WEST VIRGINIA CODE: §16-3A-2

§16-3A-2. Hazardous materials; duties of the director of the department of health; requests for information; penalties; enforcement.

(a) The director of the West Virginia department of health shall within one hundred eighty days of the passage of this article establish a list of hazardous materials, including their treatment and effect, which have been determined to be, or are suspected to be hazardous or toxic to human health. In developing and maintaining this list the director shall give consideration to: (1) The existing list prepared by the commissioner of labor pursuant to section eighteen, article three, chapter twenty-one of this code, (2) any list, publication, regulation, report, guideline or other compilation of the occupational health and safety administration of the United States department of labor, (3) any list, publication, regulation, report, guideline or other compilation of the national institute for occupational safety and health, (4) any list, publication, regulation, report, guideline or other compilation of the national fire protection association, (5) any list, publication, regulation, report, guideline or other compilation of the United States environmental protection agency, or (6) any other source considered by the director to be reliable. In determining what hazardous materials to place on the list, the director shall give consideration to: (1) The materials' frequency of use in the state, (2) the frequency of exposure or overexposure of persons in the state to the materials, (3) the seriousness of the effects of such exposure, or (4) such other reason as the director may determine to be sufficient.

(b) The director of the department of health shall, within ninety days of the preparation of the list described above, determine the immediate health effects of exposure to and the recommended emergency medical treatment of exposure to such hazardous materials and publish such information in a usable form for medical and emergency personnel. The director shall also arrange that this information shall be immediately available to medical or emergency personnel at any time in the event of an accident. The director may do so by storing this information in the West Virginia poison control center or in such other manner and form as he may determine. The distribution of this information in a medical or other emergency to persons other than the medical or emergency personnel shall be approved by the director of the department of health or his authorized agent who may release such information in his discretion notwithstanding the requirements of the freedom of information act, chapter twenty-nine-b of this code.

(c) The director may accept for any of the purposes of this article all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of these in accordance with other state laws.

(d) The lists referred to in subsections (a) and (b) of this section shall be updated annually.

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(e) If the director determines that any information on the use, manufacture, transportation or storage of hazardous materials in West Virginia would be of assistance to him he may request that such information be provided to him by any person, any industry or company, any medical group or person, or any academic institution or person. He may also request from any person information concerning the harmful effects of exposure to such hazardous materials or the best method of medical treatment of such exposures. The information requested of any person, firm or corporation shall be provided to the director within thirty days unless good cause be shown to the satisfaction of the director why such request is unreasonable because of the potential breach of a trade secret.

(f) Any person, or corporation, that violates the provisions of this section shall be subject to a civil penalty of not less than $100 nor more than $1,000 for each violation. When the director believes that a violation has occurred he may request the Attorney General or the prosecuting attorney of the county where the violation occurred to file a civil action for civil penalties, or for injunctive or other relief, or both penalties and injunctive or other relief.

(g) The director shall develop by rule or regulation promulgated pursuant to the provisions of the administrative procedures act, chapter twenty-nine-a of this code, a program to assemble and update the hazardous materials list, the information on the immediate medical effects of exposure to such materials, and the appropriate emergency medical treatment of persons exposed: Provided, That the list and other information shall not be required to be promulgated pursuant to the administrative procedures act, chapter twenty-nine-a of this code. The program shall also include the most effective method or methods of distributing this information to medical and emergency personnel. This program shall be developed using the budget provided by the Legislature for this program. The director shall implement this program immediately and it shall be later reviewed by the Legislature through the approval of rules and regulations as provided for in chapter twenty-nine-a of this code.

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