

10261

I N   A S S E M B L Y

May 18, 2016

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Introduced by M. of A. PEOPLES-STOKES -- (at request of the Division of Homeland Security and Emergency Services) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to chemical security

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 714 of the executive law, as amended by section 17  
2 of part B of chapter 56 of the laws of 2010, is amended to read as  
3 follows:  
4     S 714. Protection of critical infrastructure; storage facilities for  
5 hazardous substances. 1. Notwithstanding any other provision of law and  
6 subject to the availability of an appropriation, the commissioner of the  
7 division of homeland security and emergency services shall conduct a  
8 review and analysis of SECURITY measures being taken by the owners and  
9 operators of facilities [identified pursuant to paragraph (b) of subdi-  
10 vision two of this section to protect the security of critical infras-  
11 tructure related to such facilities] THAT MANUFACTURE OR STORE CHEMICALS  
12 WHICH, IF AN UNAUTHORIZED RELEASE OCCURRED, COULD ENDANGER THE SECURITY  
13 OF THE PUBLIC. The commissioner of the division of homeland security and  
14 emergency services shall have the authority to review all audits or  
15 reports related to the security of such critical infrastructure, includ-  
16 ing all such audits or reports mandated by state and federal law or  
17 regulation, including spill prevention reports and risk management  
18 plans, audits and reports conducted at the request of the department of  
19 environmental conservation or at the request of any federal entity, or  
20 any other agency or authority of the state or any political subdivision  
21 thereof, and reports prepared by owners and operators of such facilities  
22 as required in this subdivision. The owners and operators of such facil-  
23 ities shall, in compliance with any federal and state requirements  
24 regarding the dissemination of such information, provide access to the  
25 commissioner of the division of homeland security and emergency services  
26 to such audits and reports regarding such critical infrastructure  
27 provided, however, exclusive custody and control of such audits and  
28 reports shall remain solely with the owners and operators of such facil-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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ities to the extent not inconsistent with any other law. For the purposes of this section, the term "critical infrastructure" has the meaning ascribed to that term in subdivision five of section eighty-six of the public officers law.

2. [To effectuate his or her duties pursuant to this section and identify risks to the public, the commissioner of the division of homeland security and emergency services shall:

(a) within six months of the effective date of this section, in consultation with the commissioner of environmental conservation, the commissioner of health, and such representatives of the chemical industry and higher education as may be appropriate, prepare a list that identifies toxic or hazardous substances, including but not limited to those substances listed as hazardous to public health, safety or the environment in regulations promulgated pursuant to article thirty-seven of the environmental conservation law, as well as those substances for which the state possesses insufficient or limited toxicological information but for which there exists preliminary evidence that the substance or the class of chemicals with similar physical and chemical properties to which it belongs has the potential to cause death, injury, or serious adverse effects to human health or the environment, based on the severity of the threat posed to the public by the unauthorized release of such substances. Such list will be promulgated in accord with the provisions of the state administrative procedure act;

(b) upon completion of the list required pursuant to paragraph (a) of this subdivision, but no later than one hundred twenty days after such date, in consultation with the commissioner of environmental conservation, the commissioner of health and such representatives of the chemical industry and any state, local and municipal officials as may be appropriate, identify facilities, including facilities regulated pursuant to title nine and title eleven of article twenty-seven and article forty of the environmental conservation law, but excluding facilities that hold liquified petroleum gas for fuel at retail sale as described in section 112(1)(4)(B) of the Clean Air Act (42 U.S.C. section 7412(r)(4)(b)) and those facilities that are defined as "water suppliers" in subdivision one of section eleven hundred twenty-five of the public health law, which because of their storage of or relationship to such substances identified pursuant to paragraph (a) of this subdivision pose risks to the public should an unauthorized release of such hazardous substances occur; and

(c) require such facilities identified pursuant to paragraph (b) of this subdivision, as the commissioner so determines, to prepare a vulnerability assessment of the security measures taken by such facilities to prevent and respond to the unauthorized release of hazardous substances as may be stored therein, which assessments the commissioner of the division of homeland security and emergency services shall review and consider in light of the seriousness of the risk posed and vulnerability of such facility and, where appropriate, make recommendations with respect thereto.

3.] (a) On or before June first, two thousand five, the commissioner of the division of homeland security and emergency services shall make a preliminary report to the governor, the temporary president of the senate, the speaker of the assembly, the commissioner of environmental conservation, the commissioner of health and the chief executive officer of any such affected facility or his or her designee, and on or before December thirty-first, two thousand five, and not later than three years after such date, and every five years thereafter, the commissioner of

1 the division of homeland security and emergency services shall report to  
2 the governor, the temporary president of the senate, the speaker of the  
3 assembly, the commissioner of environmental conservation, the commis-  
4 sioner of health and the chief executive officer of any such affected  
5 facility or his or her designee. Such report shall review the security  
6 measures being taken regarding critical infrastructure related to such  
7 facilities, assess the effectiveness thereof, and include recommenda-  
8 tions to the legislature, the department of environmental conservation  
9 or the department of health if the commissioner of the division of home-  
10 land security and emergency services determines that additional measures  
11 are required to be implemented.

12 (b) Before the receipt of such report identified in paragraph (a) of  
13 this subdivision, each recipient of such report shall develop confiden-  
14 tiality protocols which shall be binding upon the recipient who issues  
15 the protocols and anyone to whom the recipient shows a copy of the  
16 report in consultation with the commissioner of the division of homeland  
17 security and emergency services, for the maintenance and use of such  
18 report so as to ensure the confidentiality of the report and all infor-  
19 mation contained therein, provided, however, that such protocols shall  
20 not be binding upon a person who is provided access to such report or  
21 any information contained therein [pursuant to section eighty-nine of  
22 the public officers law after a final determination that access to such  
23 report or any information contained therein could not be denied pursuant  
24 to subdivision two of section eighty-seven of the public officers law]  
25 AND ANY INFORMATION CONTAINED OR USED IN ITS PREPARATION SHALL BE EXEMPT  
26 AND NOT MADE AVAILABLE PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS  
27 LAW. The commissioner of the division of homeland security and emergen-  
28 cy services shall also develop protocols for such division related to  
29 the maintenance and use of such report so as to ensure the confidencial-  
30 ity of all sensitive information contained in such report. On each  
31 report, the commissioner of the division of homeland security and emer-  
32 gency services shall prominently display the following statement: "This  
33 report may contain information that if disclosed could endanger the life  
34 or safety of the public, and therefore, pursuant to section seven  
35 hundred eleven of the executive law, this report is to be maintained and  
36 used in a manner consistent with protocols established to preserve the  
37 confidentiality of the information contained herein in a manner consist-  
38 ent with law."

39 (c) The department of environmental conservation shall have the  
40 discretion to require that recommendations of the commissioner of the  
41 division of homeland security and emergency services be implemented by  
42 any owner or operator of a hazardous substances storage facility as  
43 defined in this section.

44 S 2. This act shall take effect immediately.