, the commission shall provide updated information on a regular basis to libraries designated under subdivision 1, listing the facilities subject to sections 299K.01 to 299K.10 and noting types of hazards, specific chemicals on site, and amounts of chemicals on site at each facility, and identifying the regional review committee that may be contacted for further information. The commission also shall provide to the libraries a copy of the most recently approved emergency response plan for the county and designate a contact person for public participation in emergency planning.

**History:** 1989 c 315 s 6

#### **299K.07 NOTIFICATION TO EMERGENCY MANAGEMENT CENTER.**

(a) The notification of the commission required under the federal act must be made to the state Emergency Management Center. The owner or operator of a facility shall immediately notify the state Emergency Management Center of the release of a reportable quantity of the following materials:

(1) a hazardous substance on the list established under United States Code, title 42, section 9602; or

(2) an extremely hazardous substance on the list established under United States Code, title 42, section 11002.

(b) This section does not apply to a release that results in exposure to persons solely within the site or sites on which a facility is located or to a release specifically authorized by state law.

(c) A person who is required to report to or notify a state agency of a discharge, release, or incident under section 221.0341, this chapter, chapter 18B, 18C, 18D, 115, 115A, 115B, 115C, 115D, 116, or 299J, or any other statute, administrative rule, or federal regulation may satisfy the requirement to report by notifying the Emergency Management Center established in this section. The commissioner of the Department of Public Safety shall ensure that the center is staffed with adequate personnel to answer all calls 24 hours a day and that those staff are adequately trained to efficiently notify all appropriate state and federal agencies with jurisdiction over the discharge or release, and provide emergency responder information. No state agency may adopt a rule or guideline that requires a person who notifies the Emergency Management Center to also notify that agency. The commissioner of each affected state agency shall include the telephone number of the Emergency Management Center in all files, permits, correspondence, educational publications, and other communications with the public and other persons, and shall designate personnel to coordinate receipt of reports or notifications with Emergency Management Center personnel.

**History:** 1989 c 315 s 7; 1991 c 233 s 97; 2004 c 225 s 14

## **299K.08 FACILITY REQUIRED TO COMPLY.**

Subdivision 1. **Generally.** Facilities subject to the federal act must comply with the federal act and sections 299K.01 to 299K.10.

Subd. 2. **Hazardous chemical inventory reporting.** (a) In addition to facilities specified in the federal act, facilities that are operated by employers subject to the occupational health and safety provisions of sections 182.65 to 182.675 shall comply with the hazardous chemical inventory reporting of the federal act.

(b) This section is a designation of additional facilities under sections 11021 and 11022 of the federal act, and the legislative process meets the requirements for public notice and opportunity to comment.

Subd. 3. **Toxic chemical release reporting.** (a) Except as provided in paragraph (b), in addition to facilities specified in the federal act, the following facilities shall comply with the toxic chemical release reporting requirements of section 11023 of the federal act and United States Code, title 42, section 13106, to the same extent as facilities that are required by federal law to comply with these requirements: facilities having a two-digit standard industrial classification of 10, 40, 45, or 49; a three-digit standard industrial classification of 806, 807, or 822; or a four-digit standard industrial classification of 5161, 5162, 5169, 7384, 7389 (solvent recovery facilities only), 8734, or 9223.

(b) For the facilities added in this section, the toxic chemical release reporting requirements of section 11023 of the federal act, and sections 115D.07, 115D.08, and 115D.12, do not apply to substances that are associated with or incidental to the combustion of fossil fuels or other fuels for the generation of electricity or the production of steam.

Subd. 3a. **Use of alternative threshold and certifications; restrictions.** (a) For Minnesota facilities required to report under subdivision 3, the alternative threshold quantities outlined in Code of Federal Regulations, title 40, section 372.27, paragraphs (a)(1) and (a)(2)(ii), or a successor regulation, shall be

changed back to the threshold levels prior to implementation of the toxic release inventory burden reduction rule of December 18, 2006.

(b) The use of Environmental Protection Agency certification form 9530-2, (Form A), or any equivalent successor to the form, shall not be used by facilities:

(1) if the total annual reportable amount is 500 pounds or more for nonpersistent bioaccumulative and toxic chemicals; or

(2) with respect to any chemical identified by the Environmental Protection Agency administrator as a chemical of special concern under Code of Federal Regulations, title 40, section 372.28, or a successor regulation.

(c) Facilities affected by paragraph (b) must use Environmental Protection Agency form 9350-1 (Form R), or any equivalent successor to the form.

Subd. 4. **Exemptions.** (a) A person may petition the commission to:

(1) exempt all facilities having a standard industrial classification listed in subdivision 3, or a classification within one of the listed classifications, from the reporting requirements of subdivision 3; or

(2) review a previously granted exemption.

(b) In making a determination on a petition under paragraph (a), the commission shall consider:

(1) the reported or estimated releases and transfers from facilities within the affected classification;

(2) the quality of the data submitted;

(3) the extent to which facilities within the affected classification report no releases or transfers;

(4) the number of reporting facilities in the affected classification;

(5) the percentage of all releases and transfers in the state that are reported by facilities in the affected classification;

(6) hazards to public safety and the environment posed by releases and transfers from facilities in the affected classification; and

(7) other factors identified by the commission.

(c) The commission shall hold at least one public meeting to receive testimony on the petition. The commission shall publish in the State Register notice of granted exemptions. The commission shall report on the status of petitions and exemptions as part of the annual toxic release inventory report.

(d) A facility specified in paragraph (a) that is not within a classification exempted under paragraph (b) and does not release or transfer chemicals subject to reporting under section 11023 of the federal act is exempt from reporting under subdivision 3 if the owner or operator of the facility certifies in writing to the commission that there are no releases or transfers at the facility. The certification must be submitted to the commission by the first reporting date for the facility under the federal act. The facility is exempt from further reporting unless there is a release or transfer from the facility or there is a change in the facility's standard industrial classification. Facilities that qualify for this exemption shall maintain documentation supporting the exemption and shall provide this documentation at the request of the commission.

**History:** 1989 c 315 s 8; 1993 c 172 s 81,82; 2008 c 357 s 37

**299K.09 FEE RULES.**

Subdivision 1. **Fees.** The commission shall adopt rules setting the following fees:

(1) a material safety data sheet fee to be paid by a facility when it submits material safety data sheets in lieu of a hazardous chemical report form as required under section 11021 of the federal act;

(2) a fee to be paid by a facility when the owner or operator submits its emergency and hazardous chemical inventory form, required under section 11022 of the federal act, for calendar year 1990 and annually afterwards; and

(3) a late fee to be paid by a facility that fails to pay a fee under clause (1) or (2) in a timely manner, not to exceed 200 percent of the original fee.

Subd. 2. **Fee structure.** The fee established under subdivision 1 may not exceed, in the aggregate, the amount necessary to cover the costs for all data management, including administration of fees, by the commission and regional review committees, and a portion of the costs of operation of the Emergency Management Center.

**History:** 1989 c 315 s 9; 1991 c 233 s 98

**299K.095 HAZARDOUS MATERIALS INCIDENT RESPONSE FEES.**

(a) Persons, except individuals engaged in a farming operation, required under section 11002 of the federal act to notify the commission of the storage of an extremely hazardous substance shall pay an annual fee of \$75 for each facility.

(b) Persons required under section 11023 of the federal act to submit a toxic chemical release form to the commission shall pay an annual fee of \$200 for zero releases and transfers annually, \$400 for more than zero releases and transfers but not exceeding 25,000 pounds annually, and \$800 for releases and transfers exceeding 25,000 pounds annually. This fee is in addition to fees collected under section 115D.12.

(c) All fees collected under this section must be deposited in the general fund.

**History:** 1992 c 593 art 2 s 8

**299K.10 ENFORCEMENT.**

Subdivision 1. **Commission's enforcement powers.** (a) To carry out its duties, the commission may:

(1) enforce the federal act;

(2) issue, enter into, or enforce orders, schedules of compliance, and stipulation agreements;

(3) conduct investigations, issue notices, and hold hearings that are necessary or useful to discharge its duties;

(4) examine and copy any books, papers, records, memoranda, or data of a person that is related to data required to be submitted to the commission;

(5) enter public or private property to take an action authorized by this section including obtaining information from a person who has a duty to provide information to the commission; and

(6) issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to matters involved in a hearing or investigation.

(b) An employee or agent of the commission may examine witnesses and administer oaths in connection with a subpoena. Witnesses must receive the same fees and mileage as in civil actions.

(c) The commission may delegate its authority under this subdivision to state or local governmental agencies or organizations to conduct investigations, examine and copy records, and enter property.

Subd. 2. **Civil action; commission.** The commission may enforce the federal act through a civil action brought in federal district court under the federal act or in state district court by the attorney general on request of the commission.

Subd. 3. **Civil action; citizen.** A person may commence a civil action against an owner or operator of a facility in state district court that may be brought in federal district court under the federal act.

Subd. 4. **Civil action; regional or local committee.** A regional review committee or a local emergency planning committee may commence an action against an owner or operator of a facility in state district court for a violation of the federal act that the local emergency planning committee is authorized to commence in federal district court under the federal act.

Subd. 5. **Injunctive relief.** In addition to other relief granted, the court may grant injunctive relief to restrain violations of the federal act.

Subd. 6. **Civil penalties.** (a) A violation of the federal act is a violation of state law.

(b) An owner or operator of a facility is liable to the state for civil penalties in the same manner and amount as the owner or operator is liable to the United States under section 11045, subpart (a), subpart (b), paragraphs (1), (2), and (3), and subpart (c), paragraphs (1) and (2), of the federal act.

(c) The commission may enforce the penalties in state district court in the same manner as the administrator of the United States Environmental Protection Agency may enforce the civil penalties in federal district court under the federal act.

(d) For purposes of this subdivision, each day of continued violation constitutes a separate violation.

Subd. 7. **Costs and attorney fees.** On the motion of a party prevailing in an action under this section, the court may award costs, disbursements, and reasonable attorney and witness fees to the prevailing party.

Subd. 8. **Venue.** A civil action authorized by this section may be brought in the District Court in Ramsey County, in the district court where the alleged violation occurred, or in the district court where the defendant is located.

Subd. 9. **Administrative penalty order.** The commission may issue an order requiring a violation of the federal act to be corrected and administratively assessing monetary penalties. Except in the case of serious or repeated violations, the penalty assessed in the order must be forgiven if the person who is subject to the order corrects the violation before the 31st day after receiving the order. The procedures in section 116.072 must be followed when issuing administrative penalty orders under this subdivision. The maximum amount of an administrative penalty order under this subdivision is \$10,000 for all violations identified in an inspection or a review of compliance.

**History:** 1989 c 315 s 10; 1990 c 388 s 2; 1993 c 282 s 1