



New York City Environmental Justice Alliance

**166A 22nd Street
Brooklyn, NY 11232
347-841-4410
eddie@nyc-eja.org
www.NYC-EJA.org**

New York City Environmental Justice Alliance recommendations to the New York City Council regarding proposed amendments to the Community Right to Know Local Law.

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The New York City Environmental Justice Alliance (NYC-EJA) is grateful for the opportunity to have testified and submitted written comments to the New York City Council at the hearing "*Oversight – Rebuilding After Sandy and Improving the Resiliency of the City's Infrastructure*" convened by the committees on Housing and Buildings, Environmental Protection, Parks and Recreation, Transportation, and Waterfronts. However, given the vulnerability of industrial waterfront neighborhoods to climate change impacts, and the cumulative impacts of potential hazardous exposures that may result in the event of severe weather, NYC-EJA urges the Council to consider expanding the proposed amendments to the Community Right to Know Law and encourages the following recommendations.

A. § 24-718 RISK MANAGEMENT PLAN

- 1. Require a comprehensive response to potential climate change impacts on any hazardous substance, extremely hazardous substance, regulated toxic substance, or any substance in the special health hazard list, that addresses storm surge, strong winds, and sea level rise (not just flooding), through certification that these substances are dry floodproofed and storm surge proofed, if located within a FEMA-FIRM special flood hazard area, a New York State Office of Emergency Management storm surge zone, or a New York City Office of Emergency Management hurricane evacuation zone.**
 - Climate change impacts pose various threats beyond the impact of elevated still waters due to flooding. This is the case of storm surge and strong winds which are documented through the NYS Office of Emergency Management storm surge zones map, and depicted by the NYC Office of Emergency Management hurricane evacuation zones.
 - New York State Office of Emergency Management storm surge zones map available at: <http://www.dec.ny.gov/energy/67778.html>
 - New York City Office of Emergency Management Office hurricane evacuation zones are available at: http://www.nyc.gov/html/oem/html/hazards/storms_evaczones.shtml
 - Special flood hazard areas represent a limited geography that doesn't take into account projections for increased flooding due to sea level rise.
 - In addition, risk management plans shouldn't just require a plan to secure hazardous substances to potential flooding, but require floodproofing and storm surge proofing certification from an engineer or licensed professional surveyor.

Proposed language:

§ 24–718 Risk management plan. 8) (...) **For facilities any portion of which exists within a special FEMA-FIRM flood hazard area, as established by section G102.2 of appendix G of the New York city building code, a storm surge zone as established by the New York State Office of Emergency Management, or a hurricane evacuation zone as established by the New York City Office of Emergency Management, the risk management plan shall also include a dry floodproofing and storm proofing certificate from an engineer or licensed professional surveyor to ensure that hazardous substances, extremely hazardous, regulated toxic substances, or any substance in the special health hazard list, are located in areas that have been dry floodproofed in accordance with ASCE 24 and storm surge proofed, or located on a story that is entirely above the design flood elevation specified in ASCE 24, table 7-1, as modified by appendix G of the New York city building code.**

2. **Require the responsible parties of a facility where an extremely hazardous substance, a regulated toxic substance, or any substance in the special health hazard list, to prepare a risk management plan, if located within a Significant Maritime and Industrial Area, and located within a FEMA-FIRM special flood hazard area, a New York State Office of Emergency Management storm surge zone, or a NYC Office of Emergency Management hurricane evacuation zone -- regardless of the threshold planning quantity (TPQ).**
 - § 24 -718 (a) only requires that extremely hazardous substances and regulated toxic substances at the threshold planning quantities (TPQ) established by the US-EPA, to prepare a risk management plan. While these thresholds may be sufficient under normal conditions, potential climate change impacts require additional attention to prevent potential exposures under severe weather.
 - Given the proximity of industrial facilities and sites within Significant Maritime and Industrial Areas (SMIAs), even small quantities can derive considerable amounts of hazardous substances in aggregate in the event of severe weather.

Proposed language:

§ 24 -718 a) On or before March first of each year beginning in nineteen hundred ninety-five, a responsible party of a facility where an extremely hazardous substance or a regulated toxic substance is present in an amount that equals or exceeds the threshold planning quantities established by the United States Environmental Protection Agency in regulations promulgated pursuant to applicable law, **or is located within a Significant Maritime and Industrial Area, and located within a FEMA-FIRM special flood hazard area, a New York State Office of Emergency Management storm surge zone, or a NYC Office of Emergency Management hurricane evacuation zone -- regardless of the threshold planning quantity (TPQ),** shall file with the commissioner a risk management plan in accordance with the provisions of this section.

3. **Require that facilities where a hazardous substance is exempt from the Community Right To Know Law and overseen by the NYC Fire Department to provide: a) a certificate of compliance with FDNY regulation pursuant to title twenty-seven of the code, and the equivalent of a CRTK risk management plan; and b) to provide dry flood proofing and storm surge proofing certification, if located within a FEMA-FIRM special flood hazard area, a New York State Office of Emergency Management storm surge zone, or a NYC Office of Emergency Management hurricane evacuation zone.**

- Fossil fuels, petroleum chemicals and combustible or flammable chemicals, are subject to legislation by the fire department, and therefore, exempt by the CRTK Law. However, DEP should be empowered by the CRTK Law to oversee that all exempt substances are complying with the corresponding environmental regulation.
- In addition, the Community Right To Know Law should require that facilities where exempt hazardous substances regulated by FDNY within a FEMA-FIRM special flood hazard area, a New York State Office of Emergency Management, or a NYC Office of Emergency Management Hurricane Evacuation Zone -- regardless of the threshold planning quantity (TPQ) to be dry floodproofed and storm surge proofed.

Proposed language:

§ 24-718 Risk management plan. (8) (...) **For facilities any portion of which exists in a special flood hazard area as established by section G102.2 of appendix G of the New York city building code, a New York State Office of Emergency Management storm surge zone, or a New York City Office of Emergency Management hurricane evacuation zone, the risk management plan shall also require "Floodproofing and storm surge proofing certification" for extremely hazardous and regulated toxic substances, including fossil fuels, petroleum chemicals and combustible or flammable chemicals, subject to legislation by the fire department, and therefore, exempt by the CRTK Law. This certification shall be developed by an engineer or licensed professional surveyor that shall certify that dry floodproofing and storm surge proofing has been produced in accordance with ASCE 24, or located on a story that is entirely above the design flood elevation specified in ASCE 24, table 7-1, as modified by appendix G of the New York city building code.**

4. Require the Department of Environmental Protection to support facilities in the creation of risk management and risk reduction plans, facilitating access to technical and financial resources available, and support in the identification of additional required resources.

- There is a need to facilitate access and interpretation of existing documentation regarding climate change impacts. This is the case with FEMA-FIRM maps, NYS-OEM storm surge zone maps, and NYC-OEM hurricane evacuation maps, so local industrial businesses understand their vulnerability and can interpret this data.
- In addition, local industrial businesses require support in order to identify technical resources to identify strategies to reduce risk effectively, and the financial mechanisms available to be able to afford strategies for building adaptation and pollution prevention.

Proposed language:

§ 24-718 (d) Preparation of risk management plan. The risk management plan shall be prepared by one or more of the following persons: an industrial hygienist certified by the American Board of Industrial Hygienists, a professional engineer licensed pursuant to section 7206 of the New York state education law, a safety professional certified by the Board of Certified Safety Professionals, or other qualified person authorized by rule of the commissioner. **DEP staff should be available along this process to provide technical assistance, and provide detailed documentation in electronic and printed form supporting the process to identify technical and financial strategies for building adaptation to dry floodproof and storm surge proof hazardous substances; reduce risk through pollution prevention strategies; and access financial mechanisms to help industrial businesses afford such capital improvements.** A plan submitted pursuant to this section shall contain proof satisfactory to the commissioner of the qualifications of the person who prepared such plan.

B. § 24-711 LABELING REQUIREMENTS

5. Require that the labeling for all hazardous substances present at a facility discloses potential short and long-term public health impacts of exposure to humans and the environment (including the effects of a potential reaction to water). In addition, labeling should include contact information for City hazmat emergency management staff that can provide immediate assistance in the case of exposure. Labeling information should be also posted in a second language other than English.

- Labels should disclose potential short and long-term public health impacts of exposure as well as the most relevant effects of a potential reaction to water that may occur in the event of severe weather.
- Labeling information should not only be in English, but also be disclosed in the second most common language spoken among the facility staff.

Proposed language:

§ 24–711 Labeling requirements. Within thirty days after a facility inventory form is first required to be filed for a facility, all hazardous substances present at such facility shall be clearly marked with a label showing the chemical name and CAS identification number of the hazardous substance. Labeling should disclose **short and long term health impacts of exposure to humans and the environment, including the most relevant effects of a potential reaction to water, and contact information for City hazmat emergency management staff to request immediate assistance in the case of exposure. This information should not just be available in English, but in the second most common language spoken by the facility’s staff.**

C. § 24-715 ANNUAL REPORT

6. Require detailed information documenting the amount, type and location of hazardous substances and extremely hazardous substances regulated by the Community Right to Know Law, as well as detailed documentation of the work of the Department of Environmental Protection to support businesses toward reducing the risk of potential hazardous exposures.

- As the most comprehensive document reporting on the status of hazardous substances in New York City, the annual report should be expanded in scope by the Community Right to Know Law in order to require disclosing of the following information:
 - Key components of hazardous substance use in New York City, including total pounds used, non-product output, and on-site releases – see NJ Community Right to Know Program publications at: <http://www.state.nj.us/dep/opppc/reports.html>.
 - Top industry groups reporting under the Community Right to Know each year, disclosing number of facility inventory forms; risk management plans; accidental spills and releases; and extremely hazardous substance/regulated toxic substance reports; as well as total pounds used – see NJ Community Right To Know Program publications.
 - Increases or decreases in the total number of pounds of hazardous substances reported under the Community Right to Know Law, and what hazardous substances and industry groups (NAICS) have experienced the greatest change.
 - Total number of pounds for each of the hazardous substances regulated under the CRTK Law that are reported within the special flood hazard areas, storm surge zones and hurricane evacuation zones.
 - Successful technical assistance cases provided by DEP to industrial business reporting under the Community Right to Know Law, in pounds dry floodproofed, storm surge proofed, or eliminated

through DEP Division of Emergency response & technical Assessment (DERTA) CRTK risk mismanagement planning efforts.

- Violations, hazmat responses, and incident types, should be reported by community district not by borough.
- Toxic Release Inventory data by substance should compare results to the previous year, indicating percent change.
- In addition, the annual report must be easier to find. The CRTK Law should require that DEP includes a link to all annual reports published to date as part of the Community Right to Know Program page in the DEP website.
- The CRTK should require an interim report after a presidentially-declared disaster, documenting spills, (location, substances and nature); DERTA emergency responses; DEP testing and individual documenting incident types.
- DEP should provide detailed information and training to businesses documenting the location and interpretation of the areas most vulnerable to flooding, storm surge, high winds and sea level rise, using the most update available projections for NYC.

Proposed language:

§ 24-715 Annual report. (a) The commissioner shall annually review the facility inventory forms and material safety data sheets filed with the department pursuant to this chapter and citywide facility inventory data. Upon making this annual review, the commissioner shall forward a report to the mayor and the council no later than October first of each year. **The Commissioner shall include links to all annual reports published as part of the Community Right to Know Program page in the DEP website.** Such annual report shall, at a minimum, provide the following information **as a citywide aggregation, as well as disaggregation by community district, industry group (NAICS) and substances:** the number of facilities for which facility inventory forms have been filed pursuant to this chapter, **with an indication of how many are located within FEMA-FIRM special flood hazard area, New York State Office of Emergency Management storm surge zones, or NYC Office of Emergency Management hurricane evacuation zones; a citywide aggregate of total pounds used, non-product output, and on-site releases – documenting increases or decreases and which substances and industry groups have experienced the greatest change; risk management plans; and extremely hazardous substance/regulated toxic substance reports;** the number of complaints received; the number of civilian complaints filed; the number of inspections performed pursuant to this chapter; the number of notices of violation issued pursuant to this chapter and chapter six of this title; the number of orders issued by the commissioner pursuant to subdivision a of section 24-608 of this title and the nature of such orders; the number of civil actions and administrative proceedings commenced under this chapter and chapter six of this title and the dispositions thereof; the number of incidents in which the department participated in response measures undertaken in connection with hazardous substances; **a comparison of** the number of releases of hazardous substances reported ~~to~~ **over the last two years,** or otherwise documented by the department; the number of emergency response personnel in each city agency which performs functions in connection with emergencies involving hazardous substances; ~~and~~ the average response time and cost of each member of the city's emergency response personnel; **and the pounds dry proofed, storm surge proofed, re-located or eliminated through the technical assistance of the Department of Environmental Protection. In the case of a presidentially-declared natural disaster, the Commissioner should be required to publish an interim report documenting spills, (location, substances and nature), DERTA emergency responses, DEP testing and case-by-case documentation of incident types and remediation carried out.**

D. § 24-717 HAZARDOUS SUBSTANCE ADVISORY BOARD

7. Require diverse representation in the Hazardous Substance Advisory Board

- Require representatives from the environmental protection, environmental justice, and community-based planning, nonprofit advocacy sectors at the Hazardous Substance Advisory Board to represent the interests of these groups at the table.
- Require the participation of a representative of the Mayor's Office of Long-Term Planning and Sustainability (MOLTPS) at the Hazardous Substance Advisory Board, to oversee/coordinate municipal inter-agency strategies for increasing adaptation and resiliency interventions to protect public health along the NYC industrial waterfront.

Proposed language:

§ 24 -717 b) The board shall consist of the commissioner, who shall serve as the board's chairman, **a representative of the Mayor's Office of Long-Term Planning and Sustainability (MOLTPS), commissioned with the tasks to oversee/coordinate municipal inter-agency strategies for increasing adaptation and resiliency interventions to protect public health along the NYC industrial waterfront, three nonprofit representatives from the environmental protection, environmental justice, and community-based planning sectors,** plus four members to be appointed by the mayor and four to be appointed by the council. Each member shall hold office for a three year term or until such time as the board shall cease to exist or until such member shall resign or is removed from office for good cause shown. Each member appointed shall have a working knowledge of emergency response procedures or in managing hazardous substances.

E. § 24-705 FACILITY INVENTORY FORM

8. Require facilities to disclose whether hazardous substances are located in areas vulnerable to flooding or storm surge as part of the facility inventory form.

- The facility inventory form should request disclosure regarding the location of the facility both within a FEMA-FIRM special flood hazard area, a New York State Office of Emergency Management storm surge zones, or a NYC Office of Emergency Management hurricane evacuation zone.

Proposed language:

§ 24-705 Facility inventory form. (a) (7) a brief description of the manner of storage of each hazardous substance present at the facility, **and whether the hazardous substance, extremely hazardous substance, regulated toxic substance, or any substance in the special health hazard list, is located within a FEMA-FIRM special flood hazard area, a New York State Office of Emergency Management storm surge zone, or a NYC Office of Emergency Management hurricane evacuation zone.**

F. § 24-706 FACILITY INVENTORY REPORTING

9. **Require facilities to submit a Facility Inventory Form if a hazardous substance or an extremely hazardous substance is located within a Significant Maritime and Industrial Area (SMIA) and in a FEMA-FIRM special flood hazard area, a New York State Office of Emergency Management storm surge zone, or a NYC Office of Emergency Management hurricane evacuation zone --regardless of the threshold planning quantity (TPQ).**
- Given the proximity of industrial facilities and sites within NYC Significant Maritime and Industrial Areas (SMIAs) even small quantities can expose considerable amounts of hazardous substances in aggregate in the event of severe weather.

Proposed language:

§ 24–706 Facility inventory reporting. (a) A responsible party of a facility shall file a completed facility inventory form for such facility with the department for each substance on the hazardous substance list or the special health hazard list present within a facility that has been present in the preceding calendar year in a quantity which exceeds the threshold reporting quantity established under section 24–703 of this chapter, **or if any of the hazardous substances, or extremely hazardous substances, are located within a Significant Maritime and Industrial Area, and within a FEMA-FIRM special flood hazard area, or a NYC OEM Hurricane Evacuation Zone**, on or before March first of each year, beginning in nineteen hundred eighty-nine.

G. § 24-710 ACCESS TO HAZARDOUS SUBSTANCE INFORMATION

10. **Require the Department of Environmental Protection to publish information to educate the general public regarding what the Community Right to Know Laws are, what information is gathered and reported, why is this relevant, and explain how to request further information about hazardous substances in their communities, and the type of risks and public health impacts that these may pose in the event of severe weather.**
- Even though the DEP has a CRTK page in its website, there is no information explaining the general public what information is gathered regarding hazardous substances in their communities or its relevance, nor how to access detailed documentation of the hazardous risks affecting their community's health.
 - DEP should produce friendly educational materials in hard copy and distribute them through the community boards, and nonprofit organizations, particularly those at work in/around Significant Maritime and Industrial Areas. See California CRTK's Guide for Consumers at: [http://www.calema.ca.gov/HazardousMaterials/Documents/CRTK_Feb2012_EXT%20\(2\).pdf](http://www.calema.ca.gov/HazardousMaterials/Documents/CRTK_Feb2012_EXT%20(2).pdf)
 - The DEP should also be required to disclose the existence of hazardous substances and extremely hazardous substances

Proposed language:

§ § 24–710 Access to hazardous substance information (b) (...) Within thirty days after the annual completion of the compilation of citywide facility inventory data pursuant to section 24–707 of this chapter, the commissioner shall publish a notice in the City Record that such information shall be available for inspection by the public at the location or locations

specified in the notice. **The Commissioner should also prepare and make available digital and printed educational materials explaining the general public what the Community Right to Know Laws are, what information is gathered and reported, why is this relevant, and how to request further information about hazardous substances in a specific community, and the type of risks and public health impacts that these may pose in the event of severe weather. Custom aggregations of CRTK data should be prepared by DEP upon request. All other information should be publicly available, and distributed to all community boards, and community-based organizations, particularly those located in/around the Significant Maritime and Industrial Areas.**