



CITY OF CLEVELAND  
Mayor Justin M. Bibb

## INSTRUCTIONS HAZARDOUS CHEMICALS RIGHT-TO-KNOW CODE



Fire Prevention Bureau • 1645 Superior Ave., E • 216.664.6664 • F: 216.664.6681  
Hours of Operation: Weekdays 7:30 am to 4:30 pm

### **When do you need a Hazardous Chemicals: Right-To-Know Registration?**

When hazardous or toxic chemicals are used or stored in the workplace.

### **When am I exempt from Registration?**

1. Hazardous substances in containers having a volume of one (1) gallon or less of liquid, or a weight of ten (10) pounds or less.
2. Laboratories
3. Chemicals in the process of being transported.
4. Consumer products, food stuffs or tobacco products intended for use by the public without further alteration.
5. Foods, drugs, cosmetics or tobacco products intended for personal consumption by employees.
6. Hazardous substances during the first five (5) business days after they enter the workplace.
7. Gasoline, kerosene and propane if it used as fuel and is less than 55 gallons or 550 pounds.

### **How to apply for a Hazardous Chemicals: Right-To-Know Registration**

1. Read and understand the attached Cleveland Codified Ordinance Chapter 393.
2. Completely fill out the application.
3. Attach the chemical locator list, and a business card if you have one.
4. Have the application notarized.
5. Make out a check or money order payable to "City of Cleveland" for the appropriate amount.
6. Mail or deliver in person to the following location:

Fire Prevention Bureau  
1645 Superior Ave. E, 2nd Floor  
Cleveland, Ohio 44114

### **The Fee**

0 - 100,000 sq.ft. ≤ 10 employees	\$65.00
0 - 100,000 sq.ft. > 10 employees	\$200.00
100,001 - 400,000 sq.ft.	\$350.00
400,001 sq.ft. and over	\$550.00

**PLEASE NOTE:**

If your company's aggregate toxic or hazardous chemicals are less than 25 gallons or 250 pounds, and there are no highly hazardous chemicals, the fee is \$65.00



CITY OF CLEVELAND  
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**INSTRUCTIONS  
HAZARDOUS CHEMICALS  
RIGHT-TO-KNOW CODE**



**APPLICATION**

Fire Prevention Bureau • 1645 Superior Ave., E Cleveland, OH 44114 • 216.664.6664  
Hours of Operation: Weekdays 7:30 am to 4:30 pm

**SECTION 1 – BUSINESS / APPLICANT INFORMATION**

Date	Ward Number	Find Your Ward at: <a href="https://clevelandcitycouncil.org/find-my-ward">https://clevelandcitycouncil.org/find-my-ward</a>	
Name			
Address			
City	ST	Zip	
Telephone	Email		
Number of Employees			

**SECTION 2 – INCORPORATION INFORMATION**

Name	
State of Incorporation	Federal ID number

**SECTION 3 – BUSINESS HAZARDOUS CHEMICALS CONTACT**

Name	Title
Telephone	Email

<input type="checkbox"/>	<b>CHEMICAL LOCATOR LIST ATTACHED</b>
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**SECTION 4 – FEES**

<input type="checkbox"/>	0 – 100,000 sq.ft. ≤10 employees \$65.00	<input type="checkbox"/>	0 – 100,000 sq.ft. >10 employees \$200.00
<input type="checkbox"/>	100,001 – 400,000 sq.ft \$350.00	<input type="checkbox"/>	400,001 sq.ft and over \$550.00

**PLEASE NOTE:** If your company's aggregate toxic or hazardous chemicals are less than 25 gallons or 250 pounds, and there are no highly hazardous chemicals the fee is \$65.00

The Business/Applicant acknowledges that he/she has received and understands the Right-to-Know Code described in Codified Ordinance Chapter 393 and that they have, to the best of their knowledge and ability, complied with all of its provisions.

State of Ohio  
County of Cuyahoga, ss:

\_\_\_\_\_, being first duly sworn, deposes and states that he/she is the individual making the foregoing application for registration; that the answers to the foregoing questions and other statements contained therein are true of his/her own knowledge and belief.

Sworn to before me, and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Seal

\_\_\_\_\_  
Signature of Business Representative

\_\_\_\_\_  
Notary Public



## **CHAPTER 393 – HAZARDOUS CHEMICALS: RIGHT-TO-KNOW CODE**

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- 393.18 Employee Rights
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- 393.21 Confidentiality Agreement
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### ***Cross-reference:***

*Fire Division, CO 135.21 et seq.*

### ***Statutory reference:***

*Labeling of Hazardous Materials, RC Ch. 3716*

### **§ 393.01 Application**

(a) This chapter in appropriate sections, requires employers to provide information to their employees and to designated representatives of these employees about hazardous chemicals to which these employees may be exposed by means of a hazard communication program, labels, placards, work area hazardous chemical lists, material safety data sheets, and information training.

(b) This chapter, in appropriate sections, requires employers to provide information to the City of Cleveland's Fire Division about the hazardous chemicals manufactured, used or stored inside the workplace by means of a hazardous chemical list, hazardous chemical discharge permits, and reports and material safety data sheets, if requested.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.02 Scope of Coverage**

(a) This chapter shall apply: to Standard Industrial Codes (SIC) 7, 13 through 17, 20 through 39, 41, 42, 44, 45, 48 through 50, 516, 517, 5198, 53 through 55 (except 554), 70, 72, 733, 734, 7349, 7395, 75, 7692, 80 (except 807), 82, 84, 863 and nonclassifiable establishments unless expressly exempted by the Fire Chief; to all governmental bodies except the federal government, or any department, agency, board or commission thereof; and to any industry which the Fire Chief determines is cleaning hazardous and/or toxic chemicals from bulk containers.

(b) If no highly hazardous chemicals are present in a particular workplace and if that workplace either has twelve (12) or fewer employees or less than an aggregate of fifty (50) gallons or five hundred (500) pounds of hazardous chemicals present, then only Section 393.05(c), 393.06(a)(1), 393.07(a), 393.10 and 393.11(b)(5) of this chapter shall apply. If such workplace contains any highly hazardous chemicals, then the entire chapter shall apply.

(c) This chapter shall not apply to toxic or hazardous substances in containers having a volume of one (1) gallon or less of liquid, or a weight of ten (10) pounds or less, except that such substances must be identified for the employees, and must be identified on an area list.

(d) This chapter shall not apply to any laboratory operated by an otherwise covered employer, including educational laboratories, research laboratories, analytical laboratories, or medical laboratories, so long as the chemical names in such laboratories are available to the employees or the employees' representative.

(e) This chapter shall not apply to hazardous chemicals or to workers involved with those chemicals in the process of being transported into, or through the City of Cleveland.

(f) This chapter shall not apply to substances which are consumer products, food stuffs or tobacco products intended for use by the public without further alterations by a manufacturer or employer.

(g) This chapter does not apply to chemicals which are foods, drugs, cosmetics or tobacco products intended for personal consumption by employees while in the workplace.

(h) This chapter shall not apply to any article manufactured or formed which, in its intermediate or end use function(s) does not release, or otherwise result in exposure to a hazardous chemical under normal conditions of use.

(i) This chapter shall not apply to hazardous chemicals during the first five (5) business days after they first enter the workplace, if, despite reasonable efforts of the employer to comply with this chapter, such substances arrive without conforming labels or material safety data sheets.

(j) This chapter shall not apply to gasoline or kerosene if it is present in a workplace in quantities of less than fifty-five (55) gallons or five hundred fifty (550) pounds, or to propane if it is used as a fuel.

(k) If, after November 25, 1985, regulation has commenced under the federal Hazard Communication Standard contained in 29 C.F.R. 1910.1200, then the Board of Building Standards and Building Appeals shall, in accordance with its procedures contained in Section 393.12, grant a categorical exemption in SIC Codes, 20-39,



provided that affected employers continue to satisfy the requirements set forth in Subsections 393.06(d) and 393.07(a), (b) and (c).

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.03 Definitions**

- (a) “Chemical name” is the scientific designation in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstract Service (CAS) rules of nomenclature for those substances referred to in Section 393.04.
- (b) “Common name” means a code name, code number, trade name, brand name, generic name or any other means used to identify a chemical other than by its chemical name.
- (c) “Container” means any bag, barrel, bottle, box, can, cylinder, drum, storage tank, reaction vessel, or the like that contains a hazardous chemical. For purposes of this section, pipes, piping systems or transfer containers used in production are not considered to be containers.
- (d) “Designated representative” means any individual or organization to whom an employee gives written authorization to exercise such employee’s rights under this chapter. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.
- (e) “Discharge” means the emission of a hazardous chemical into the air or water, or onto the land, whether accidental or intentionally.
- (f) “Employee” includes any worker who may be exposed, on or after the effective date of this chapter, under normal conditions of use or foreseeable emergencies to hazardous chemicals including, but not limited to, production workers, line supervisors, and repair or maintenance personnel. Office workers, grounds maintenance personnel, security personnel and non-resident management are excluded unless their jobs involve exposure to hazardous chemicals. In the case of a deceased or legally incapacitated employee, the employee’s legal representative may directly exercise all the employee’s rights under this chapter.
- (g) “Employer” means any person, firm, corporation, association or other entity in the City of Cleveland if any portion of its activities falls within the coverage under Section 393.02. In determining whether it is covered by this chapter, each employer shall be guided by the standards contained in the most recent Standard Industrial Classification Manual, published by the Office of Management and Budget. In the case of ambiguity, the Fire Chief shall make an assignment in conformance with those standards.
- (h) “Exposure” or “exposed” means that any employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, or skin contact) and includes potential exposure, without regard to the use of personal protective equipment, but does not include situations where the employer can demonstrate to the Fire Division inspection personnel that the hazardous chemical is not used, handled, stored, generated, or present in the workplace in any manner different from typical, non-occupational situations.
- (i) “Hazardous and/or toxic chemical” means any substance set forth on the list promulgated pursuant to Section 393.04. Any mixture which is comprised of at least one percent (1%) (by weight or volume) of any chemical set forth on the list promulgated pursuant to Section 393.04 or one-tenth of one percent (0.1%) of a chemical which is identified on said list as a carcinogen, reproductive toxin, mutagen or sensitizer (“Highly hazardous chemical”) shall also be considered hazardous for purposes of this chapter, unless the mixture has been evaluated as a whole by the Fire Chief in consultation with the Hazardous Chemical Committee, and the data indicates it is not hazardous.
- (j) “Highly hazardous chemical” means any substance identified as a carcinogen, reproductive toxin, mutagen, or sensitizer on the list promulgated pursuant to Section 393.04.
- (k) “Physical hazard” means a chemical identified by OSHA as a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

- (l) "Use" means handle, react, process, package, or repackage.
- (m) "Waste" includes all hazardous material required to be reported under Section 393.07(b).
- (n) "Work area" means a room or defined space in an establishment where hazardous chemicals are produced, used, or stored.
- (o) "Workplace" means all buildings, structures and storage at one (1) geographical location which contains one (1) or more work areas.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

#### **§ 393.04 Master List of Toxic and Hazardous Substances**

(a) No later than one hundred eighty (180) days from the date of enactment of this chapter, the Fire Chief of the City of Cleveland, in consultation with the Hazardous Chemicals Committee created under Section 393.16 of this chapter, shall compile a Master List of Toxic and/or Hazardous Chemicals, using as reference the sources in Subsections 393.04(a)(1)-(8). The Fire Chief may indicate a threshold quantity and/or concentration hazard level, using appropriate references, including the Cleveland Fire Prevention Code and the Ohio Fire Code. Substances whose aggregate presence in the workplace falls below the stated threshold levels shall be excluded from regulation under this chapter. The Master List shall indicate which chemicals were listed as carcinogens, sensitizers, reproductive toxins or mutagens on the source list.

(1) The occupational Safety and Health Administrator's list of Toxic and Hazardous Substances, 29 C.F.R. 1910, Subpart Z.

(2) The U.S. Department of Transportation's Hazardous Materials Table, 49 C.F.R. 172.101.

(3) The American Conference of Governmental and Industrial Hygienist's list entitled "Threshold Limit Value for Chemical Substances and Physical Agents in the Workplace."

(4) The International Agency for Research on Cancer's sublist entitled "Substances found to have at least sufficient evidence of carcinogenicity in animals."

(5) The National Toxicology Program's list of chemicals published in the annual report on carcinogens.

(6) The "Chemical Hazards to Human Reproduction" list, by Ian Nisbet and Nathan J. Karch; Clement Associates, Inc. Arlington, Virginia; 1983.

(7) The sensitizer list in "Index of signs and symptoms of Industrial Diseases", the Johns Hopkins University, School of Hygiene and Public Health; 1980 or such other list of sensitizers which the Fire Chief determines is appropriate.

(8) Such other substances as the Fire Chief deems hazardous.

(b) In consultation with the Hazardous Chemicals Committee created under Section 393.16 of this chapter, the Fire Chief shall review such lists at least annually. He or she shall make revisions of the Master List as often as is necessary, arrange for publishing them in the *City Record*, and place them on file in the Public Administration Library and in every City fire station.

(c) The Fire Chief shall append to the Master List and annually revise a description of all mixtures determined not to be hazardous and/or toxic chemicals under Section 393.03(i).

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

#### **§ 393.05 Hazard Determination and Communication Program**

(a) Every employer manufacturing, using, or storing hazardous chemicals in the workplace shall post a sign in the form as follows this subsection at the location or locations where notices to employees are normally posted to inform employees that they or their designated representatives have a right to information from the

employer regarding the toxic or hazardous effects of the chemicals and the circumstances under which these effects may be produced. Such sign shall emphasize that any reports to the Fire Division of apparent violations shall remain confidential:

NOTICE TO EMPLOYEES

YOU HAVE A RIGHT TO KNOW

Your employer must inform you of the chemical name and health hazards of the hazardous chemicals in your workplace.

Learn all you can about hazardous chemicals on your job. For information, contact:

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(name of company representative)

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(location and phone number)

If your employer fails to train or inform you about hazardous chemicals in your workplace, please notify:

Cleveland Fire Department, Fire Prevention Bureau; 216-664-6664.

All reports will remain confidential.

(b) Each employer shall develop and implement a hazard communication program for its workplace which meets criteria specified in Sections 393.06 through 393.09 for labels and placards, material safety data sheets, employees information and training, and hazardous chemical lists. The employer may rely on an existing hazard communication program to comply with this section provided it meets the criteria specified in Sections 393.06 through 393.09.

(c) Each employer shall develop and post in each work area a list of all hazardous or toxic chemicals in that work area, identified by chemical name, unless otherwise provided under the trade secret provisions of Section 393.17.

(Ord. No. 483-2020. Passed 6-17-20, eff. 6-23-20)



## **§ 393.06 Labels and Placards**

(a) The employer shall ensure that each container of hazardous or toxic substances in the workplace is labeled, tagged or marked:

(1) With the chemical name where said name is not a trade secret under Section 393.17. Employers may use the common name in addition to the chemical name to identify the chemical;

(2) With Department of Transportation (DOT) required labels for all substances regulated by DOT;

(3) With a cancer warning for all materials identified as carcinogens on the list required by Subsection 393.04(a). The cancer warning shall say, "Warning: Chemicals in this container can cause cancer." The label shall be large enough to be clearly legible.

(b) When stationary containers in a work area have similar contents and hazards, the employer may post signs or placards to convey the required information rather than affixing labels to each container.

(c) Where containers or process equipment contain hazardous chemicals and the contents change frequently, or where labels would be obscured or destroyed by heat, spillage or other factors, the employer may post signs or placards to convey the required information.

(d) Each work area shall have hazard warnings, including the category and degree of hazard conveyed through the color and number coding system adopted by the National Fire Protection Association, Inc., as published in the 1980 edition of NFPA 704, entitled "Standard System for the Identification of the Fire Hazards of Materials". A copy of the NFPA 704 shall be on file for public inspection in the Clerk of Council's office and the Cleveland Law Library.

In some situations, a wide variety of materials may be stored in a particular work area having varying degrees of hazards. In such cases, the identifying NFPA symbol shall indicate the most severe degree of hazard present except when a high hazard rating would be misleading because of the presence of an insignificant quantity of the material requiring the rating.

(e) This chapter does not require labeling for materials required to be labeled under the following Acts or Regulations issued under them: Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.), Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), Federal Alcohol Administration Act (27 U.S.C. 201 et seq.), Consumer Product Safety Act (15 U.S.C. 2051), Federal Hazardous Substance Act (15 U.S.C. 1261), and the Atomic Energy Act (42 U.S.C. 2011 et seq.).

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

## **§ 393.07 Employer Filing Requirements**

(a) Each employer shall compile and update at least annually a list of all hazardous or toxic chemicals manufactured, used or stored in the workplace. The list shall conform to the requirements of Section 393.05(c) of this chapter or to the requirements of any separately required program which applies in lieu of this chapter. The list shall be filed annually with the Fire Division and made available, at cost, to employees, employee representatives or community representatives.

(b) Each employer shall also forward to the Fire Division, upon request, its written hazard communication program, and any MSDS obtained by it.

(c) Each employer shall immediately report to the Fire Division any information concerning any spill, leak, discharge or emission of any hazardous and/or toxic substance in the workplace of reportable quantities as defined under the U.S. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund") or any other toxic or hazardous chemical included on the list under Subsection 393.07(a) if the spill or discharge exceeds one (1) gallon.

(d) The provisions of Subsections (a), (b) and (c) shall not apply to employers engaged in the business of construction provided such employers are in compliance with the provisions of Section 393.08 of this chapter and the quantity of any industrial toxic or hazardous substance manufactured, used or stored is less than fifty-five (55) gallons of liquid or the equivalent thereof in its solid or gaseous state.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.08 Material Safety Data Sheet (MSDS)**

(a) Each employer shall obtain a material safety data sheet for each hazardous chemical or toxic substance which it manufactures, uses, or stores. Each material safety data sheet shall be entitled as such and contain the following information:

(1) The identity used on the label, and, except as provided in Section 393.17 governing trade secrets:

A. If the hazardous chemical is a single substance, or a mixture which has been tested as a whole to determine its hazards, its chemical and common names;

B. If the hazardous chemical is a mixture which has not been tested as a whole, the chemical and common names of all ingredients set forth on the list promulgated pursuant to Section 393.04 and which comprise greater than one percent (1%) of the composition, or one tenth of one percent (0.1%) of the composition for chemicals on said list determined to be carcinogens; and

C. The chemical and common names of all ingredients set forth on the list pursuant to Section 393.04 which have been determined to be physical hazards.

(2) The physical and chemical characteristics of the hazardous chemicals including flash point, vapor pressure, vapor density, solubility, specific gravity;

(3) The fire and explosion data of the hazardous chemical, including flammability limits, autoignition temperature, extinguishing media, special fire fighting procedures, and unusual fire and explosion hazards;

(4) The reactivity characteristics including stability, hazardous decomposition products, incompatibility with other materials, and whether the hazardous chemical will polymerize or not;

(5) The known acute and chronic health effects of exposure to the hazardous chemical, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical;

(6) The primary route(s) of entry into the body and OSHA permissible exposure limit, ACGIH Threshold Limit Value and any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the material safety data sheet, where available;

(7) Whether the hazardous chemical is listed in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs (latest edition), or by OSHA. (Such list shall be on file in the Fire Division);

(8) Any generally applicable precautions for safe handling and use which are known to the employer or preparer, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks;

(9) Any generally applicable control measures which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

(10) Emergency first aid procedures;

(11) The date of preparation of the material safety data sheet or the last change to it;

(12) The name, address and telephone number of the chemical manufacturer, importer, employer or other responsible party preparing or distributing the material safety data sheet, who can provide additional information and appropriate emergency procedures, if necessary;

(13) If no relevant information is found for any given category on the material safety data sheet, the chemical manufacturer, importer or employer shall mark it to indicate that no applicable information was found;

(14) Where complex mixtures have similar hazards and contents (i.e., the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture), the chemical manufacturer, importer or employer may prepare one (1) material safety data sheet to apply to all these similar mixtures;

(15) The employer shall update the material safety data sheet within ninety (90) days of the time the employer is notified by the preparer of the MSDS or within ninety (90) days of the time the employer becomes aware of any new and significant information regarding the health hazard of a chemical.

(b) The employer shall maintain copies of the most recent required material safety data sheet in each workplace and shall ensure that they are readily accessible to employees during each work shift.

(c) The employer shall provide one (1) copy of a material safety data sheet to any employee, designated representative, or the Fire Division by the close of business on the next workday following a written request made to the appropriate company representative.

(d) The provisions of Subsection (c) hereof shall not apply to employers engaged in the business of construction provided such employers ensure that copies of the material safety data sheets for each toxic or hazardous substance are available during all hours of operations.

(e) If an MSDS is not available from a supplier, seller or manufacturer of a toxic or hazardous substance or mixture, then upon an employee's or an employee representative's request to inspect the MSDS, an employer who is only a processor, user, or storer of the toxic or hazardous substance or mixture shall be deemed to satisfy his or her obligations under this section if:

(1) Within ten (10) working days of the employee's request the employer makes a written inquiry to the supplier, seller or manufacturer requesting an MSDS or equivalent information. If the employer has made such an inquiry in the preceding six (6) months, then an additional inquiry need not be made;

(2) The employer notifies the employee, in writing, of the date that the inquiry was made, to whom it was made, and the response, if any, received; and

(3) The employer notifies the employee of the availability of MSDS within ten (10) working days of receipt of the MSDS from the supplier, seller or manufacturer, or provides a copy of the MSDS to the employee within ten (10) working days of the receipt of the MSDS.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.09 Employee Training Program**

(a) Employers shall provide employees with information and training on hazardous chemicals and toxic substances as listed on the Master List pursuant to Section 393.04 in their work areas at the time of their initial assignment, and whenever a new hazardous chemical or toxic substance listed on said Master List is introduced into their work area. Employees shall be informed of:

(1) The requirements of this chapter;

(2) Any operations in their work area where hazardous chemicals are present; and

(3) The location and availability of the written hazard communication program, including the required list(s) of hazardous chemicals, and material safety data sheets required by this chapter.

(b) Employee training shall include at least:

(1) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducts by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);

(2) The physical and health hazards of the chemicals in the work area;

(3) The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used;

(4) The details of the hazard communication program developed by the employer, including an explanation of the labeling system, the material safety data sheet, and how employees can obtain and use the appropriate hazard information; and

(5) A copy of Section 393.18 dealing with Employee Rights. This shall be posted in each work area or included in the employee training information.

(c) The employer shall keep a written record of the employee training program. Information on this record shall include a list of employees trained, when the training took place, the name and qualifications of the trainer, and the subjects covered.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.10 Duties of the Fire Division**

(a) The Fire Division's responsibilities include inspection of workplaces where hazardous chemicals are used, manufactured or stored, based either on a complaint or a rotating inspection schedule. The Fire Chief or his or her authorized representative upon presentation of proper credentials, may enter any building or premises at all reasonable hours to inspect for compliance with this chapter. No person shall prevent, obstruct or delay any inspection or the performance of any lawful duty of such inspector acting within his or her official capacity. The inspector shall determine whether hazardous chemicals are properly labeled consistent with Section 393.06; shall check a random sample of MSDSs for compliance with Section 393.08; and shall inspect the employee training record required by division (c) of Section 393.09. Inspections should occur regularly, but not necessarily annually.

(b) The Fire Division shall investigate, within five (5) working days of receipt, any complaint in which it is alleged that employees have been ordered to work with substances for which material safety data sheets or proper labels required by this chapter are not provided. Each such complaint shall be in writing, dated, and signed by the complainant.

(c) If, upon inspection, the Fire Division finds violations, it shall give a written violation notice to the employer, stating specific violations, allow an appropriate period of time for corrections, and then return and reinspect. At that time, if all violations have not been corrected, the Fire Division shall have authority to issue a written violation letter and order requiring correction of specifically described deficiencies. Such order may be appealed to the Board of Building Standards and Building Appeals by filing a written notice of appeal and filing fee as provided in Sections 3103.18 and 3103.19 of these Codified Ordinances.

(d) The Fire Division shall maintain a copy of the most recent work area hazardous chemical list required by division (a) of Section 393.07.

(e) The Fire Division shall maintain for public inspection the full list of hazardous and toxic substances promulgated pursuant to Section 393.04 and their health effects.

(f) The Fire Division shall maintain a copy of the work area list for thirty (30) years.

(g) Upon written request, the Fire Division shall provide copies of any work area list or MSDS to members of the public at cost.



(h) The Fire Division shall provide consulting assistance, as feasible, to employers in connection with employee training programs.

(i) Each employer is obligated to comply with this chapter, with or without an inspection by the Fire Division.

(Ord. No. 1233-15. Passed 11-9-15, eff. 11-11-15)

### **§ 393.11 Registration and Fees**

(a) No employer shall store or use hazardous or toxic chemicals unless it has submitted an annual registration form and fee to the Commissioner of Assessments and Licenses. The registration form shall contain a sworn statement that the employer has received and read the Right-to-Know Code and that it has, to the best of its knowledge and ability, complied with all of its provisions.

(b) To cover the monitoring costs under this chapter, the Commissioner of Assessments and Licenses of the City of Cleveland shall collect an annual registration fee based on the following classifications:

(1) For employers with a workplace square footage of zero (0) to one hundred thousand (100,000), the fee shall be two hundred dollars (\$200.00);

(2) For employers with a workplace square footage of one hundred thousand one (100,001) to four hundred thousand (400,000), the fee shall be three hundred fifty dollars (\$350.00);

(3) For employers with workplace square footage of over four hundred thousand one (400,001) the fee shall be five hundred fifty dollars (\$550.00);

(4) For employers with a workplace square footage of zero (0) to one hundred thousand (100,000) and ten (10) or fewer employees, the fee shall be sixty-five dollars (\$65.00);

(5) For employers with aggregate toxic or hazardous chemicals of less than twenty-five (25) gallons or two hundred fifty (250) pounds, and no highly hazardous chemicals, the fee shall be sixty-five dollars (\$65.00);

(6) Where a workplace contains only one (1) work area, the fee structure shall be based on the square footage of that work area only.

The revenue raised by this fee schedule shall be used to defray the inspection and enforcement costs associated with the implementation of this chapter.

(c) If, after the Fire Division issues an order requiring corrections under division (c) of Section 393.10, another reinspection is required, then the employer shall pay a one hundred dollar (\$100.00) reinspection fee, collectible by the City of Cleveland.

(Ord. No. 2393-02. Passed 2-3-03, eff. 2-3-03)

### **§ 393.12 Variances**

(a) The Board of Building Standards and Building Appeals shall have the power, upon written application by an employer and a hearing as provided by law, to authorize variances from this chapter which will not be contradictory to the public interest or the intent of this chapter, but only where, owing to special conditions pertaining to a specific employer, workplace or work area, the literal enforcement of this chapter would cause undue or unnecessary hardship, or owing to a separately required program of an employer designed to inform or protect workers, an employer is in substantial compliance with this chapter. The Board shall act in accordance with Section 3103.18 of these Codified Ordinances, and may also adopt and promulgate such rules and regulations as are necessary to carry out its duties under this chapter.

(1) A variance for undue or unnecessary hardship shall be preceded by a finding by the Fire Division that the following facts and conditions exist:



A. Exceptional or extraordinary circumstances or conditions apply to the subject employer, workplace or work area. In making a finding on this point, the Fire Division shall consider factors, including but not limited to, extreme temperature, difficulty of access, or lack of a permanent work area or workplace; and

B. The employer has established acceptable alternate methods of providing information about the toxic or hazardous substances involved, such as placards, posting signs in common areas or entry areas, and oral and written communication, which shall be substituted for those requirements that are waived and which will result in substantial compliance with the intent of this chapter.

(2) In considering a variance for a separately required program, the Fire Division shall determine if the following facts and conditions exist:

A. The separately required program will substantially achieve the purposes of this chapter;

B. The labeling used in the program conveys information in a manner substantially equivalent to or better than the labeling requirements of this chapter; and

C. Material Safety Data Sheets which contain substantially the same data as required by this chapter are readily accessible to workers.

(3) In recommending a variance from the literal interpretation and strict application of this chapter, the Fire Division shall impose such requirements and conditions as it may deem essential in order to carry out the intent and purpose of this chapter, and to otherwise safeguard the public health, safety and general welfare.

(b) Variances for undue or unnecessary hardship shall be granted for up to two (2) years from the date of issuance, and may be renewed. Variances granted pursuant to this section for separately required programs shall be reexamined every five (5) years.

(c) When an employer files an application for a variance the employer shall notify its employees and their designated representative(s) of such application by immediately posting a notice of such application. Such posting shall occur in the same manner as provided for in Section 393.05.

(d) If a variance is denied, the employer shall have sixty (60) days to come into compliance with the requirements of this chapter.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.13 Remedies Available to Law Director**

The Law Director, or his or her designee, may institute appropriate legal action as authorized herein, or as may be otherwise available and appropriate either at law or in equity, which may in the judgment of the Law Director be necessary for the enforcement of any order or orders issued pursuant to this chapter, or the abatement of any nuisance or hazard against which such order was directed. Any such suits or proceedings shall be brought in the name of the City of Cleveland and shall neither exclude criminal or penal remedies otherwise authorized by law or exempt any violators of this or any other laws from any penalty or penalties as may be prescribed. This section shall not be construed to eliminate, abridge or detract from any remedies either at law or in equity which any employee or other individual may have arising out of any breach of violations of the provisions of this chapter.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.14 Conflict and Invalidity**

In any case where a provision of this chapter is found to be in conflict with a provision of any other chapter of the Codified Ordinances existing on the effective date of this chapter, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail. In any case where a provision of this chapter is found to be in conflict with a provision of any other chapter or code of the City existing on the effective date of this chapter, which latter provision establishes a lower standard for the

promotion and protection of the health and safety of the people, the provisions of this chapter shall prevail to the extent of the conflict.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.15 Separability**

Each provision of this chapter shall be deemed independent of all other provisions herein, and should any provision of this chapter be declared invalid, all other provisions hereof shall remain valid and enforceable.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.16 Hazardous Chemicals Committee**

(a) The Director of Public Health and Welfare or his or her designee shall serve as chair of a Hazardous Chemicals Committee, consisting of seven (7) members, five (5) of whom shall be appointed by the Mayor, subject to confirmation by Council. One (1) member shall be the Fire Chief or his or her designee and one (1) shall be a lawyer specializing in patent and trade secret matters. The remaining four (4) members shall be chosen on the basis of their technical experience and expertise, so as to represent the viewpoints of private employers, employees, the community and the health profession. The Law Department shall act as legal advisor to the Committee. Of the five (5) members first appointed, two (2) shall be appointed for a term of three (3) years, two (2) for a term of two (2) years, one (1) for a term of one (1) year; thereafter all appointees shall be for a term of three (3) years. The Committee shall be appointed and in place within one (1) year of passage of this chapter.

(b) Members of the Hazardous Chemicals Committee shall serve without compensation but shall be reimbursed for expenses incurred in the performance of their duties. The Committee shall rule on all appeals made pursuant to Section 393.17 of this chapter, and shall advise the Fire Chief about the composition of the Master List under Section 393.04.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.17 Trade Secrets**

(a) Any employer may withhold the specific chemical name or other specific chemical identification of a hazardous chemical, if:

(1) The claim that the information withheld is a trade secret can be supported in writing;

(2) Information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed;

(3) The label and material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and

(4) The specific identity is made available to the Fire Chief and health professionals, in accordance with the applicable provisions of paragraphs (b) and (c) of this section.

(b) The employer shall immediately disclose to the Fire Chief or a treating physician/nurse, upon request, the specific chemical identity of the requested trade secret, without regard to trade secrecy claims and regardless of the existence of a written statement of need or a confidentiality agreement, if:

(1) The Fire Chief determines that an accident has occurred which requires knowledge of specific chemical identities; or

(2) A treating physician or nurse determines that medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first aid treatment; or

The employer may require a written request and confidentiality agreement in the form of the standard Confidentiality Agreement contained in Section 393.21 or in accordance with the provisions of division (d) of

this section as soon as circumstances permit.

(c) In situations where the employer has made a trade secret claim, the employer shall, upon written request from the Fire Chief or a health professional (i.e., physician, nurse, industrial hygienist, toxicologist, or epidemiologist) providing medical or other occupational health services to exposed employee(s), disclose the specific chemical name of any chemical substance if:

(1) The request is in writing;

(2) The request describes with reasonable detail one (1) or more of the following occupational health needs for the information:

A. To assess or study the hazards or effects of the chemicals to which employees will or have been exposed;

B. To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

C. To medically pre-screen employees or provide medical treatment to exposed employees;

D. To assess appropriate personal protective equipment, engineering controls or other protective measures for exposed employees.

(3) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(4) The requesting party and the employer agree in a written confidentiality agreement that the requesting party will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances.

(d) The confidentiality agreement provided by divisions (b) and (c) of this section:

(1) May restrict use of information to health and treatment purposes consistent with the preservation of the trade secret information;

(2) May provide appropriate legal remedies in the event of a breach of the agreement, but not stipulation of a reasonable pre-estimate of likely damages; and

(3) May not include requirements for the posting of a penalty bond.

(e) Nothing in this section is meant to preclude the parties from pursuing noncontractual remedies to the extent permitted by law.

(f) If the employer denies a written request for disclosure of a specific chemical identity in non-emergency or non-accident situations, the denial must:

(1) Be provided to the requesting party and the Fire Chief within ten (10) working days of the request;

(2) Be in writing;

(3) Include evidence to support the claim that the specific chemical identity is a trade secret;

(4) State the specific reason why the request is being denied; and

(5) Explain in detail how alternative information may satisfy the specific medical need without revealing the specific chemical identity.

(g) The requesting party whose request for information is denied under division (f) of this section, may refer the written request and denial to the Hazardous Chemicals Committee for consideration. Both the requesting party and the employer shall be permitted an opportunity to submit evidence supporting their respective positions to the Hazardous Chemicals Committee.

(h) The Hazardous Chemicals Committee shall consider the evidence to determine if:

(1) The employer has supported the claim that the specific chemical identity is a trade secret;

(2) The requesting party has supported the claim that there is medical or occupational health need for the information; and

(3) The requesting party has demonstrated adequate means to protect its confidentiality.

(i) If the Hazardous Chemicals Committee determines that the specific chemical identity requested under division (c) of this section is not a bona fide trade secret, or that the specific chemical identity requested under division (c) of this section is a trade secret but the requesting party has a legitimate need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the employer shall provide said chemical identity to the requesting party within thirty (30) days of the Committee's decision. If the employer appeals the Committee's determination pursuant to subsection (j) of this section, it shall have a right to a stay, as provided in division (e)(3) of Section 3103.20 of these Codified Ordinances.

However, if the Hazardous Chemicals Committee determines that there is no medical or occupational health need for the information or that the execution of a confidentiality agreement would not provide a sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Hazardous Chemicals Committee may deny the request or may delay its final decision until appropriate modifications of the confidentiality agreement are made.

(j) The Hazardous Chemicals Committees' decision under division (i) may be appealed within thirty (30) days by either party to the Board of Building Standards and Building Appeals established pursuant to Charter Section 76-6. The Board's decision is a final order from which either party may appeal under RC Chapter 2506.

(k) No officer, employee, agent or contractor of any City department, board or commission shall knowingly and intentionally disclose to anyone in any manner, any trade secret information, except as is required to administer or enforce the provisions of this chapter and perform official duties or unless authorized by the employer claiming that the data is trade secret information or a court of law. Any person who knowingly violates this provision shall be subject to discipline for malfeasance in office under the City's Civil Service rules, and shall be subject to other applicable provisions and penalties under existing law for violations of trade secret protections. This section shall not be construed to eliminate, abridge or detract from any remedies, either at law or in equity, which an employer or other individual may have arising out of any breach of a confidentiality agreement or other legal protection of trade secrets.

(Ord. No. 1233-15. Passed 11-9-15, eff. 11-11-15)

### **§ 393.18 Employee Rights**

(a) If the Board of Building Standards and Building Appeals determines that the work area hazardous chemical list is not provided as required by Section 393.07(a), or the material safety data sheet is not provided as required by Section 393.08, the employee may, after thirty (30) days notice to the employer, refuse to work with hazardous chemicals until the information is made available.

(b) No employer shall directly or indirectly discharge, discipline, or in any manner discriminate against any employee for the reason or reasons that such person has exercised any right, made any claim or filed any suit pursuant to this chapter or has instituted, or caused to be instituted, any proceedings under this chapter, or has testified, or is about to testify in any proceedings in his or her own behalf or on the behalf of others; nor shall any remuneration, position, seniority or other benefits be lost or denied to any such employee who has exercised any right provided by this chapter.

(c) If any employee or designated representative believes that a violation of this chapter exists or that the employee's protections, as set forth in Sections 393.07, 393.08, and 393.09, have not been provided, then the employee or designated representative may request an inspection by giving written notice to the Fire Division of such violation. Upon the request of the person giving such notice, his or her identity or that of employees

referred to in the notice shall be confidential information and shall not be unnecessarily revealed or published by the Fire Division. No employer shall be charged an additional inspection fee for inspections requested under this section.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.19 Sunset Division**

If a statute of the State of Ohio is enacted which provides employees and the public the right to know the names of hazardous chemicals, and which states that the state intends to preempt local Right-to-Know Laws to the extent permitted, then this chapter shall automatically be repealed unless the Council of the City of Cleveland expressly determines that all or a portion of this chapter continues to be essential to the health and welfare of its citizens and therefore reenacts all or a portion of the chapter.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.20 Effective Dates**

Employers employing fifty-one (51) or more employees shall be in compliance within one (1) year of passage of this chapter; employers with fifty (50) or fewer employees shall be in compliance within twenty- four (24) months of passage of this chapter.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.21 Confidentiality Agreement**

The employer and Fire chief, treating physician/nurse or other health professional may use the following standard Confidentiality Agreement to protect trade secrets.

#### CONFIDENTIALITY AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_ between \_\_\_\_\_ (hereinafter called "Employer") and \_\_\_\_\_ (Fire Chief of the City of Cleveland or \_\_\_\_\_ (a physician/nurse) (hereinafter called "Trade Secret Recipient").

#### WITNESSETH:

Whereas, in its business, Employer has developed and uses commercially valuable chemical information and formulae, which information Employer desires to hold as secret and confidential; and

Whereas, Trade Secret Recipient has a right to receive the chemical identification of specific chemical components used by Employer, pursuant to Section 393.17 of the Codified Ordinances of Cleveland, Ohio, 1976;

Now, therefore, in consideration of the mutual promises made herein, the parties agree as follows:

1. All disclosures to Trade Secret Recipient of the chemical identification of specific chemical components used by Employer shall be denoted as confidential information by Employer and treated as such by Trade Secret Recipient.
2. Trade Secret Recipient shall keep such confidential information in separate, personal files to which only Trade Secret Recipient has access; shall not make copies of the documents provided; shall take reasonable steps to protect the confidentiality of the specific chemical identity of the trade secret; and shall not disclose the chemical identity of the requested trade secret to any person who has not signed a confidentiality agreement with Employer, provided that if there is a need to consult about appropriate



treatment, Trade Secret Recipient may disclose the chemical identity to a nonsignatory so long as neither the employer nor employee's name is disclosed to the same consultant.

3. The trade secret information shall be used only in connection with the incident which gave rise to disclosure of the information, or with the treatment of the person(s) exposed to the chemical.

4. Trade Secret Recipient may share with nonsignatories advice as to the appropriate medical treatment of exposed employees or advice as to proper fire prevention techniques to be used, provided that the specific chemical identity is not disclosed. Such advice shall not be deemed disclosure of the trade secret information.

5. This Agreement shall remain in effect unless Trade Secret Recipient obtains Employer's written consent to release the denoted confidential information or Employer's written release from this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement in duplicate as of the date first written above.

EMPLOYER

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_  
TRADE SECRET RECIPIENT

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)

### **§ 393.99 Penalties**

Whoever violates any provision of this chapter is guilty of a minor misdemeanor and shall be fined not more than one hundred dollars (\$100.00) per day. For a second separate violation such person is guilty of a misdemeanor of the fourth degree and shall be fined not more than two hundred and fifty dollars (\$250.00) per day or imprisoned not more than thirty (30) days or both. On a third separate violation such person is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000.00) per day or imprisoned not more than six (6) months or both. In any event, the maximum fine shall be ten thousand dollars (\$10,000.00). Any fines collected from violators of this chapter shall be used only to defray costs for inspection and enforcement associated with the implementation of this chapter.

(Ord. No. 2704-B-83. Passed 3-4-85, eff. 4-13-85)