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Right-to-know: a guide to  
Montana's Employee and  
Community Hazardous Chemical  
Information Act

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# TO- KNOW

## A Guide to Montana's Employee and Community Hazardous Chemical Information Act

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November 1985

The 1985 Montana Legislature passed the **“Employee and Community Hazardous Chemical Information Act,”** otherwise known as the “right-to-know law.” The law is intended to enhance worker and community safety by requiring employers to make information available on the potential hazards and safe handling of chemicals in the workplace.

Many provisions of the Montana law mesh closely with the Hazard Communication Standard adopted by the federal Occupational Safety and Health Administration (OSHA). Because both laws are effective as of November 25, 1985, Montana employers, workers, citizens and public officials need to become aware of their rights and responsibilities.

This pamphlet summarizes Montana’s right-to-know law, describing in narrative form the detailed legal provisions of the statute. Twelve common right-to-know concerns are addressed in a question-and-answer format. The pamphlet also indicates how to obtain pertinent documents or more information on specific issues.

While this pamphlet will help Montanans understand and comply with the right-to-know law, it is not a definitive legal interpretation. Many states have recently enacted right-to-know laws, and some specific issues are the subject of ongoing litigation in state and federal courts. Also, the extent to which the Federal Hazard Communication Standard may pre-empt state laws is unresolved. Persons seeking specific legal guidance should first refer to the text of the Montana law. Further interpretation may be obtained from the local county attorney, OSHA or, if necessary, private legal counsel.

Montanans can anticipate a transition period as affected parties learn the provisions of this complex new law and take the necessary steps to comply. A cooperative attitude by employers, workers, citizens and government officials should help ensure that the new law achieves its goals without undue burden on Montanans.

# RIGHT-TO- KNOW PROVISIONS

Although the Montana right-to-know law is eight pages long, its effect can be summed up in one sentence: The law establishes a method for employers to provide information on hazardous chemicals used in the workplace.

The text of the law details the employers covered, the definition of a hazardous chemical, employer responsibilities, worker rights, trade secret confidentiality, community access to chemical information, and administration of the law by public agencies. Explanation of each of these specific issues provides a guide for how Montanans can comply with and benefit from their right-to-know law.

## **Employers Covered**

Montana's right-to-know (RTK) law applies to any "person, firm, corporation, partnership, association, governmental agency, or other entity engaged in business or providing services that employs workers." This broad definition of employer means that almost everyone who utilizes hazardous chemicals in a workplace and employs workers must comply with RTK provisions.

The RTK law does, however, specifically exempt food sale establishments and other retail trade establishments from compliance, except in portions of the store where chemicals are

actually used or processed. Thus, for example, a hardware store owner need not comply with RTK provisions for pre-packaged chemical goods being sold. However, if the hardware store also contains a work area where employees routinely mix hazardous chemicals (for example, solvents), these employees must be provided with information on the hazards of these chemicals.

The law tempers some information and recordkeeping requirements for medical facilities and research, testing and educational laboratories. These modified requirements are discussed below under the section on “Employer Responsibilities.”

A manufacturing employer\* is subject directly to OSHA’s Hazard Communication Standard which specifies in-plant right-to-know requirements. Although this federal standard was the model for much of Montana’s RTK law, there are some differences. Manufacturing employers should consult the OSHA standard to learn their specific RTK responsibilities. All employers, including manufacturing employers, must also comply with provisions of the Montana law described below under “Community Right-to-Know.”

# **Hazardous Chemical Determination**

Only those chemicals determined to be “hazardous” are subject to the information provisions of the Montana law. In accord with the federal OSHA standard, the Montana law recognizes two major classes of hazardous chemicals: health hazards and physical hazards.

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\*“Manufacturing employer” is an employer with a workplace classified in standard industrial code classifications 20 through 39, as defined in the federal Standard Industrial Classification Manual. These industries include food products; apparel; lumber; furniture; paper; printing and publishing; chemicals; petroleum and coal products; rubber and plastics; leather; stone, clay and glass; primary metals; fabricated metal; nonelectrical machinery; electrical equipment; transportation equipment; instruments; and miscellaneous manufacturing.

Health hazards are chemicals for which there is statistically significant evidence that acute or chronic health effects may occur in exposed employees. Health hazards include carcinogens (cancer-causing agents), nerve and reproductive poisons, chemicals which damage tissues on contact, and other short- or long-term toxins. Physical hazards include explosives, compressed gases, combustible liquids, flammable compounds, reactive substances, and oxidizers.

Although the concepts of a physical hazard or a health hazard seem straightforward, hazard determination is probably the most difficult aspect of RTK law. Only a small percentage of the hundreds of thousands of chemicals used in our society have been thoroughly tested for health effects, while hundreds of new chemicals are being developed annually.

Even the identification of a chemical may be a difficult exercise for employers. An individual chemical may be known by a variety of common names or trade names. Additionally, commonly used chemical substances may be mixtures of a number of chemical constituents, thus complicating chemical identification and the determination of potential health effects.

Because of the difficulty of determining whether a chemical is hazardous, the Montana RTK law specifies that hazardous chemicals include those physical or health hazards that have been so identified by OSHA or by the chemical manufacturer. *Thus Montana employers generally are not responsible for making the hazard determination.* This approach reflects the Legislature's belief that the federal government and chemical manufacturers have the resources and expertise to make hazard determinations, while most Montana businesses and state government do not.

Under the federal OSHA standard, a chemical manufacturer must include a material safety data sheet (MSDS) with the first shipment to an employer of any hazardous chemical after November 25, 1985. An MSDS is generally a single-page, two-sided form which presents information on the properties, hazards and safe handling of the chemical.

For Montana employers, receipt of an MSDS with a chemical shipment indicates that the chemical manufacturer has done the evaluation required by the federal OSHA standard and determined that the chemical is hazardous. Thus, it is recommended that any

chemical for which an MSDS is received should be considered hazardous.\*

Some employers routinely purchase products containing hazardous chemicals from retail stores, which are not obligated to provide MSDSs. Examples of such products include cleansers, paints, inks, and solvents. If the purchasing employer subsequently requires his employees to work with the chemical product, the employer must learn if it meets the OSHA hazardous chemical definition and, if so, must obtain the appropriate MSDS. The employer should contact the manufacturer of the chemical product for this information. Note that the warning labels often printed on consumer products do not provide enough detail to satisfy the legal requirements for an MSDS.

Employers may not receive MSDSs for certain materials which are not hazardous until subject to an industrial process. Welding compounds, for example, may not be hazardous at room temperature but they do release hazardous metal fumes when heated. These fumes and other workplace-produced hazardous chemicals must be covered under an employer's right-to-know program.

Employers have questioned whether they need to comply with hazard communication requirements for common consumer products used in the workplace. Although no definitive legal interpretation has been issued on this point, OSHA enforcement guidelines address the issue as follows:

“[A] common sense approach should be utilized when [consumer] products are used in a manner similar to which they could be used by a consumer, thus resulting in levels of exposure comparable to consumer exposure. For example, it may not be necessary to have a data sheet for a can of cleanser used to clean the sink in an employee restroom. However, if such cleanser is used in large quantities to clean process equipment, it should be addressed in the Hazard Communication Program.”

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\*Some chemical manufacturers may include MSDSs as a precaution even for chemicals not meeting the definition of hazardous. An employer who suspects this to be the case could check with the chemical manufacturer to learn if the chemical is actually hazardous under the legal definition. This could, however, be a time-consuming or inconclusive process; as a rule, it is probably easiest for an employer simply to treat as hazardous any chemical for which an MSDS is received.

Many Montana workplaces will have chemicals that were received prior to the requirement that material safety data sheets be provided. Most of these chemicals probably arrived without MSDSs; nevertheless, they may be physical or health hazards meeting the definition of a hazardous chemical in the right-to-know law. For such "pre-RTK" chemicals, employers should contact the chemical manufacturer (or, if name and address are unavailable, contact the distributor who supplied the chemical) and request an MSDS if one has been prepared.

Although definitive answers may not be available for all questions on chemical hazards, a good faith effort to obtain this information is expected of an employer. The law requires employers to keep copies of all correspondence requesting MSDSs.

Montana followed the federal standard in specifying that chemicals included on two specific lists are automatically to be considered hazardous. These lists are the American Conference of Governmental and Industrial Hygienists (ACGIH) Threshold Limit Values for toxic substances and the OSHA sub-part Z list. The two lists together contain the names of about 600 industrial chemicals known to pose health threats to workers exposed to threshold concentrations. Additionally, based on the federal standard, chemical manufacturers must consider the carcinogens or potential carcinogens listed in the National Toxicology Program *Annual Report on Carcinogens* and the International Agency for Research on Cancer *Monographs* as health hazards.

Most pesticides and herbicides are subject to the packaging and labelling requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and are specifically exempt from coverage under Montana's right-to-know law.

Food, drugs and cosmetics are exempt from the RTK law.

Sealed containers of hazardous chemicals during transportation or while in storage at transportation terminals are exempt from Montana's right-to-know law. Employers must retain existing labels and comply with state and federal regulations on hazardous material transportation.

The Montana RTK law requires hazard communication for some radioactive materials that are not regulated by the Nuclear Regulatory Commission. Workplaces where such radioactive compounds may be found include medical facilities and laboratories, hardrock mines and mills, and geophysical exploration operations. Very low hazard radioactive materials (as found, for example, in lamps, watches, smoke detectors, industrial or medical analytic devices, and other commonly used products) are either

exempt or generally licensed under Montana regulations and thus are not subject to RTK provisions.

# Employer Responsibilities

The specific responsibilities placed on the employer — what information is to be collected and in what form, how it is to be provided and to whom — are the core of Montana’s right-to-know law. An employer’s responsibility to provide chemical information in the workplace can be divided into four main topics: material safety data sheets, workplace chemical lists, labels, and education and training. The OSHA standard was used as the model for these portions of the Montana law so that employers would not face conflicting state and federal requirements.

Every employer must maintain the most current material safety data sheet for each hazardous chemical in the workplace. The employer must provide an MSDS to any employee (or to the employee’s designated representative) upon request for review or copying. A readily accessible central file or notebook containing all MSDSs and an index is an appropriate way to satisfy this requirement.

Chemical manufacturers and distributors are required to supply MSDSs to Montana employers upon delivery of a hazardous chemical shipment. If an MSDS is not supplied with a hazardous chemical shipment, the employer must request one from the supplier in writing within five working days of receiving the chemical. The employer must maintain a copy of any correspondence sent or received in his effort to obtain an MSDS.

Employers must compile a workplace chemical list that contains the name of each hazardous chemical in the workplace. All generally used common names must be included and must be cross-referenced to the chemical name or to a name that will clearly identify the chemical for the purpose of conducting a hazard

evaluation. The list must indicate the work area in which each hazardous chemical is normally stored or used. The workplace chemical list must be updated as necessary, but not less than once a year.

An employer may not remove or deface any existing label on a container of a hazardous chemical.

Each employer must provide an education and training program for all employees using or handling hazardous chemicals. The program must be given at least once a year. New employees and employees newly subject to an exposure risk must also be trained before working with hazardous chemicals. Employers are required to keep a record of the dates of training sessions given to employees and the names of the employees attending.

The training program must include instruction on:

- interpreting labels and material safety data sheets;
- the acute and chronic health effects of the hazardous chemicals in the workplace; and
- the location, safe handling, protective equipment, first-aid treatment, and cleanup and disposal procedures for these chemicals.

Employers must post a notice at locations where notices are normally posted informing workers about their rights under the law. A sample notice is available at the county office housing right-to-know information.

Finally, employers must record their workplace chemical lists and material safety data sheets with the county clerk and recorder. The details of this requirement are reviewed below under the heading “Community Right-to-Know.”

Medical facilities and research, testing and educational laboratories are subject to reduced recordkeeping requirements under the Montana RTK law. Employers operating medical facilities and labs must make available all MSDs received from chemical suppliers, retain labels on chemical containers, and provide worker education and training. These employers do *not* have to (1) obtain MSDSs for all chemicals, (2) compile a workplace chemical list, or (3) record information with the county clerk. Note that laboratories that produce and distribute hazardous chemicals qualify as chemical manufacturers, and must comply with applicable RTK provisions.

Manufacturing employers are covered by the federal OSHA standard and thus are subject to slightly different RTK provisions. For example, OSHA requires these employers to have a written description of their hazard communication program.

Manufacturing employers are advised to review the specific provisions of the OSHA Hazard Communication Standard because in-plant compliance will be judged by OSHA inspectors.

## **Worker Rights**

The new law specifies a number of rights of Montana workers in relation to hazardous chemicals. Foremost is the worker's right of access to the workplace chemical list and the material safety data sheets. A worker may not be forced to work with a hazardous chemical if the employer does not provide him with an MSDS within five working days of the worker's request for this information. (Workers should note that the OSHA standard does not contain this provision.)

A worker also has the right to effective training on the potential hazards and safe handling of workplace chemicals. An employer must provide workers with personal protective equipment appropriate to the potential chemical hazards.

A worker may file a complaint with the local health officer or the county attorney if he believes his employer is not complying with the provisions of the Montana RTK law. The employer is barred from discharging, disciplining or discriminating against a worker who exercises his rights under the act.

## **Trade Secrets**

The Montana right-to-know law allows employers to keep chemical "trade secrets" confidential. A trade secret is defined as "a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, which is used in an employer's business and which gives the employer an opportunity to obtain an advantage over competitors."

An employer who believes that the name of a hazardous chemical is a trade secret may withhold the chemical name from the material safety data sheet only if:

- an MSDS, coded to an identifying notation on each container of the hazardous chemical, is available in the work area;
- the MSDS discloses the properties and effects of the chemical; and
- the trade secret determination is judged valid by the Montana Department of Health and Environmental Sciences.

To obtain trade secret protection, the employer must submit a formal claim to the Legal Unit, Montana Department of Health and Environmental Sciences, Helena, MT 59620. The department will then request substantiation from the employer and, based upon the information provided, will determine if the chemical meets the definition of a trade secret and thus merits confidentiality. The department will notify the employer of its decision; the employer has 30 days to appeal an adverse ruling to the district court of Lewis and Clark County.

The employer must provide the specific chemical identity of trade secret chemicals to medical personnel in case of an emergency. In nonemergency situations, occupational health professionals may have access to the chemical identity if necessary to document health effects on exposed workers. The employer may require medical personnel and other health professionals to sign a confidentiality agreement as a condition of access to the trade secret information.

## **Community Right-to-Know**

The Montana law, like many other state RTK statutes, distinguishes between worker right-to-know (i.e., providing chemical information to employees) and community right-to-know (i.e., providing the information to safety officials and the public).

The community RTK provisions of the Montana law require employers to record each workplace chemical list and material safety data sheet with the county clerk and recorder. Employers must also record a list with the names (or titles) and telephone numbers of persons who can be contacted for further information or in case of an emergency. These persons may be representatives of either the employer or of the chemical manufacturer.

Recording information with a county clerk is a formal process governed by standardized procedures. Under the right-to-know law, material safety data sheets must be "certified" prior to being recorded. Certification means the inclusion of a notarized statement by an employer that the MSDSs are accurate representations of the documents received from the chemical manufacturer. Workplace chemical lists and the list of emergency contacts must be "acknowledged," a process which also requires addition of a notarized statement to the document. A fee is generally assessed as part of the recording of information by the county clerk and recorder.

Employers should contact the clerk and recorder's office for information on certification, acknowledgement and fees prior to bringing in documents under the right-to-know law.

The county clerk must index the recorded information by workplace name; all entries for a workplace must be grouped together in this index. The clerk must separately index all of the chemicals for which material safety data sheets have been recorded. Employers coming to the county clerk's office to record their chemical information may wish to check the chemical index. If an MSDS has already been recorded in that county for a specific hazardous chemical, subsequent employers need not record another MSDS for that chemical, even if it is used in their workplace. They must, however, list the chemical on their workplace chemical list. Thus, for example, if 20 employers in a county use the solvent xylene, only one will have to record the xylene MSDS. This procedure was intended to prevent duplicate recordings and to keep down employers' costs.

All information recorded by the county clerk is public information and available for inspection during normal working hours.

Local fire chiefs or their agents are required to inspect the hazardous chemical records at the clerk's office. Fire officials must consult with laboratory operators at least annually on safety and

emergency considerations and must also consult with any private fire safety personnel employed at a workplace with hazardous chemicals. Local fire officials may inspect workplaces to plan emergency responses to chemical incidents and to review compliance with the RTK law.

## **Administration and Enforcement**

Administration and enforcement of the Montana right-to-know law are vested with county governments. Administrative provisions of the law fall into three major categories: management of public information, fire safety, and enforcement.

Management of public information under the RTK law is primarily the responsibility of the clerk and recorder's office in each county and is described in the preceding discussion of "Community Right-to-Know." Each county government has been provided with a right-to-know information package that includes a copy of the Montana law, a copy of the federal OSHA standard, enforcement guidelines, a sample material safety data sheet, and other materials. The county clerk should be able to direct interested persons to the county office housing this information.

Fire safety is another major administrative aspect of the right-to-know law. Specific fire safety responsibilities of local officials are described under the section on "Community Right-to-Know."

Investigations and enforcement actions under the Montana right-to-know law will be initiated by local government officials following receipt of a complaint. A worker who believes an employer is not complying with the law may submit a written complaint to the local health officer or to the county attorney. If the investigating official finds that a violation has occurred, the employer must be notified of the violation and given 10 days to take corrective action. Continued noncompliance can lead to prosecution by the county attorney. A person found to be knowingly in violation of the law is guilty of a misdemeanor, with each day of violation considered a separate offense.

Manufacturing workplaces are covered by the Hazard Communication Standard of the federal Occupational Safety and Health Administration. As part of its inspection program, OSHA will assess compliance with the standard. Alleged violations of the OSHA standard by manufacturing employers should be reported to the OSHA office in Billings, rather than to local government officials.

# QUESTIONS & ANSWERS

**1. My workers use hazardous chemicals to manufacture our product. Will the right-to-know law prevent me from using the chemicals I need?**

No. The Montana right-to-know (RTK) law is not a regulatory standard to control chemical use, production or sale. (Many other state and federal laws accomplish these purposes.) Rather, the RTK law is an informational requirement so that employees and the public may be aware of potential chemical hazards in the workplace.

**2. I'm an employer running a business; I'm not a research chemist. How can I be expected to determine what chemicals in my workplace are hazardous? Is there a master list of all the chemicals considered hazardous under the right-to-know law?**

The right-to-know law does not require employers to determine whether or not a chemical is hazardous. This obligation falls upon the chemical manufacturer who, under the federal standard, must evaluate all chemicals produced and send along material safety data sheets (MSDSs) with shipments of those determined to be hazardous.

Employers are responsible for having a material safety data sheet in the workplace for each hazardous chemical. To ensure compliance with this requirement, employers should inventory existing chemical supplies and then request MSDSs from the chemical manufacturers for those chemicals the manufacturer has determined to be hazardous.

Employers are responsible for evaluating the hazards of any chemicals produced in the workplace and securing or preparing material safety data sheets on these chemicals if they are hazardous. It is important to realize that chemical manufacturing firms are not the only workplaces where hazardous chemicals are produced. For example, welding operations can lead to the release of hazardous metal fumes. Exposed workers have the right to know about these hazardous chemicals, and the employer has the responsibility to present the required information on an MSDS.

There is no single master list of all hazardous chemicals. Under the OSHA standard, chemicals are hazardous if they pose a physical or health hazard, and these characteristics can only be determined by thorough testing. Neither OSHA nor any other federal agency has the resources to test the hundreds of thousands of existing chemicals and mixtures, so hazard determination is the responsibility of each chemical manufacturer. The OSHA standard does cite four lists containing a total of more than 2,300 chemicals that must be considered hazardous. These lists are not intended to be comprehensive; they simply indicate some of the commonly used industrial chemicals that are well-documented hazards.

**3. We received most of our workplace chemicals before suppliers were required to send the material safety data sheet (MSDS). We also have chemical containers that haven't been used for years and some of them aren't even labeled. What should I do about these chemicals to comply with the right-to-know law?**

For workplace chemicals that arrived before the MSDS requirement, employers should write to the chemical manufacturer (a) specifying the chemical in question, (b) asking if the chemical has been determined to be hazardous under the evaluation required by OSHA, and (c) requesting an MSDS if one has been prepared. The employer must keep on file a copy of each letter requesting an MSDS.

All hazardous chemicals "present in the workplace" are subject to RTK provisions, even if these chemicals are not regularly used. If the employer desires to keep the chemical on-site, he should contact the manufacturer for the appropriate MSDS. Chemicals that are not used and cannot be identified should be removed from the workplace if they can be disposed of properly. The employer is advised to contact the Solid and Hazardous Waste Management Bureau of the Montana Department of Health and Environmental Sciences in Helena for information on how to dispose of potentially hazardous chemicals.

**4. Are agricultural operations covered by the Montana RTK law?**

Yes; however, many individual farmers and ranchers may not have right-to-know responsibilities. To determine their legal obligations, farmers and ranchers (like all other Montanans) must determine (1) if they have employees and (2) if these employees are exposed to hazardous chemicals.

The law defines an employee as "a person who may be exposed to hazardous chemicals in his workplace under normal operating conditions or possible emergencies." A workplace is "an establishment at one geographical location containing one or more work areas." A work area, in turn, must be "a room or defined space . . . where hazardous chemicals are produced, used, or stored." Thus, to be covered by RTK provisions, an employee must work in a room or building containing hazardous chemicals. An agricultural employer whose workers are exclusively out of doors would therefore not have to comply with the RTK law.

Farmers and ranchers with employees working indoors must assess whether the work area contains any hazardous chemicals.

Procedures for determining whether a chemical is hazardous are discussed thoroughly elsewhere in this pamphlet; however, it is important to emphasize that pesticides and herbicides are not considered hazardous chemicals under the RTK law. Hazard communication for these chemicals is adequately addressed by other state and federal laws.

**5. The right-to-know law says I have to train my workers about chemical hazards. What kind of training program do I need and who can help me set one up?**

The training program required by the Montana RTK law must inform workers about the chemical hazards in the workplace, precautions for working with these chemicals, and the chemical information sources available to them. Training can be accomplished in many ways (e.g., audiovisuals, classroom instruction, interactive videos), and ideally should include opportunities for employees to ask questions to ensure that they understand the information presented to them. The training requirement provides considerable flexibility for employers as long as the objectives are met; however, simply giving an employee a data sheet to read does not satisfy the intent of the law with regard to training. The federal OSHA office in Billings can provide information on acceptable training approaches. Additionally, there are a number of private consulting firms specializing in industrial safety and hazard communication programs.

**6. What is the relationship of the right-to-know law to hazardous waste laws?**

Hazardous waste laws protect public health and the environment by requiring the proper treatment, storage, transportation and disposal of waste industrial chemicals. The right-to-know law, on the other hand, is intended to promote worker and public safety by increasing knowledge about the potential hazards of chemicals used in the workplace. Thus, in general, these laws are complementary efforts to insure safe handling of potentially hazardous materials in our society.

In some instances, hazardous waste laws and right-to-know laws may cover the same chemicals. For example, employers who create hazardous wastes in the workplace must manage these chemicals according to hazardous waste laws and also must inform exposed workers about the potential hazards under RTK provisions.

**7. As an employer, I get nervous about making my chemical supplies a matter of public record through “community” right-to-know. Isn’t this procedure just going to encourage lawsuits?**

The “community” provisions of the Montana right-to-know law are intended to benefit the community by (1) ensuring that fire officials will respond properly to chemical emergencies and (2) informing the public about potentially hazardous chemicals in neighboring workplaces. Although the information may engender some citizen concern, the law provides no specific grounds for legal action based on the presence of hazardous chemicals in the workplace. The law may, as a side effect, heighten an employer’s consciousness about public safety and public image, and thus lead to improved chemical management in the workplace.

**8. No state agency is responsible for enforcing Montana’s right-to-know law. As a worker, how can I be sure that I have access to chemical information and that my rights will be protected?**

Enforcement of Montana’s RTK law is vested within county governments. A worker alleging noncompliance by an employer may submit a written complaint to the county health officer or to the county attorney. These officials must investigate the complaint and, if necessary, seek corrective action from the employer. Employers have 10 days to respond to written notices of violation issued by the county health officer or the county attorney. A worker who is not satisfied with the resolution of an issue by these county officials may initiate court proceedings against the employer.

Workers in manufacturing industries should contact the OSHA office in Billings for investigation of violations of the OSHA right-to-know standard. OSHA has staff working full-time with labor and industry to ensure compliance with occupational safety and health laws.

**9. My workers use a variety of cleaning compounds, paints and other retail goods that might be hazardous. Although some of these goods have hazard warnings on their labels, they generally do not come with material safety data sheets (MSDSs). What should I do to comply with RTK provisions for these over-the-counter chemical products?**

Over-the-counter products are covered by the law; however, because retailers are exempt from compliance, employers purchasing over-the-counter products may have to contact the product manufacturer directly to obtain an MSDS. Hazard warnings on product labels do not satisfy the MSDS requirement.

Some potentially hazardous consumer products are used in the workplace much like they would be used in the home, thus resulting in levels of workplace exposure comparable to consumer exposure. In these situations, OSHA has advised employers to use "a common sense approach." For example, an MSDS may not be necessary for a can of cleanser used for an office sink; an MSDS would be required if that cleanser is used in large quantities to clean industrial equipment.

**10. Some of the compounds used in my workplace are mixtures of chemicals. Do I have to get an MSDS for each chemical in the mixture? What about chemicals I use in only small quantities?**

Evaluating the hazards of mixtures, like other chemicals, is the responsibility of the chemical manufacturer. If a chemical manufacturer has tested a mixture as a whole and found it hazardous, an MSDS would be prepared on that mixture. If the mixture has not been tested, the chemical manufacturer must consider it hazardous if it contains at least 1% (by weight or volume) of a hazardous chemical or 0.1% of a carcinogen.

The right-to-know law makes no distinction related to the quantity of hazardous chemicals in the workplace. If a chemical is hazardous, even if it is present in only small amounts, it must be included within an employer's hazard communication program.

**11. Montana has its right-to-know law, while the federal Occupational Safety and Health Administration has its Hazard Communication Standard. Can you explain the relation between these laws and how they affect Montana employers?**

The Montana law and the federal standard are both intended to enhance workplace safety by increasing workers' knowledge about hazardous chemicals. The Montana law was closely patterned after its federal counterpart, which was adopted after extensive research, public hearings, and testimony from representatives of labor and industry.

There are two major policy areas where the Montana law differs from the federal standard. These differences were instrumental in the decision of the Montana Legislature to enact its own right-to-know bill. First, while the OSHA standard only applies to workers in manufacturing industries, the Montana law extends to all workers who may be exposed to hazardous chemicals in their workplace. Second, the Montana law has community right-to-know provisions, while the OSHA standard does not address this issue.

Manufacturing employers will be subject to enforcement by OSHA for all RTK provisions in the workplace. As a result, manufacturing employers should consult the OSHA Hazard Communication Standard for specific provisions that may differ from the Montana law. The OSHA standard does, for example, require a written description of an employer's hazard communication program, while the Montana law does not.

The OSHA standard does not include community right-to-know provisions, which remain the prerogative of the state. All employers, even those in manufacturing workplaces, must comply with Montana's community right-to-know provisions. Enforcement of community right-to-know is the responsibility of Montana county governments.

Nonmanufacturing employers are not covered by OSHA and must comply with all aspects of the Montana right-to-know law. Enforcement is vested with county government.

## **12. When do the federal and Montana right-to-know laws go into effect?**

The federal OSHA standard contains two effective dates. On November 25, 1985, chemical manufacturers and distributors must begin to include material safety data sheets and appropriate labels with hazardous chemical shipments. Manufacturing employers have until May 25, 1986 to begin hazard communication programs in their workplaces.

Montana's Employee and Community Hazardous Chemical Information Act is effective as of November 25, 1985. However, the Montana law states generally that employers in compliance with the OSHA standard are also considered to be in compliance with Montana's workplace provisions. Thus, an employer could argue that compliance with OSHA's May 25, 1986 effective date for workplace hazard communication is within the Montana law.

The community right-to-know provisions of the Montana law have no counterpart in the federal standard. These provisions are effective for all employers on November 25, 1985.

# FOR MORE INFORMATION

Careful review of this pamphlet and the law itself should provide a working understanding of Montana's right-to-know law. However, some employers and workers may have additional questions. Because the law does not establish or fund any state agency to serve as a clearinghouse for RTK information, the following course of action is suggested for persons desiring more information on specific RTK provisions.

**For questions about whether a certain chemical is hazardous,** first see if a material safety data sheet was received. If so, it is recommended that the chemical be treated as hazardous. If the chemical was received prior to MSDS requirements, contact the chemical manufacturer directly. Ask the chemical manufacturer if the company has determined if the chemical is hazardous under the OSHA Hazard Communication Standard; at the same time, request any available MSDS on that chemical.

**For questions about the process of recording chemical information,** contact the Office of Clerk and Recorder in your county.

**For questions about agricultural chemicals,** contact the Environmental Management Division, Department of Agriculture, Helena, MT 59620; 444-2944.

**For questions about other RTK responsibilities,** contact the local health officer or county attorney for all issues related to nonmanufacturing workplaces and to community right-to-know. Contact the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) office at 19 North 25th, Billings, MT 59101; 1-800-332-7087 (toll-free) for information on all in-workplace RTK aspects for manufacturing industries.

**For the Montana right-to-know law,** obtain a copy of the Montana Code Annotated, 1985, Title 50, chapter 78. Copies of the statute may be obtained for a fee at any clerk and recorder's office and may also be available at law offices, libraries, universities and other public institutions. Additionally, the law may be purchased for \$4 from the Secretary of State, Elections and Legislative Bureau, Helena, MT 59620; request Senate Bill 452 from the 1985 Legislature.

**For a copy of the federal OSHA Hazard Communication Standard,** contact OSHA at 19 North 25th, Billings, MT 59101; 1-800-332-7087.

**For additional copies of this pamphlet,** contact your county clerk and recorder, county health department or the Montana Department of Health and Environmental Sciences, Environmental Sciences Division, Helena, MT 59620; 444-3948.

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