

You Make The Call: What Should You Do If Your Chemical Supplier Doesn't Provide an SDS/WHMIS Supplier Label?



SITUATION

On Jan. 1, 2019, XYZ Chemical Suppliers ships 100 dozen cases of Toxix, a hazardous product used to clean industrial machinery, to Company ABC. Having never used the product before, Company ABC tasks its EHS director with verifying that the shipment includes the proper Safety Data Sheets (SDS) and WHMIS supplier labels. The good news is that the documents are there; the bad news is that they comply with the old MSDS/supplier label requirements rather than the new GHS rules.

WHAT THE LAW SAYS

WHMIS rules ban employers from using, handling *or storing* hazardous products at their workplace unless they have a proper SDS and supplier label for those products.

YOU MAKE THE CALL

What the heck is Company ABC supposed to do with all those cases of Toxix' If storing the product without a GHS-compliant SDS and label is illegal, does Company ABC have to send the entire shipment back to XYZ'

ANSWER

Not necessarily.

EXPLANATION

WHMIS gives employers some leeway to handle these situations. The Basic Rule: You may store, although not use or handle, hazardous products without a compliant SDS and/or supplier label in your workplace as long as you make reasonable efforts to obtain the SDS/label and/or required information from the supplier (and perhaps other sources).

Note that the exemption applies only to employers that receive hazardous products from an upstream supplier and not to employers who manufacture those products themselves. The rules also vary by jurisdiction, as illustrated by Table 1 below. Some key differences:

- In Alberta, the exemption for storage lasts only 120 days and employers must post a placard containing safety information about the stored product;
- In Nova Scotia, employers must affix a workplace label or simplified DO NOT HANDLE warning label if they lack the information needed to create the workplace label;
- In Québec, employers must create a workplace SDS for the stored product if they can't obtain a supplier SDS from the supplier; and
- In Ontario, employers must notify an MOL Director in writing when they have failed, despite their best efforts, to obtain an SDS or supplier label from the supplier.

Table 1: Employer Right to Store Hazardous Products without a Compliant SDS or Supplier Label by Province

Jurisdiction	Rule
Federal (OHS Regs, Sec. 10.31(2))	Employer may store hazardous product received from suppliers without SDS and/or supplier label if: <ul style="list-style-type: none">ú It actively seeks the SDS and/or label; andú It leaves whatever labeling is on the container without defacing, modifying or altering it
Alberta (OHS Code, Secs. 404(2) and 398(4))	<ol style="list-style-type: none">1. Employer may store hazardous product received from suppliers without SDS for up to 120 days if it actively seeks the SDS;2. Employer may store hazardous product received from suppliers without supplier or workplace labels for up to 120 days if:<ul style="list-style-type: none">ú It actively seeks the supplier label or info required for a workplace label;ú It posts a placard that complies with OHS Code Sec. 401; andú It ensures that a worker who works with or in proximity to the product: (i) knows the purpose of the placard and the significance of its information; (ii) is trained in procedures to be followed in case of fugitive emissions; and (iii) is trained in the procedures to be followed in case of an emergency involving the product
British Columbia (OHS Reg, Sec. 5.4(2))	Employer may store a hazardous product [without a compliant SDS or supplier label] in a workplace while actively seeking the required information
Manitoba (WSH Reg, Sec. 35.2(2))	Employer may store hazardous product received from suppliers without SDS and/or supplier label if: <ul style="list-style-type: none">ú It actively seeks the information required; andú It ensures the product is stored in a manner that doesn't pose a risk to a worker's health and safety
New Brunswick (WHMIS Reg, Sec. 5(2))	Employer may store hazardous product at place of employment [without a compliant SDS or supplier label] while actively seeking the information required

Newfoundland & Labrador (WHMIS Regs, Sec. 4(2))	Employer may store [hazardous] product at workplace [without a compliant SDS or supplier label] while actively seeking the information required
Nova Scotia (WHMIS Regs, Sec. 3(2))	Employer may store a hazardous product in a workplace [without a compliant SDS or supplier label] while actively seeking, via written request to a supplier or other reasonable efforts, the required information if the employer ensures that the [hazardous] product or its container has applied to it: * A workplace label; or * If the employer doesn't have the information required for a workplace label, a label disclosing that the product is: (i) hazardous; and (ii) cannot be used or handled at workplace until further information is obtained
Ontario (WHMIS Reg, Sec. 5(1), and OHS Act, Sec. 37(4))	1. Employer may store a hazardous product received from a supplier without having a label on it and without obtaining an SDS for it . . . while the employer is actively seeking a supplier label and a supplier SDS for it 2. Employer must advise an MOL Director in writing if employer, after making reasonable efforts, is unable to obtain a required label or SDS
Prince Edward Island (WHMIS Regs, Sec. 3(2))	Employer may store a hazardous product [without a compliant SDS or supplier label] at a workplace while actively seeking the required information about the hazardous product
Qu�bec (OHS Act, Sec. 62.1 and Hazardous Products Information Reg, Sec. 17)	1. Employer may store a hazardous product without a supplier label or SDS in a workplace or allow it to be handled for storage purposes under conditions prescribed by regulation (summarized in para. 2 below), if it takes, without delay, the steps necessary to ensure that the product has such a label and SDS and if the worker is given, as soon as possible, the required training and information regarding handling and storage 2. If supplier doesn't provide required SDS, employer may store the hazardous product in the workplace until it gets the SDS from the supplier or prepares a workplace SDS for the product
Saskatchewan (WHMIS Regs, Sec. 4(2))	Employer may store a hazardous product [without a compliant SDS or supplier label] in a place of employment while actively seeking the required information
Northwest Territories (OHS Regs, Sec. 324(2))	Employer may store a hazardous product [without a compliant SDS or supplier label] in a workplace while actively seeking the required information
Nunavut (OHS Regs, Sec. 324(2))	Employer may store a hazardous product [without a compliant SDS or supplier label] in a workplace while actively seeking the required information
Yukon (WHMIS Regs, Sec. 3(2))	Employer may store a hazardous product [without a compliant SDS or supplier label] in the employer's workplace while actively seeking information necessary for the employer to comply with this Regulation

Takeaway

Make sure you document the reasonable efforts you make to obtain the information required for the hazardous product. At a minimum, that should include making a request to the supplier for the SDS and/or supplier label or the information required. While not required outside Ontario, it may also be advisable to consider notifying the OHS regulatory authority of your attempts to track down the required information.