

13: 1K-19 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 13:1K-19 et al "Toxic Catastrophe Prevention Act"

LAWS OF: 1985 CHAPTER: 403

BILL NO: A4145

Sponsor(s): Baer

Date Introduced: September 9, 1985

Committee: Assembly: -----

Senate: -----

Amended during passage: No

Date of Passage: Assembly: September 12, 1985

Senate: December 9, 1985

Date of Approval: January 8, 1986

Following statements are attached if available:

Sponsor statement: Yes Attached: Assembly amendments, adopted 9-12-84 (with statement)

Committee statement: Assembly No

Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clippings--attached:

- "Law maker seeks toxic-catastrophe bill backing," 8-28-85 Star Ledger.
- "Assembly to consider chemicals, environment," 9-12-85 Trenton Times.
- "Toxin safety bill ok'd," 9-13-85 Bergen Record.
- "Toxic registration bill wins Assembly approval," 9-13-85 Trenton Times.
- "State's 'Bhopal law' going into effect," 3-19-86 Trenton Times.

1-8-86

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## ASSEMBLY, No. 4145

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 9, 1985

By Assemblyman BAER

AN ACT concerning potentially catastrophic discharges of hazardous substances into the environment, supplementing Title 13 of the Revised Statutes, and making an appropriation.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Toxic  
2 Catastrophe Prevention Act."

1 2. The Legislature finds and declares that a number and variety  
2 of industrial facilities and related operations generate, store,  
3 handle, and transport extremely hazardous substances; that some  
4 of those operations may represent a catastrophic threat to public  
5 health and safety, especially in a densely populated state; that, in  
6 recent months, the catastrophically tragic event in Bhopal, India, as  
7 well as a score of accidental chemical releases into the atmosphere  
8 of the State demonstrate that modern technology, operations  
9 systems, and safeguards can fail in protecting against such threats  
10 to the public; that while a strengthened capacity to minimize and  
11 abate discharges once they occur and efficient plans to evacuate  
12 populations if those discharges cannot be contained are vital  
13 components of a comprehensive public protection program, the  
14 single most effective effort to be made is toward prevention of those  
15 environmental accidents by anticipating the circumstances that  
16 could result in their occurrence and taking those precautionary and  
17 preemptive actions required.

1 3. As used in this act:

2 a. \***["Catastrophic threat"]**\* \**“Extraordinarily hazardous ac-*  
3 *cident risk”*\* means a potential for release of an extraordinarily

**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 printed in italics *thus* is new matter.**

**Matter enclosed in asterisks or stars has been adopted as follows:**

\*—Assembly amendments adopted September 12, 1985.

4 hazardous substance into the environment which **\*[would]\***  
5 *\*could\** produce a significant likelihood that persons exposed  
6 **\*[will]\*** *\*may\** suffer acute health effects resulting in death or  
6A permanent disability;

7 b. "Commissioner" means the Commissioner of the Department  
8 of Environmental Protection;

9 c. "Department" means the Department of Environmental Pro-  
10 tection;

11 d. "Extraordinarily Hazardous Substance Accident Risk Assess-  
12 ment" or "EHSARA" means a review and safety evaluation of  
13 those operations in a facility which involve the generation, storage,  
14 or handling of an extraordinarily hazardous substance, as provided  
15 in section 6 of this act;

16 e. "Extraordinarily Hazardous Substance" means any substance  
17 or chemical compound used, manufactured, stored, or capable of  
18 being produced from onsite components in this State in sufficient  
19 quantities at a single site such that its release into the environment  
20 would produce a significant likelihood that persons exposed will  
21 suffer acute health effects resulting in death or permanent dis-  
22 ability;

23 f. "Extraordinarily Hazardous Substance List" means the sub-  
24 stances or chemical compounds identified in subsection a. of section  
25 4 of this act and adopted by regulation pursuant to subsection c.  
26 of that section;

27 g. "Extraordinarily Hazardous Substance Risk Reduction Work  
28 Plan" or "work plan" means the document developed by the depart-  
29 ment for each facility at which is generated, stored, or handled an  
30 extraordinarily hazardous substance setting forth the scope and  
31 detail of the EHSARA to which the facility will be submitted, as  
32 provided in section 6 of this act;

33 h. "Facility" means **\*[the]\*** *\*a\** building, equipment, and con-  
34 tiguous area **\*[at a single location used for the conduct of busi-  
35 ness]\***. Facility shall not include a research and development  
36 laboratory\*, *which means a specially designated area used primarily  
37 for research, development, and testing activity, and not primarily  
38 involved in the production of goods for commercial sale, in which  
39 extraordinarily hazardous substances are used by or under the  
40 supervision of a technically qualified person\**;

41 i. "Risk management program" means the sum total of **\*[ad-  
42 ministrative and operational]\*** programs **\*[which are implemented  
43 to minimize the risk of human exposure to extraordinarily haz-  
44 ardous substances, which program may include]\*** *\*for the purpose  
45 of minimizing extraordinarily hazardous accident risks, including\**,

46 but not be limited to, requirements for safety review of design for  
47 new and existing equipment, requirements for standard operating  
48 procedures, requirements for preventive maintenance programs, re-  
49 quirements for operator training and accident investigation pro-  
50 cedures, requirements for risk assessment for specific pieces of  
51 equipment or operating alternatives, requirements for emergency  
52 response planning, and internal or external audit procedures to  
53 ensure programs are being executed as planned.

1 4. a. The following chemicals or chemical compounds, in the  
2 quantities indicated, shall constitute the initial extraordinarily  
3 hazardous substance list: hydrogen chloride (HCl), and allyl  
4 chloride in quantities of 2,000 pounds or more; hydrogen cyanide  
5 (HCN), hydrogen fluoride (HF), chlorine (Cl<sub>2</sub>), phosphorus  
6 trichloride, and hydrogen sulfide (H<sub>2</sub>S) in quantities of 500 pounds  
7 or more; and phosgene, bromine, methyl isocyanate (MIC), and  
8 toluene-2, 4-diisocyanate (TDS) in quantities of 100 pounds or  
9 more.

10 b. Within 60 days of the effective date of this act, the department  
11 shall develop and issue a registration form to be completed within  
12 120 days of the effective date of this act, by the owner or operator  
13 of each facility in the State which at any time generates, stores, or  
14 handles any of the extraordinarily hazardous substances on the  
15 initial extraordinarily hazardous substance list, pursuant to sub-  
16 section a. of this section. The registration form shall provide, in  
17 addition to any other information that may be required by the  
18 department, the following: an inventory of the extraordinarily  
19 hazardous substance or substances generated, stored, or handled  
20 at the facility and the quantity or quantities thereof, which in-  
21 ventory shall identify whether those substances are end products,  
22 intermediate products, byproducts, or waste products; a general  
23 description of the processes and principal equipment involved in the  
24 management of the substance or substances; a profile of the area  
25 in which the facility is situated, including its proximity to popula-  
26 tion and water supplies; the extent to which the risks and hazards  
27 of the processes, equipment, and operations have been identified,  
28 evaluated, and abated, and the expertise and affiliation of the  
29 evaluators and any direct or indirect relationship between the  
30 evaluators and the owner or operator of the facility; and the name  
31 or names of all insurance carriers underwriting the facility's  
32 environmental liability and worker's compensation insurance poli-  
33 cies and the scope of these policies, including any limitations and  
34 exclusions.

35 c. Within 18 months of the effective date of this act, the Depart-

36 ment of Environmental Protection, in consultation with the Depart-  
37 ment of Health, shall develop and, after public hearing, adopt as a  
38 regulation, pursuant to the "Administrative Procedure Act," P. L.  
39 1968, c. 410 (C. 52:14B-1 et seq.), an extraordinarily hazardous  
40 substance list. The list shall correlate the substances or com-  
41 pounds with the quantities thereof required to produce the poten-  
42 tially catastrophic circumstance. The department shall have the  
43 power to amend, by regulation, the extraordinarily hazardous sub-  
44 stance list to accommodate new chemical compounds that may be  
45 developed or reflect new information or scientific data that may  
46 become available to the department.

47 d. Within 90 days of the adoption by the department of an  
48 extraordinarily hazardous substance list pursuant to subsection c.  
49 of this section, the owner or operator of each facility in the State  
50 which generates, stores, or handles any of the extraordinarily  
51 hazardous substances on the extraordinarily hazardous substance  
52 list not registered pursuant to subsection b. of this section shall  
53 complete the registration form developed and issued by the depart-  
54 ment.

1 5. a. \***¶**If a facility that submitted a registration pursuant to sec-  
2 tion 4 of this act indicates that it has established a risk manage-  
3 ment program for the substances listed on the extraordinarily  
4 hazardous substance list, the department shall review that risk  
5 management program of the facility before requiring any other  
6 action pursuant to this act. If the department finds deficiencies  
7 in the established risk management program which it determines  
8 could constitute a catastrophic threat, it may recommend changes  
9 or additions to the program. The department shall consider the  
10 cost effectiveness and technical feasibility of any changes or addi-  
11 tions that it recommends. The owner or operator shall respond  
12 to the department's recommendation within 60 days to determine  
13 what steps will be taken to correct the deficiencies. The owner or  
14 operator may suggest alternative solutions to the problems identi-  
15 fied by the department.**¶**\* *If the owner or operator of a facility*  
16 *that submitted a registration form pursuant to section 4 of this act*  
17 *has established a risk management program, the department shall*  
18 *provide for the submission and review of the risk management*  
19 *program before requiring the owner or operator to take any other*  
20 *action regarding the facility and program pursuant to this act. If*  
21 *the department finds the risk management program has any ma-*  
22 *terial deficiencies or omissions that could reduce the effectiveness*  
23 *of the risk management program, it shall recommend to the owner*  
24 *or operator risk management program changes or additions. No*

25 *later than 60 days after the recommendation, the owner or oper-*  
26 *ator shall submit to the department any action the owner or oper-*  
27 *ator proposes in order to correct the deficiencies or omissions. The*  
28 *owner or operator's proposals may be in accordance with the*  
29 *changes and additions recommended by the department or in ac-*  
30 *cordance with alternative changes, additions or proposals recom-*  
31 *ended by the owner or operator.\**

32 b. If the owner or operator and the department agree on the  
33 measures necessary to *\*[make the risk management program*  
34 *acceptable]\** *\*correct the deficiencies or omissions in the risk man-*  
35 *agement program\**, the parties *\*[will]\** *\*may\** enter into a con-  
36 sent agreement.

37 *\*[If the parties cannot reach agreement within a reasonable*  
38 *period of time, the commissioner may issue an administrative order*  
39 *to enforce the recommendation of the department for changes pur-*  
40 *suant to subsection a. of this section.]\** *\*c. If the parties cannot*  
41 *reach agreement the commissioner, after notice and hearing and*  
42 *written findings of fact, may issue an administrative order requir-*  
43 *ing changes or additions to correct the deficiencies. Information*  
44 *available on the cost effectiveness, extraordinary hazardous acci-*  
45 *dent risk reduction effectiveness and technical feasibility of any*  
46 *changes or additions that the department or owner or operator*  
47 *recommends shall be considered by the department and the com-*  
48 *missioner in making any decision.\** Such an order shall follow  
49 administrative hearing procedures which are subject to judicial  
50 review as necessary. *\*This hearing procedure shall, to the maxi-*  
51 *imum extent practicable and feasible, be accorded priority status.\**

1 6. Upon review of all registration and accompanying materials  
2 submitted pursuant to this section, the department shall\*, *in co-*  
3 *operation with the facility owner or operator,\** develop an Extra-  
4 ordinarily Hazardous Substance Risk Reduction Work's Plan for  
5 each registered facility without a risk management program agreed  
6 upon by the facility owner and the department or subject to a con-  
7 sent agreement *\*or administrative order\** entered into pursuant  
8 to section 5 of this act. The work plan shall constitute the basis  
9 for any Extraordinarily Hazardous Substance Accident Risk As-  
10 sessment *\*required\** of that facility, to be performed pursuant to  
11 this section. The work plan shall require the reporting of the  
12 identity and quantity of all extraordinarily hazardous substances  
13 generated, stored, handled, or that could unwittingly be produced  
14 in the event of an equipment breakdown, human error, design de-  
15 fect, or procedural failure, or the imposition of an external force;  
16 the nature, age, and condition of all the equipment and instruments

17 involved in the handling and management of the extraordinarily  
18 hazardous substance or substances at the facility, and the schedules  
19 for their testing and maintenance; the measures and precautions  
20 designed to protect against the intrusions of external forces and  
21 events, or to control or contain discharges within the facility; the  
22 circumstances that would have to obtain in order for there to result  
23 a discharge of an extraordinarily hazardous substance, and the  
24 practices, procedures, and equipment designed to forestall such an  
25 event; any alternate processes, procedures, or equipment which  
26 might reduce the risk of a release of an extraordinarily hazardous  
27 substance while yielding the same or commensurate results, and  
28 the specific reasons they are not employed; any training or man-  
29 agement practices in place which impart knowledge to relevant  
30 personnel regarding the dangers posed by a release of an extra-  
31 ordinarily hazardous substance and the training provided to pre-  
32 pare them for the safe operation of the facility and for unantici-  
33 pated occurrences; any other preventive maintenance measures or  
34 onsite emergency response capability or other internal mechanism  
35 developed to safeguard against the occurrence of an accidental  
36 release of an extraordinarily hazardous substance or any other  
37 aspect or component of the facility deemed relevant by the depart-  
38 ment. The department may by regulation or on a case-by-case  
39 basis, limit the scope or detail of the work plan and the priority or  
40 frequency of review of any facility or facility operation or com-  
41 ponent thereof where it determines, in writing, that the action does  
42 not remove or compromise the protection required for the public  
43 interest, and enables the department to allocate its resources more  
44 efficiently and effectively.

1 7. The owner or operator of every facility registered with the  
2 department pursuant to section 4 of this act shall submit those  
3 operations in the facility concerned with the generation, storage,  
4 handling or safeguarding of any extraordinarily hazardous sub-  
5 stance to an Extraordinarily Hazardous Substance Accident Risk  
6 Assessment except as provided for in section 5 with respect to  
7 facilities with an established risk management program. The  
8 EHSARA shall be conducted in conformity with the work plan  
9 for the facility developed by the department pursuant to section 6  
10 of this act by an independent consultant selected by the department  
11 from a list of three candidates submitted by the owner of the sub-  
12 ject facility or, at the option of the department, by the department  
13 or by an independent consultant contracted for directly by the  
14 department; except that the department, with respect to the former  
15 option, may request the owner of the subject facility to provide

16 three additional candidate consultants if it finds all three originally  
17 submitted by the facility owner unacceptable.

18 The owner of the subject facility shall be assessed a fee estab-  
19 lished in accordance with a schedule, established as a regulation  
20 by the department, which reflects all the costs of the risk assess-  
21 ment of that facility conducted by, or on behalf of, the department.

1 8. a. Upon review of the Environmental Hazardous Substance  
2 Accident Risk Assessment for each facility, the department shall, if  
3 appropriate, order the owner or operator of the facility to under-  
4 take an extraordinarily hazardous substance risk reduction plan.  
5 The order shall identify the risk or risks which must, within the  
6 limits of practicability and feasibility, be abated and a reasonable  
7 timetable for implementation of the plan. The department shall,  
8 by regulation, establish criteria or quantitative standards for de-  
9 termining risk, which criteria and standards shall reflect, among  
10 other factors, the size of the potentially exposed population and  
11 the gravity of consequence. The commissioner may order those  
12 operations posing the identified risk or risks that have not been  
13 abated on schedule to cease until the risk reduction plan has been  
14 implemented.

15 b. The owner of a facility who is aggrieved by an order issued  
16 pursuant to subsection a. of this section may petition the commis-  
17 sioner for a review of the matter, pursuant to which he shall pro-  
18 vide the commissioner with all data and documents which he  
19 believes demonstrate that the order is unwarranted. If the com-  
20 missioner, after review, affirms the initial order, he shall, at the  
21 request of the aggrieved owner, transmit all relevant materials and  
22 documents on the matter to the Office of Administrative Law, which  
23 shall conduct a hearing on the order pursuant to the provisions of  
24 P. L. 1978, c. 67 (C. 52:14F-1 et seq.). This hearing shall be an  
25 adjudicatory proceeding, and shall be conducted as a contested case  
26 pursuant to the "Administrative Procedure Act," P. L. 1968, c. 410  
27 (C. 52:14B-1 et seq.). The department and the aggrieved owner of  
28 the facility shall be deemed parties of interest in the proceeding.  
29 Intervention in this hearing by any other person shall be as pro-  
30 vided in the "Administrative Procedure Act." After review of the  
31 record of the adjudicatory proceedings and the recommendation of  
32 the administrative law judge, the commissioner shall affirm or  
33 modify his order. The decision of the commissioner shall constitute  
34 final agency action on the matter, and shall be subject only to  
35 judicial review as provided in the Rules of Court. During the  
36 pendency of the review and the hearing, the timetable for com-  
37 pliance with the order giving rise to the proceeding shall be  
38 suspended.



1 9. a. The department has the right to enter any facility at any  
2 time in order to verify compliance with the provisions of this act  
2A *\*and the quality of all work performed pursuant to this act\**,  
3 except that facility owners or operators shall be under no obliga-  
4 tion to employ any personnel solely to assure access to the facility  
5 by the department when this access would otherwise be impossible.

6 b. The department shall develop and establish, pursuant to regu-  
7 lation, and enforce a system of recordkeeping, which system shall  
8 require the owner or operator of each facility registered pursuant  
9 to section 4 of this act to report to the department on all risk  
10 assessment and risk reduction efforts undertaken pursuant to this  
11 act, all ongoing maintenance measures taken, all unanticipated  
12 and unusual events, and any other information the department  
13 deems appropriate, and which shall be so designed as to prevent  
14 the destruction or alteration of information and data contained  
15 in those records.

16 These regulations shall also establish strict penalties, or other  
17 sanctions, to be assessed against any party guilty of destroying  
18 or tampering with any records required to be kept pursuant to  
19 this act.

1 10. a. The department may institute an administrative proce-  
2 dure to determine whether an owner or a facility which generates,  
3 stores, or handles any extraordinarily hazardous substances should  
4 be required to authorize the insurance carrier or carriers which  
5 underwrite environmental liability or worker's compensation in-  
6 surance for that facility to release to the department information  
7 relevant to the risks posed by the facility's management of the sub-  
8 stance or substances. If so authorized, the insurance carrier or  
9 carriers shall release the information within the period of time  
10 established by the department, but in no case less than two weeks.

11 b. An insurance carrier or its representative shall not be held  
12 liable in a civil proceeding for any statement made or action taken  
13 voluntarily or in response to an authorization or request from the  
14 client facility pursuant to this section unless actual malice on the  
15 part of the insurer or its representative is present. This immunity  
16 shall extend to protect an insurance carrier or its representative  
17 from being held liable to any party who sustains any loss or injury  
18 as a direct or consequential result of the carrier's or its representa-  
19 tive's compliance, noncompliance, or attempt to comply with this  
20 act.

21 c. The department is authorized to disclose information obtained  
22 from an insurance carrier or its representative pursuant to this  
23 section only to its own employees or agents to assist in enforcing

24 the provisions of this act, or for use in a civil or criminal proceed-  
25 ing, if so ordered by a court.

26 d. A person who, as required by this section, knowingly and  
27 willfully refuses to release information required under this act, or  
28 fails to hold information received under this act, in confidence,  
29 is liable for a penalty not to exceed \$5,000.00, to be collected and  
30 enforced in a summary manner under "the penalty enforcement  
31 law" (N. J. S. 2A:58-1 et seq.). The proceedings may be brought  
32 by the department or by a person or an insurer injured by a failure  
33 to keep the information confidential. If a money judgment is  
34 rendered against the defendant, it shall be paid to the plaintiff.  
35 A reasonable and good faith effort to comply with the provisions of  
36 this section shall be a defense to an alleged violation of this section.

1 11. a. The department shall, pursuant to regulation, adopt  
2 principles, guidelines, and procedures governing the internal  
3 management of confidential information supplied to the department  
4 pursuant to this act. The regulations shall provide that informa-  
5 tion obtained pursuant to this act shall be disclosed only to its em-  
6 ployees or agents to assist in enforcing the provisions of this act,  
7 or for use in a civil or criminal proceeding, if so ordered by a court,  
8 and shall include, but not be limited to requirements: (1) that all  
9 confidential information supplied pursuant to this act be labeled as  
10 such by the facility owner; (2) that receipt of such labeled informa-  
11 tion be acknowledged in writing by an authorized employee of the  
12 department; (3) that the department establish a review procedure  
13 by which only specifically designated personnel be authorized access  
14 to such information and then only on a "need-to-know" basis; and  
15 (4) that the department establish secure areas for the express  
16 purpose of storage of such confidential information.

17 b. The owner of a facility who alleges that certain information  
18 required to be disclosed pursuant to this act contains or relates to a  
19 trade secret or constitutes security information which, notwith-  
20 standing the management procedures for such information adopted  
21 by the department pursuant to subsection a. of this section, must be  
22 kept privileged so as not to competitively disadvantage the facility,  
23 or compromise the security of the facility or its operations, shall  
24 petition the commissioner for the right to withhold the information.  
25 Upon receipt of the petition, the commissioner shall review the  
26 matter. If the commissioner in his discretion, denies the petition,  
27 he shall, at the request of the facility owner, transmit all relevant  
28 information to the Office of Administrative Law, which shall con-  
29 duct a hearing on the claim pursuant to the provisions of P. L. 1978,  
30 c. 67 (C. 52:14F-1 et seq.). At the hearing, the petitioner shall have

31 the burden to show that the trade secret or security risk claim is  
32 valid. This hearing shall be an adjudicatory proceeding, and shall  
33 be conducted as a contested case pursuant to the "Administrative  
34 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.).

1 12. a. If any person violates any of the provisions of sections 4  
2 through 8 of this act or any rule, regulation or order promulgated  
3 or issued pursuant thereto, the department may institute a civil  
4 action in a court of competent jurisdiction for injunctive or any  
5 other appropriate relief to prohibit and prevent this violation and  
6 the court may proceed in the action in a summary manner.

7 b. Any person who violates the provisions of sections 4 through  
8 8 of this act or any rule, regulation or order promulgated pursuant  
9 thereto is liable to a civil administrative penalty of not more than  
10 \$10,000.00 for the first offense, not more than \$20,000.00 for the  
11 second offense, and up to \$50,000.00 for the third and each subse-  
12 quent offense. If the violation is of a continuing nature, each day  
13 during which it continues constitutes an additional, separate and  
14 distinct offense. No civil administrative penalty shall be levied  
15 except subsequent to the notification of the violator by certified  
16 mail or personal service. The notice shall include a reference to  
17 the section of the statute, regulation, order or permit condition  
18 violated; a concise statement of the facts alleged to constitute the  
19 violation; a statement of the amount of the civil penalties to be  
20 imposed; and a statement of the violator's right to a hearing. The  
21 violator shall have 20 days from receipt of the notice within which  
22 to deliver to the commissioner a written request for a hearing.  
23 Subsequent to the hearing and upon a finding that a violation has  
24 occurred, the commissioner may issue a final order after assessing  
25 the amount of the fine specified in the notice. If no hearing is  
26 requested, the notice shall become a final order upon the expiration  
27 of the 20-day period. Payment of the penalty is due when a final  
28 order is issued or when the notice becomes a final order. The au-  
29 thority to levy a civil administrative penalty is in addition to all  
30 other enforcement provisions in this act, and the payment of a civil  
31 administrative penalty shall not be deemed to affect the availability  
32 of any other enforcement provision in connection with the violation  
33 for which the penalty is levied.

34 c. The department is authorized and empowered to compromise  
35 and settle any claim for a penalty under this section in such amount  
36 in the discretion of the department as may appear appropriate and  
37 equitable under all of the circumstances including the posting of a  
38 performance bond by the violator.

39 d. Any person who violates any of the provisions of sections 4

40 through 8 of this act, or any rule, regulation, or order promulgated  
41 or issued pursuant thereto, or an administrative order issued pur-  
42 suant to subsection b. of this section or a court order issued pur-  
43 suant to subsection a. of this section or who fails to pay a civil  
44 administrative penalty in full pursuant to subsection b. of this  
45 section is subject, upon order of the court, to a civil penalty not  
46 to exceed \$10,000.00 per day of the violation, and each day's  
47 continuance of the violation constitutes a separate and distinct  
48 violation. Any penalty imposed under this subsection may be  
49 recovered with costs in a summary proceeding pursuant to "the  
50 penalty enforcement law" (N. J. S. 2A :58-1 et seq.). The Superior  
51 Court shall have jurisdiction to enforce "the penalty enforcement  
52 law."

1 13. The department is authorized to charge and collect fees  
2 from facility owners registered pursuant to section 4 of this act,  
3 in accordance with a schedule adopted as a rule or regulation, which  
4 schedule shall \***[be designed to]**\* reflect the costs to the depart-  
5 ment of reviewing individual facilities while enabling the depart-  
6 ment to continue to administer the program on a self-supporting  
7 basis.

1 14. The department shall make every effort to involve hazardous  
2 materials advisory councils, where they exist, local government  
3 officials, and other pertinent entities in explaining actions taken  
4 in regard to facilities in their areas. Local ordinances which are  
5 inconsistent with, in conflict with, or more restrictive than, the  
6 provisions of this act must be approved by the department before  
7 adoption.

1 15. a. There is appropriated to the Department of Environ-  
2 mental Protection from the General Fund the sum of \$500,000.00 to  
3 carry out its responsibilities pursuant to this act.

4 b. It is the intent of the Legislature that, for the purpose of  
5 guaranteeing the continued effectiveness and continuity of the pro-  
6 gram herein established, an appropriation from the General Fund  
7 to the department shall be made annually in an amount required to  
8 cover administrative costs to the department in excess of those  
9 recovered from fees levied on registrants, or for unanticipated  
10 expenses or expanded responsibilities.

1 16. This act shall take effect immediately.

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## STATEMENT

This bill establishes a mechanism for anticipating, within the limits of practicability and feasibility, those equipment failures, human errors, and procedural breakdowns and external forces and events that could result in the release of that relatively small number of extraordinarily hazardous substances that would have catastrophic health consequences to the public, provides for the comprehensive review of the whole chain of safeguards necessary to assure maximum protection, and mandates that all risks be abated to forestall the possibility of a catastrophic accident.

Specifically, the bill provides: (1) an initial list of extraordinarily hazardous substances exposure to which would result in death or disability injury to those affected, which list is to be formally adopted, with appropriate additions and deletions, as a regulation within 18 months of the effective date of this act; (2) that all facilities in the State generating, storing, or handling these substances in the quantities indicated to have potentially catastrophic health consequences to register with the department; (3) that the department shall develop a work plan which will establish the scope and detail of risk assessments of each registered facility; (4) that each facility be submitted to a risk assessment in accordance with the work plan either by an independent consultant selected by the department from a list of candidates offered by the facility, or by the department or an independent consultant contracted by the department; and (5) that the department shall review the risks assessments and, where appropriate, mandate a risk reduction plan to be implemented by the facility. The bill directs the department to avail itself of any existing risk management program of the facility before taking any other action pursuant to this act. Deficiencies in any such program may be corrected by mutual agreement, or be subject to administrative order.

The bill also provides for administrative hearings for facility owners aggrieved by department orders and to review trade secret claims.

Finally, the bill appropriates \$500,000.00 to the department to institute the program.

It seeks to make the program self-supporting by authorizing the department to collect fees from subject facilities, but encourages future legislatures to continue levels of funding necessary to compensate for any shortfalls in revenue from these fees or from any program expansions.

194145 (1985)

PS

R-43  
9/12/85

R-43  
9/12/85

ASSEMBLY Amendments

to

ASSEMBLY Bill No. 4145  
by Assemblyman Baer  
Proposed by Assemblyman Baer  
(typewritten copy)

9-12

Amend:

Page	Sec.	Line
5	5	20
5	5	21
5	6	2
5	6	6
6	6	8
8	9	3
11	13	4

Omit "section," and Insert  
 " c.  
~~"X~~ If the parties cannot reach agreement  
 the commissioner, after notice and hearing  
 and written findings of fact, may issue an  
 administrative order requiring changes or  
 additions to correct the deficiencies.  
 Information available on the cost effectiveness,  
 extraordinary hazardous accident risk reduction  
 effectiveness and technical feasibility of any  
 changes or additions that the department or  
 owner or operator recommends shall be considered  
 by the department and the commissioner in making  
 any decision."  
 After "necessary." Insert "This hearing procedure  
 shall, to the maximum extent practicable and  
 feasible, be accorded priority status."  
 After "shall" Insert ", in cooperation with  
 the facility owner or operator,"  
 After "agreement" Insert "or administrative order"  
 After "Assessment" Insert "required"  
 After "act" Insert <sup>"and"</sup> "the quality of all work  
 performed pursuant to this act"  
 After <sup>"shall"</sup> ~~"be"~~ Omit <sup>"be"</sup> ~~"designed to"~~

STATEMENT

The amendments make a number of technical  
changes, refining two definitions and clarifying  
*ambiguous language.*



979.90  
661

# OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: CARL GOLDEN  
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TRENTON, N.J. 08625

Release: WED., JAN. 8, 1986

Governor Thomas H. Kean today signed legislation giving New Jersey the nation's first comprehensive plan to prevent the accidental discharge or release of toxic and hazardous substances into the surrounding environment.

The bill, A-4145, was signed into law by the Governor at a public ceremony in his office. Officially known as the "Toxic Catastrophe Prevention Act," it was sponsored by Assemblyman Byron Baer, D-Bergen.

"Once again, New Jersey is leading the rest of the country in environmental safety," Kean said. "And, once again, State government has moved firmly to give the people of the State the greatest possible degree of protection against the perils of toxic and hazardous substances."

The legislation requires registration by firms or facilities in the State which handle or store hazardous substances and, further, requires such facilities to have a risk management plan to deal with emergency situations.

The Department of Environmental Protection (DEP) is given the authority to review these plans, reach a determination regarding its effectiveness, and, if necessary, order changes be made to improve the plan.

If the DEP determines a facility represents a threat to public health and safety, the Commissioner is authorized to order a cessation of operations until the problem is remedied.

-more-

Violation of the law carries a fine of \$10,000 for the first offense, \$20,000 for a second offense, and \$50,000 for a third and each subsequent offense.

"This legislation spells out clearly and concisely the powers and authority of the DEP to require that facilities handling toxic substances do so in the safest possible manner," Kean said. "Its singular and most important goal is avoiding the kinds of chemical related tragedies we have seen both in this country and overseas --- tragedies with widespread loss of life and injury."

The Governor also took note of recent accidental chemical discharges in New Jersey which resulted in illnesses in surrounding residential areas, as well as foul odors.

"We were fortunate that the chemicals involved were not highly toxic or deadly, but it is clear that steps must be taken to forarm the appropriate State authorities against any future accidents in which we may not be so fortunate," Kean said.

# # #

PROPERTY OF  
NEW JERSEY STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION

125 W. State Street  
Trenton, N. J.