

***NEW JERSEY  
RIGHT TO KNOW & ACT COALITION***

January 5, 1993

Assemblyman Robert Shinn  
Larchmont Commons Shopping Center  
3111-23 Route 38  
Mount Laurel, NJ 08054

Dear Assemblyman Shinn:

Enclosed please find petitions that were recently circulated by some high school students in area schools. They were collected at a meeting of school representatives from across the area. We thought you might be interested in their perspective.

Sincerely,

Jane Nogaki  
Co-Chair

Enclosure

cc: Governor James Florio  
Assemblyman Doria

## **SOME ORGANIZATIONS OPPOSING A.1232**

Governor's Right to Know Advisory Council

New Jersey State AFL-CIO

New Jersey Education Association

New Jersey Poison Information & Education System

Fire Fighters Association of New Jersey

Firemen's Mutual Benevolent Association

CATA - Farmworkers Support Committee

New Jersey Industrial Union Council, AFL-CIO

Sierra Club

New Jersey Environmental Lobby

New Jersey Environmental Federation

Communication Workers of America

American Federation of State, County & Municipal Employees

American Federation of Teachers - New Jersey

International Federation of Professional & Technical Employees

United Auto Workers Region 9

Oil, Chemical, & Atomic Workers International Union

International Chemical Workers Association

New Jersey Citizen Action

New Jersey Public Interest Research Group

Coalition to Prevent Reproductive Hazards in the Workplace

New Jersey State Council of Machinists

Coalition Against Toxics

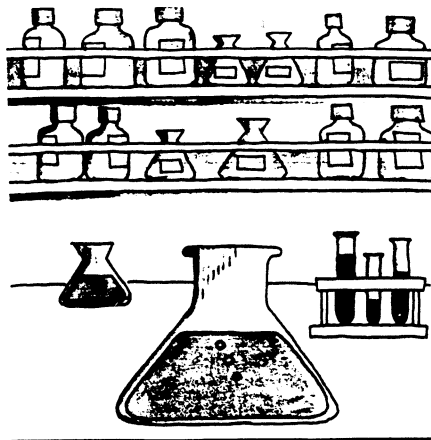
International Ladies Garment Workers Union

White Lung Association

*Issued by the N.J. Right to Know & Act Coalition*

*January 1993*

# NEW JERSEY RIGHT TO KNOW & ACT COALITION



January 1993

Dear Friend of Public Health:

We urge you to **OPPOSE A.1232** (Shinn/Doria), a bill that claims to "reform" New Jersey's Worker & Community Right-to-Know Act, but would actually gut a law that has helped protect health and prevent pollution for almost a decade.

At the same time, we urge you to **SUPPORT regulations** about to be proposed by the New Jersey Department's of Health and Environmental Protection & Energy that will make the Right-to-Know Act easier to comply with -- without endangering workers, firefighters, public school students, or the environment. (Copies of the proposals are available from the departments).

The New Jersey Right to Know & Act Coalition includes 160 labor, firefighter, community, and public health organizations united in opposition to A1232. Contact us for further information -- or to learn how you can help defeat "the right-to-know nothing."

Sincerely,

*Jane Nogaki*

Jane Nogaki  
Co-Chair  
(609) 767-1110

*Eric Scherzer*

Eric Scherzer  
Co-Chair  
(908) 381-3920

This packet includes the following materials opposing A.1232:

- \*A factsheet "Oppose A.#1232: The Right-to-Know Nothing"

- \*Some New Jersey Right-to-Know Success Stories

- \*Letter from N.J. Poison Information System

- \*Why Universal Labeling Provisions are Important to Public Health

- \*List of Companies Who Already Comply with RTK Labeling

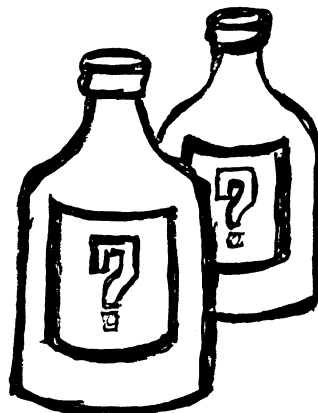
- \*Letter to Assemblymen Shinn and Doria from CATA, the Farmworkers Support Committee, **opposing** A1232 and supporting A865 instead.

- \*A Detailed Analysis of Bill #1232

- \*Summary of Litigation Concerning Law (prepared by the N.J. Public Advocate)

***Lists of legislators to contact, sample resolutions, and other material useful for opposing A1232 are available from the Coalition.***

***Copies of proposed draft regulations concerning the Act are available from the NJDOH and NJDEPE.***





## OPPOSE A.#1232: "THE RIGHT-TO-KNOW NOTHING"

To prevent toxic exposures, in 1983 the state legislature passed the Worker and Community Right-to-Know Law, sponsored by then Senator Dan Dalton. This law requires that all chemical containers be labeled and that firefighters, police, and other public employees be trained about toxic hazards. Companies must also reveal what they release into our air and water. Our law has been widely recognized as a national model.



***But now proposed legislation would eliminate our right-to-know.*** Assembly Bill #1232 (Shinn/Doria) would encourage industry to cover-up chemical hazards like they did in the past. Chemicals in public school chemistry labs would no longer have to be labeled. The requirement that all chemical containers be labeled -- "universal labeling" -- would be eliminated. Neighbors, students, firefighters, police, first aid, chemical, factory, and public workers could all be put at risk.

This bill would gut a law that has helped protect health and prevent pollution for almost a decade. It would, in part:

- ***Endanger all of us by allowing management to hide the true chemical name of toxic substances with codes or trade names. Many containers would not have to be labeled at all because the bill eliminates "universal labeling."***
- ***Endanger public school students and personnel by eliminating requirements that chemical containers be labeled in chemistry labs and shops.***
- ***Endanger firefighters and other emergency responders by requiring labeling by state law of only the single "most potentially lethal" chemical per site, ignoring the fact that many chemicals can be dangerous.***
- ***Endanger public employees who would no longer have a right to labeling, proper training, or hazardous substance factsheets. Public employees aren't covered by OSHA's Hazard Communication rule. Thus they would have no right-to-know at all!***
- ***Endanger Spanish speaking citizens by ending rules for information in Spanish.***

# A1232: COVERING UP TOXIC HAZARDS



● **Endanger research and development and quality control workers who face unknown chemical hazards by eliminating these facilities from coverage by the Act.**

*A1232 would also allow cancer and birth-defect agents to be considered trade secrets! And it would eliminate the Health Department's production of "Hazardous Substance Factsheets" which provide unbiased information on chemicals to the public.*

***In fact, if this bill passed, thousands of chemical, oil, drug, and other companies wouldn't have to comply with any part of our right-to-know law!***



➡ ***Yet many New Jersey companies already comply with this law, including universal labeling. Gutting it and mandating unworkable alternatives will increase the cost of doing business in these tough economic times.***

➡ ***A.1232 will also increase costs for state government which would have to analyze and approve over 575,000 different company produced material safety data sheets! Ending universal labeling will also cause the state to face more expensive litigation related to federal OSHA law pre-emption.***

The bill would give farmworkers the right-to-know for the first time -- in return for gutting protection for all other workers and the environment. That's why CATA, the Farmworkers Support Committee, *opposes* this bill and supports the true farmworker right-to-know bill (A-865). Strengthening the Right-to-Know rules can be addressed by the Right to Know Advisory Council, which includes industry and public representatives, and by the regulatory process.

***Please oppose this "right-to-know nothing" -- and any other bill that would cover-up the dangers of toxic chemicals to children, workers, firefighters, and neighbors.***

Issued in June 1992 by the New Jersey Right-to-Know and Act Coalition, an alliance of 160 community, firefighter, labor, and environmental organizations that helped win passage of the 1983 Right-to-Know law. Support for the points made in this factsheet can be found in a detailed analysis of A.1232 prepared by the Coalition.

[TNG10/AFL-CIO]

# **SOME NEW JERSEY RIGHT-TO-KNOW SUCCESS STORIES**

## **Labeling Toxic Chemicals in Schools**

Right-to-Know inspections in many schools have found substantial compliance with the law's requirements, particularly labeling. Many schools have reported health benefits for students and staff as a result of labeling. For example:

- \*Dramatic improvements in general housekeeping and safe organization of chemical storage.

- \*Discovery of outdated and dangerous chemicals which had been on the shelves for years. These were then disposed of.

- \*Substitution of less toxic materials.

- \*Simplification of inventories by ordering smaller amounts of fewer products.

- \*Greater awareness of the need for better ventilation, personal protective equipment, and training in dealing with toxics, especially in science and art departments.

## **Labeling In A Water Treatment Plant**

During a Department of Health inspection of a water treatment plant, an employee expressed elation when informed that requirements even included labeling drums of water. This employee had been burned by chemicals when he dipped his hands into a container of what had appeared to be water but was actually acid.

## **Elimination of Picric Acid in Schools**

1988 Right-to-Know survey data was used to identify schools storing picric acid, an extremely toxic and potentially explosive chemical. The Department of Health then sent letters to the schools alerting them to this hazard and advising them on safe disposal. As a result, many schools eliminated storage of picric acid.

## **Voluntary Compliance with the Law**

Numerous employers not covered by the Right-to-Know law, such as doctor's offices, have voluntarily trained staff about toxic chemicals using the New Jersey Hazardous Substance Factsheets and training materials.

## **Elimination of a Male Reproductive Hazard**

A county highway department discovered while labeling paint supplies that a reflective road paint contained a chemical known to be a male reproductive toxin. A less toxic alternative was found and substituted for the toxic paint.

## **Better Respirators**

After reading the Department of Health's "Hazardous Substance Factsheets," many employers have recognized that the paper dust masks they supplied to employees didn't prevent exposures to solvents and other volatile chemicals. As a result, they have supplied better respirators.

## **Hazardous Substance Factsheets**

The Department of Health has produced factsheets for 1,034 different chemicals. They are vastly superior in scientific quality and readability compared to material safety data sheets produced by chemical suppliers or for-profit vendors. Millions of factsheets have been requested by physicians, firefighters, employers, unions, and individual citizens who rely on them for reliable information on chemical hazards.

## **Hazardous Substance Factsheets in Spanish**

These factsheets are also available in Spanish for 235 chemicals to-date. They are widely used, particularly in schools, including Rutgers University, N.J. Institute of Technology, UMDNJ, and DEPE. Scientific studies have found that Hispanic residents and employees suffer extensive toxic exposure. Thus these factsheets are particularly important.



# NEW JERSEY POISON INFORMATION AND EDUCATION SYSTEM

## 201 Lyons Avenue Newark, New Jersey 07112

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Steven Marcus, M.D., Executive Director  
Diplomate, American Board of Medical Toxicology

Emergency : 1-800-962-1253  
Facsimile : 1-201-926-0013  
Office : 1-201-926-7443  
TTY : 1-201-926-8008

December 4, 1992

Joseph Doria  
Assembly Minority Leader  
New Jersey State Assembly  
235 Broadway  
Bayonne NJ 07002

Robert Shinn  
Assemblyman  
New Jersey State Assembly  
Larchmont Shopping Center  
3111-23 Route 38  
Mt. Laurel NJ 08054

Dear Assemblyman Doria and Shinn:

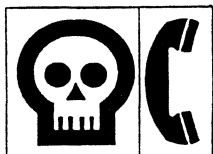
A mother calls the poison control center when her child ingests substance XYZ whose label does not list what is in it. The PCC is unable to find a listing of the substance on its computer and cannot ascertain the toxic component. The PCC attempts to call the company, it's name and address is listed on the container, but it is after hours and the company has no after hours office.

A worker is exposed to substance Y in the workplace, it splashes in its eye. The worker calls the PCC because the substance has the brand name, but has no constituents listed on it. The PCC attempts to look it up, but again finds nothing on its computer and cannot reach the manufacture because it is after hours.

These are just two of the possible scenarios that, as we read Assembly Bill 1232, we foresee occurring in the future if Assembly Bill 1232 is passed.

Over the past years the ability to deal with the exposed individual has improved dramatically because of the passage of the community and worker right to know laws. The PCC has been fighting for its own existence over the years because of funding problems and now fights not just for its own existence, but for the ability to serve the public when the public calls the PCC because of potential lack of proper labeling.

The PCC has already had experiences with companies who have attempted to maintain confidentiality of "trade secrets" and hindered the ability of the PCC to provide consultation to treating physicians. On at least one occasion a Connecticut company first refused to give information on the ingredients



The Regional Drug and Poison Information Center for New Jersey, Designated as a Regional Poison Control Center and a Member, American Association Of Poison Control Centers

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Joseph Doria  
Assembly Minority Leader  
New Jersey State Assembly  
235 Broadway  
Bayonne NJ 07002

Robert Shinn  
Assemblyman  
New Jersey State Assembly  
Larchmont Shopping Center  
3111-23 Route 38  
Mt. Laurel NJ 08054

of its product and then finally gave information, but refused to let the PCC give that information to the treating physician in total lack of understanding of the function of the PCC. When the PCC did release that information to the treating physician the company brought a complaint against the PCC to the Department of Labor.

After investigation, the Department of Labor felt that the company acted out of line and supported the PCC's position. It took several days of time from the Executive Director of the PCC's busy schedule to iron out the problems.

As a result of Assembly Bill 1232 this problem may increase many fold. It is thus, that I write asking you to please rethink this legislation and withdraw it. I believe that it is counter to the tenants of occupational safety and health and will lead to potential problems in the non-work related exposure area as well.

We hope that the bill will not be passed in the legislature and if it does happen to pass we do hope that the governor will veto this bill since it appears that such a bill will put the worker and the public of New Jersey at an increased risk.

Please do not hesitate to call for any data concerning potential exposure to substances that will no longer require labeling under a A1232 and its impact on the population of New Jersey.

Respectfully submitted,

  
Steven M. Marcus, MD

cc: Governor Jim Florio

New Jersey Department of Health -- Right to Know Program  
 Inspected Private Employers in Compliance with RTK Labeling  
 Generated: October 1, 1992

SIC	Company Name	City
0782	LANDCRAFTERS.	DEPTFORD
0782	OSMOSE WOOD PRESERVING.	MONROE TWP
0782	COBBLESTONE LANDSCAPING.	SEWELL
0782	CHEM LAWN CORP.	THOROFARE
0782	TRU-GREEN CORP.	THOROFARE
2431	BOWLITE CO.	E RIVERTON
2711	BERGEN COMPOSITION CO.	PARAMUS
2751	REVIEW PRINTING CO.	PITMAN
2751	GRAPHIC IMPRESSIONS PRINTING.	TURNERSVILLE
2752	UNITED COLOR INC.	CLIFFSIDE PARK
2752	L P THEBAULT CO.	PARSIPPANY
2752	GATEWAY GRAPHICS.	WESTVILLE
2759	SELECTRO FLASH.	WEST ORANGE
2771	THAYER PUBLISHING CORP.	VINELAND
2810	UNION CARBIDE INDUSTRIAL GASES INC.	KEASBEY
2810	UNION CARBIDE INDUSTRIAL GASES INC.	MOORESTOWN
2813	AIR PRODUCTS & CHEMICALS INC.	CAMDEN
2813	AIR PRODUCTS & CHEMICALS INC.	DAYTON
2813	AIR PRODUCTS & CHEMICALS.	ISELIN
2813	UNION CARBIDE CORP - LINDEN DIV.	LINDEN
2813	LIQUID CARBONIC CARBON DIOXIDE CORP.	LINDEN
2815	BASF COATING & INK DIV.	LINDEN
2816	REICHHOLD CHEMICALS INC.	NEWARK
2819	MONSANTO CO.	CAMDEN
2819	ENGELHARD CORP.	EAST NEWARK
2819	MOBIL CHEMICAL CO-EDISON RESEARCH LAB.	EDISON
2819	FISHER SCIENTIFIC CO.	FAIR LAWN
2819	E I DUPONT DENEMOURS & CO-REPAUNO PLANT.	GIBBSTOWN
2819	USR OPTONIX INC.	HACKETTSTOWN
2819	E I DUPONT DENEMOURS & CO INC-GRASSELLI.	LINDEN
2819	J T BAKER INC.	PHILLIPSBURG
2819	WITCO CHEMICAL CORP.	PHILLIPSBURG
2819	FMC CORP.	PRINCETON
2819	ALUCHEM INC.	SALEM
2819	MARSULEX INC.	SOUTH AMBOY
2821	SYBRON CHEMICALS INC.	BIRMINGHAM
2821	HERCULES INC - BURLINGTON PLANT.	BURLINGTON
2821	OCCIDENTAL CHEMICAL CORP.	BURLINGTON
2821	BUDD CHEMICAL CO.	CARNEYS POINT
2821	SYNERGISTICS INDUSTRIES INC.	FARMINGDALE
2821	RHONE-POULENC INC.	NEW BRUNSWICK
2821	HERCULES INC.	PARLIN
2821	AIR PRODUCTS AND CHEMICALS INC.	PAULSBORO
2821	B F GOODRICH CO.	PEDRICKTOWN
2821	C J OSBORN - DIV SUVAR CORP.	PENNSAUKEN
2821	WITCO CORP.	PERTH AMBOY
2821	UNION CARBIDE - C & P CO INC.	SOMERSET
2821	A O POLYMER CORP.	SPARTA
2821	HOECHST-CELANESE CORP.	SUMMIT
2821	ICI AMERICA INC.	WEST DEPTFORD
2821	AUSEMONT USA INC.	WEST DEPTFORD
2821	HUNTSMAN POLYPROPYLENE CORP.	WOODBURY
2830	BERLEX LABORATORIES INC.	WAYNE
2831	ORTHO DIAGNOSTIC SYSTEMS INC.	RARITAN
2833	HOFFMAN-LAROCHE IND - ROCHE VITAMINS.	BELVIDERE

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SIC	Company Name	City
2833	SANDOZ PHARMACEUTICALS CORP.	EAST HANOVER
2833	SOLUBLE PRODUCTS CO.	LAKEWOOD
2833	NAPP CHEMICALS INC.	LODI
2834	AMERICAN CYANAMID.	BOUND BROOK
2834	AMSPEC CHEMICAL CORP.	CHERRY HILL
2834	PRIVATE FORMULATIONS INC.	EDISON
2834	AMERCHOL CORP.	EDISON
2834	WARNER LAMBERT CO.	MORRIS PLAINS
2834	FOOD SERVICES CORP.	MT LAUREL
2834	NEWTON INDUSTRIES INC.	NEWTON
2834	ORTHO PHARMACEUTICAL RESEARCH INSTITUTE.	RARITAN
2834	BRISTOL - MYERS PRODUCTS.	SOMERVILLE
2834	P F LABORATORIES INC.	TOTOWA
2834	GUARDIAN DRUG CO.	TRENTON
2834	SCHERING CORP.	UNION
2834	ORGANON INC.	WEST ORANGE
2834	KNOLL PHARMACEUTICALS - BASF CORP.	WHIPPANY
2836	IMMUNOGENETICS INC.	VINELAND
2841	COLGATE PALMOLIVE CO.	PISCATAWAY
2841	CHURCH & DWIGHT CO INC.	PRINCETON
2842	LEHN & FINK PRODUCTS.	BELLE MEAD
2842	DOVER LABS INC.	PATERSON
2842	KUEHNE CHEMICALS CO.	SOUTH KEARNY
2842	ANSCOTT CHEMICAL INDUSTRIES INC.	WAYNE
2843	STEPAN CHEMICAL CO.	FIELDSBORO
2843	MONA INDUSTRIES INC.	PATERSON
2844	COSMAIR INC.	CLARK
2844	CARTER WALLACE - WAMPOLE LAB.	CRANBURY
2844	COSMAIR INC.	LAKEWOOD
2844	MEM CO INC.	NORTHVALE
2844	CHANEL INC.	PISCATAWAY
2851	BASF - COATINGS CORP.	BELVIDERE
2851	UNION CARBIDE CHEMICALS & PLASTICS CO.	BOUND BROOK
2851	AMOCO OIL CO.	CARTERET
2851	VAR-CHEM PRODUCTS INC.	CLIFTON
2851	CON-LUX COATINGS INC.	EDISON
2851	PYROLAC CORP.	HAWTHORNE
2851	ORELITE CHEMICAL COATINGS INC.	IRVINGTON
2851	BIRK PAINT MANUFACTURERS INC.	JERSEY CITY
2851	PENN COLOR INC.	MANVILLE
2851	STONHARD INC.	MAPLE SHADE
2851	SHERWIN - WILLIAMS CO.	NEWARK
2851	BENJAMIN MOORE & CO.	NEWARK
2851	LILLY INDUSTRIES INC.	PAULSBORO
2851	DEVOE COATINGS CO.	PENNSAUKEN
2851	SUPERIOR VARNISH & DRYER CO.	PENNSAUKEN
2861	CROMPTON & KNOWLES CORP.	NEWARK
2865	MONSANTO CO.	BRIDGEPORT
2865	BIOCHEMICAL SCIENCES INC.	BRIDGEPORT
2865	GENERAL COLOR CO.	CAMDEN
2865	E I DUPONT DENEMOURS & CO INC.	DEEPWATER
2865	BREEN COLOR CONCENTRATES INC.	LAMBERTVILLE
2865	GAF CHEMICALS CORP.	LINDEN
2865	GAF CHEMICALS CORP.	WAYNE
2869	AKZO CHEMICALS INC.	EDISON

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SIC	Company Name	City
2869	MOBIL CHEMICAL CO-CHEMICAL PRODUCTS DIV.	EDISON
2869	HULS AMERICA INC.	ELIZABETH
2869	SANDOZ CHEMICAL CORP.	FAIR LAWN
2869	MONSANTO CO.	KEARNY
2869	EXXON COMPANY USA - LINDEN TERMINAL.	LINDEN
2869	EXXON CORP - BAYWAY CHEMICAL PLANT.	LINDEN
2869	WITCO CORP - HUMKO CHEMICAL DIVISION.	NEWARK
2869	FAIRMOUNT CHEMICAL CO.	NEWARK
2874	REED & PERRINE INC.	TENNENT
2879	AMERICAN CYANAMID CO.	LINDEN
2879	W A CLEARY CORP.	SOMERSET
2879	ROCKLAND CHEMICAL CO.	WEST CALDWELL
2891	PRODUCTS RESEARCH & CHEMICAL CORP.	GLOUCESTER CITY
2891	NATIONAL STARCH & CHEMICAL CO.	PLAINFIELD
2891	ELECTRO SEAL CORP.	POMPTON LAKES
2891	UNION RUBBER INC.	TRENTON
2892	E I DUPONT DE NEMOURS & CO INC.	POMPTON LAKES
2893	BORDEN CHEMICAL CO.	FAIRLAWN
2893	ICI SPECIALTY INKS.	LINDEN
2893	BASF CORP.	LODI
2893	VARN PRODUCTS CO INC.	OAKLAND
2899	DREW CHEMICAL CORP - HEADQUARTERS.	BOONTON
2899	DREW CHEMICAL CORP - R & D.	BOONTON
2899	NATIONAL MEDICAL CARE CO.	DELRAN
2899	PAN CHEMICAL CORP.	HAWTHORNE
2899	DREW CHEMICALS CORP.	KEARNY
2899	ALDEN LEEDS INC.	SO. KEARNY
2899	CSL WATER TREATMENT INC.	WARREN
2911	EXXON COMPANY USA - BAYWAY REFINERY.	LINDEN
2911	SEAVIEW OIL CO.	PAULSBORO
2911	AMERADA HESS - PORT READING CORP.	PORT READING
2911	COASTAL EAGLE PT OIL CO.	WESTVILLE
2992	OCTAGON PROCESS INC.	EDGEWATER
2992	OCTAGON PROCESS INC.	EDGEWATER
2992	COOKS INDUSTRIAL LUBRICANTS CO.	LINDEN
2992	SHELL OIL CO.	SEWAREN
3079	GORDON TERMINAL CO.	BAYONNE
3081	OCCIDENTAL CHEMICAL CORP.	BURLINGTON
3089	HOECHST-CELANESE - ENG. PLASTICS.	CHATHAM
3221	DECORA CO.	MILLVILLE
3554	WORLDWIDE PROCESSING CO.	ALLENDALE
3559	ALPHA LEHIGH TOOL CO INC.	ALPHA
3562	ROLLER BEARING CORP.	WEST TRENTON
3599	DEFCO MACHINE CO.	WYCKOFF
3647	ABEX CORP.	HACKENSACK
3652	CBS RECORDS - SONY.	PITMAN
3693	ELECTRO POLYMERIC IND.	HURFFVILLE
3693	SHARP ELECTRO MECHANICAL MFR.	TURNERSVILLE
3861	FALCON SAFETY PRODUCTS INC.	SOMERVILLE
4613	COLONIAL PIPE LINE CO.	ATLANTA
4613	INTERSTATE STORAGE & PIPELINE CORP.	BURLINGTON
4613	COLONIAL PIPE LINE CO - MT LAUREL.	MT LAUREL
4613	COLONIAL PIPE LINE CO - PENNSAUKEN.	PENNSAUKEN
4613	COLONIAL PIPE LINE CO.	WOODBIDGE
4941	ATLANTIC ELECTRIC CO - BEESLEYS POINT.	PLEASANTVILLE

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4941	ATLANTIC ELECTRIC CO-CAPE MAY COURT HSE.	PLEASANTVILLE
5087	COMMERCIAL LAUNDRY SALES.	WASHINGTON TWP
5171	TEXACO REFINING & MARKETING - BAYONNE.	BAYONNE
5171	AMERADA HESS - BAYONNE TERMINAL.	BAYONNE
5171	AMERADA HESS - EDGEWATER TERMINAL.	EDGEWATER
5171	CITGO PETROLEUM CORP - LINDEN TERMINAL.	LINDEN
5171	NORTHVILLE - LINDEN TERMINAL.	LINDEN
5171	AMERADA HESS CORP - PENNSAUKEN.	PENNSAUKEN
5171	AMERADA HESS - PERTH AMBOY TERMINAL.	PERTH AMBOY
5171	AMERADA HESS - FIRST RESERVE TERMINAL.	WOODBURGE
5172	SPECIALTY PRODUCTS CO.	JERSEY CITY
5198	TILL PAINT CO.	WOODBURY HEIGHTS
5521	PROFESSIONAL CLEANERS.	WILLIAMSTOWN
5521	TONY'S AUTO SALES.	WILLIAMSTOWN
7216	HERITAGE CLEANERS INC.	ALPHA
7216	SECAMA INDUSTRIES INC.	HACKETTSTOWN
7216	AL'S QUALITY CLEANERS & TAILOR'S INC.	HACKETTSTOWN
7216	MINI ENTERPRISES INC-RIVERSIDE CLEANERS.	MANSFIELD TOWNSHIP
7216	PITMAN CLEANERS.	PITMAN
7216	WEDGEWOOD VILLAGE CLEANERS.	SEWELL
7216	BETTY BRITE CLEANERS.	TURNERSVILLE
7216	R & S CLEANING.	TURNERSVILLE
7216	WHITMAN DRY CLEANERS.	WASHINGTON TWP
7216	SUNNY CLEANERS.	WILLIAMSTOWN
7216	MINUTEMAN CLEANERS.	WILLIAMSTOWN
7216	SIMPKINS CLEANERS.	WOODBURY
7531	CHATHAM COLLISION REPAIR INC.	CHATHAM
7531	MEDICA AUTO BODY.	TURNERSVILLE
7532	LAKE AVENUE AUTO BODY.	WILLIAMSTOWN
7538	STONE BARN INC.	INDEPENDENCE TWP
9851	GULF OIL CO - U S- LINDEN.	LINDEN

**C.A.T.A.**



P.O. BOX F  
4 S. DELSER DRIVE  
GLASSBORO, NJ 08028  
TEL (609) 881-2507  
FAX (609) 881-2027

June 1, 1992

Memo to: Assemblyman Robert Shinn  
Assemblyman Joseph Doria

From: Guillermo Albino, President of the CATA Board of Directors

Re: A-1232, Proposed amendments to the Worker and Community Right-to-Know Law.

Dear Assemblymen Shinn and Doria;

On May 18, the CATA Board of Directors met to review your proposed amendments (A-1232) to the existing Worker and Community Right-to-Know Law. After much discussion, the CATA Board decided that it is opposed to A-1232, and supports A-865, The Pesticide Safety and Right to Act, which amends the Pesticide Control Act. Although A-1232 includes many of the right to know provisions which farmworkers seek, we feel that A-865 (sponsored by Assemblymen Rooney and Roma) better provides farmworkers these protections for the following reasons:

1. A-1232 does not provide for DOH pesticide training of health care providers who see farmworkers; nor does it require that all suspected or confirmed pesticide poisonings be reported to the DOH for follow-up. A-865 will require the DOH to train health providers about pesticides, thus improving the diagnosis and treatment of pesticide poisonings; also pesticide poisonings will have to be reported to the DOH for follow-up. Improved treatment and documentation of pesticide poisonings will be assured under A-865.

2. Farmworker training is required under A-1232, but trainers are not required to be certified by the State. A-865 will require that DEPE develop a certification process for all trainers, thus assuring uniformity and improved quality of farmworker training.

3. A-1232 does not expand the Pesticide Control Council to include farmworkers; farmworkers will be members of the PCC, under A-865. We feel that the perspective and experience of farmworkers must be on the PCC, to represent an essential group of workers involved in New Jersey Agriculture.

4. A-1232 provides no means for financing the estimated \$1.2 million per year to administer farmworker pesticide right-to-know. Certainly during these economic times the legislature will not increase taxes to pay these costs. A-865 provides a non-tax-based mechanism for paying the costs of pesticide right-to-know, through raising the fees of registered pesticides \$100 per year.

5. Two important components of A-865 are community notification and a ban on aerial spraying in non-agricultural areas. These essential parts of the Pesticide Right-to-Know Law are not included in A-1232.

6. Finally, A-1232 would eliminate many of the rights in the Worker and Community Right-to-Know Act, which are essential to protect the health of other workers in New Jersey: gutting many of the important labelling requirements, endangering firefighters and other emergency responders, eliminating coverage for public employees, and eliminating use of the DOH Hazardous Substance Fact Sheets-- which are models for the entire country.

Farmworker training and information is appropriately regulated under the Pesticide Control Act, which administers the Federal EPA (FIFRA) regulations. A-865 will expand the Pesticide Control Act to provide farmworkers with the rights-to-know they need to protect themselves from pesticides, will increase their involvement in the DEPE through the Pesticide Control Council, will assure that physicians adequately diagnose and report pesticide poisonings, will assure that communities are notified about pesticide applications and are protected from unnecessary aerial spraying, and will provide a mechanism for financing implementation of the law. As importantly, A-865 will not eliminate the protections guaranteed to New Jersey's workers under the Worker and Community Right-to-Know Law. We urge you to withdraw your sponsorship of A-1232, which would provide farmworkers fewer of the protections guaranteed under A-865, and would endanger the health of the rest of New Jersey's workers.

Respectfully,

  
Guillermo Albino

President, CATA Board of Directors



**DETAILED ANALYSIS OF A.B. No. 1232**

**Issued by the Legal Committee  
of the New Jersey Right-to-Know  
and Act Coalition**

**July 6, 1992**

## **ANALYSIS OF A.B. NO. 1232**

Assembly Bill No. 1232 would eliminate the strong protective provisions for workers and members of the public in the New Jersey Worker and Community Right To Know Act, N.J.S.A. 34:5A-1 et seq. ("Right To Know Act"). In the following discussion, we will set forth the changes in each section of the Right To Know Act that would result from the passage of A.B. 1232. However, prior to discussing those provisions in depth, it is important to review the history of the Right To Know Act in New Jersey in order to fully understand the substantial dangers posed by this bill.

### **BACKGROUND OF RIGHT TO KNOW LEGISLATION AND LITIGATION**

In 1983, the New Jersey Legislature enacted the Right To Know Act, which was publicized by the Legislature and the Governor at the time as the most far-reaching measure in the country for the purpose of providing protection for workers and the community from hazardous substances in the workplace. The legislation was immediately challenged in the federal courts by various business and chemical companies; the thrust of the legal challenge was that the Right To Know Act was pre-empted by the far more limited, and less protective, OSHA Hazard Communication Standard ("the OSHA Standard"). In a 1985 decision, the United States Court of Appeals for the Third Circuit concluded that many

of the provisions providing protections for workers in the private sector were pre-empted by the OSHA Standard. However, since the OSHA Standard did not apply to workers in the public sector, the worker protection provisions for those workers were not pre-empted. The Court of Appeals also decided that the New Jersey provisions relating to environmental hazardous substances were not pre-empted, because they were designed to protect firefighters, police officers and members of the community at large, not just workers. Finally, the Court of Appeals determined that the provisions of the Right To Know Act requiring the labeling of containers with workplace hazardous substances were also pre-empted. The court sent the case back to the trial court to consider whether the labeling provisions for environmental hazardous substances, and the universal labeling provisions, in the Right To Know Act were pre-empted as well.

After extensive evidentiary hearings in the trial court and a decision upholding the labeling provisions in the trial court, the case returned to the Third Circuit Court of Appeals. In 1989, the court held that the provisions requiring container labeling of environmental hazardous substances and universal labeling of all containers covered by N.J.S.A. 34:5A-14 were not pre-empted. This decision was the product of six years of hotly contested litigation and substantial expense by the State in defense of the Right To Know Act. It was widely hailed at the time as a significant victory for the protection of workers, firefighters, police officers, emergency service personnel and members of the public from hazardous substances that could

adversely effect their health, safety, welfare and environment.

In short, even though the federal litigation resulted in the pre-emption of certain worker protection provisions, the Right To Know Act, and the substantial benefits for the public, was left intact in three major areas: (1) public sector workers were still covered; (2) the DEPE retained the authority to enforce provisions relating to environmental hazardous substances and to expand the environmental hazardous substance list indefinitely to minimize risks from environmental spills, emissions and other dangers; and (3) the container labeling provisions, which basically required that the chemical name and chemical abstracts service number be placed on containers, were completely preserved. The labeling information required by the Right To Know Act has generally been recognized by experts as essential, because it enables individuals to obtain specific information on the nature and effects of hazardous substances and on the dangers of substances that, in some contexts, might be considered non-hazardous.

#### **THE OVERALL EFFECT OF A.B. NO. 1232**

The proposed bill would negate the major benefits of the six-year legal struggle over the Right To Know Act and would substitute, in their place, weak protections for the public and emergency service personnel. A.B. No. 1232 would also repeal other provisions unaffected by the litigation which are essential for the proper protection of all New Jersey residents.

In addition, the substantial damage to public protection would not be offset by any legitimate countervailing benefits.

Many companies and businesses have already expended substantial amounts of money and other resources to comply with the law and the bill would require them to incur additional expense. There is little doubt that the confusion generated by the new requirements, and the probability that the new bill would foster further costly litigation, would rekindle the significant uncertainty about the status of the law that was prevalent from 1983-89.

Furthermore, the proposed bill would substantially increase the responsibilities of several state agencies. These obligations would require the hiring of additional employees to implement the new requirements, when there is presently a budget crisis which requires the reduction of state expenditures. At a time when so many difficult policy issues are facing the New Jersey Legislature and the public's confidence in government is waning, it does not make sense to reopen an issue that would substantially impair the public's ability to know about the identity and dangers of hazardous substances in their workplaces and communities.

#### **SECTION-BY-SECTION ANALYSIS OF A.B. NO. 1232**

1. This provision would undermine the central principles found in the current Right To Know Act by amending certain key definitions in Section 3.

(d) The definition of container would be changed to exclude any container which is generally available for retail sale in New Jersey. The term "retail sale" is not defined and since many containers in the workplace are available for retail

sale, including 55 gallon drums, this new definition potentially could exclude almost every container.

(h) The definition of employer is also amended to exempt "any person, partnership or corporation engaged in the operation of a research and development laboratory." This exemption is worded so broadly that it would encompass every chemical, oil and pharmaceutical company from coverage, since they all operate research and development laboratories. In addition, the definition of research and development laboratory is significantly expanded to include pilot facilities and quality control laboratories, both of which are currently regulated under the Right To Know Act. (Subsection 3(r)). The new expansive definitions of pilot facilities (Subsection (cc)) and quality control laboratories (Subsection (dd)) would exempt virtually all manufacturing facilities from the entire array of protections in the Right To Know Act -- the very industries that pose the greatest public hazards. Consequently, the public's Right To Know about the companies which represent the greatest danger to public health, safety, and the environment, would be eliminated.

Finally, the Department of Labor is given the authority to modify the employer coverage if the federal OMB modifies the Standard Industrial Classification Manual. The DOL is directed in these circumstances to include employers whose operations "primarily involve" environmental hazardous substances and exclude those whose operation only involve the "incidental use." These critical terms are left undefined in the statute and provide no guidance as to what constitutes a primary as opposed

to an incidental use; yet, these terms are essential for determining what employers might or might not be covered in the event the SIC Manual is revised. This omission is particularly serious in light of the lack of DOL's experience and expertise in matters relating to the enforcement and implementation of the Right To Know Act.

(j) The DEPE now has the discretionary authority to develop a virtually unlimited list of environmental hazardous substances. The revised definition would take away that discretion and would limit the DEPE's authority to the publication of the specified source lists in Section 4 of the Act and would limit the environmental hazardous substance list to the substances on the specified source lists. Because information about environmental hazards is constantly evolving, there is a critical need for the DEPE to have the authority to update and expand the lists of hazardous substances, when necessary, to protect the public in an adequate fashion. The overall effect of this provision is to hamstring the DEPE from performing this essential responsibility, since the list of substances would be frozen as of the effective date of A.B. No. 1232.

(l) The definition of facility would exclude a research and development laboratory. This provision, when read in conjunction with the definitions discussed in (h) above, substantially reduces the number of employees and facilities covered by the Right To Know Act. This provision is unjustified, because the Right To Know Act, and the implementing regulations, already contain substantial modifications for research and

development facilities.

(m) Eliminates the definition of "hazardous substances." The effect of this amendment will be discussed below in connection with the elimination by A.B. No. 1232 of the worker protection provisions in the Right To Know Act.

(n) Presently, the Department of Health prepares hazardous substance fact sheets which are vital for the proper implementation of the Right To Know Act. These fact sheets provide detailed information about the nature and effects of the particular substance, and they have served as models throughout the country. The bill would change the DOH's responsibility from preparing these fact sheets to authorizing a fact sheet, or a Material Safety Data Sheet (which is required by OSHA), for each environmental hazardous substance.

There are several other problems with this amendment. First, the bill imposes a substantial administrative burden upon the DOH, which will certainly require significant additional personnel and resources to review thousands of MSDSs and other available documents. Second, there is a serious question about what the DOH should do if an MSDS is inadequate under the law and there is no other available document on the substance; if the DOH seeks to require the revision of the MSDS, it could create pre-emption problems. In fact, any DOH review of the MSDSs might lead to additional pre-emption challenges which could further forestall the implementation of the law and engender widespread confusion. Finally, the MSDSs are generally prepared by the chemical manufacturer or importer who, experience has shown,



often minimizes the risks or obscures the information in technical jargon. In contrast, the hazardous substance fact sheets are objective and comprehensible accounts of the nature and effects of particular substances.

(r) The effect of the exemption for employers operating research and development laboratories is discussed in the comments to subsection (h) above. This provision expands the definition of a "research and development laboratory" and results in exempting additional employers and facilities from the Act.

(s) Eliminates the definition of "special health hazard substance." The effect of this amendment will be discussed below in connection with the elimination by A.B. No. 1232 of the worker protection provisions in the Right To Know Act.

(t) Eliminates the definition of the "special health hazard substance list." In conjunction with the repeal of the requirement that the DOH prepare a special health hazard substance list (see comments to Section 5(b) below, this amendment removes the disclosure requirement in the Right To Know Act for trade secrets that pose a special hazard to health and safety because of their carcinogenic effect, their potential to cause birth defects or genetic disorders, or their flammability, reactivity or explosiveness. In short, information about cancer-producing substances or substances that can cause birth defects, population deformities, explosions or chemical fires can now be kept secret from emergency service personnel and the public. The other effects of this amendment will be discussed

below in connection with the elimination by A.B. No. 1232 of the worker protection provisions in the Right To Know Act.

(u) The amendments to the definition of trade secrets increases the number of substances that can be claimed as trade secrets and exempted from the Act's requirements.

(x) Eliminates the definition of "workplace hazardous substance list." The environmental hazardous substance list, which is to be published by the DEPE under the proposed bill, contains substantially fewer chemicals than the present workplace hazardous substance list. The other effects of this amendment will be discussed below in connection with the elimination by A.B. No. 1232 of the worker protection provisions in the Right To Know Act.

(y) Eliminates the definition of "workplace survey." The Community Right To Know Survey, which is the only survey that would be sent to employers under the proposed bill, would require information on substantially fewer hazardous substances than the present workplace survey. The other effects of this amendment will be discussed below in connection with the elimination by A.B. No. 1232 of the worker protection provisions in the Right To Know Act.

(z) Adds definition of "Hazardous Material Warning System" for the new warnings that will replace container labeling under the present Right To Know Act. These symbols and designation provide easily understandable warnings, but do not supply the essential chemical name and chemical abstracts service number required under the present Act. The present Right To Know Act

enables individuals to obtain information that is necessary to plan for, respond to, and treat, victims of accidents, illnesses, fires or environmental dangers. This chemical identifying information will no longer be readily accessible under the proposed legislation.

(aa) Adds definition of "Chemical Warning Symbol." This provision and the following definition of "Chemical Inventory Placard" are the replacements for the current container labeling scheme in the Right To Know Act. Initially, it is important to note that this new warning system could be enacted without eliminating the container labeling requirements of the Right To Know Act. To the extent that these provisions are needed for firefighters and emergency responders, they should not be enacted at the cost of the protections afforded by container labeling and, in particular, universal labeling.

The potential risks to workers, the public and emergency responders from the proposed elimination of container labeling are enormous. While the current requirements provide precise chemical name and chemical abstracts service number information about almost all individual containers and pipelines, the new chemical warning system would only require a single logo for the "most potentially lethal or most potentially environmentally hazardous substance." In place of identifying information on all substances, the new warning symbol would only deal with one substance. This provision will increase greatly the dangers to firefighters, emergency responders and the public by restricting labeling to the one "most potentially lethal"

chemical per site. Identifying information that would enable interested persons to determine the interactive effects of substances in various containers, the range of hazards posed by individual containers, etc. would no longer be available at the site of the containers or at the pipelines.

In addition, in place of the chemical identifying information on all containers covered by the current Act, A.B. No. 1232 would only require the logo about a single substance to be displayed on the building, or at the entry point to an area or field. In other words, there will be one big sign about one single substance rather than the container-specific and precise information currently required on almost every container label.

(bb) The definition of "Chemical Inventory Placard" would require an array of information on a 3x5 card at the main points of entry to each building, area or field. It is difficult to understand how it would be possible to include all of the proposed information on a small card, as proposed in the bill. In essence, this placard would contain miniature MSDSs on a range of substances; however, there would be no more comprehensive container labeling.

In the current Right To Know Act, the Legislature implemented a system of container labeling and informational sheets, recognizing that the two requirements were interdependent and essential for protection of the public and emergency responders. The proposed bill would eliminate both container labeling and the hazardous substance fact sheets -- the two critical linchpins of the present statute.

In addition, while the placard may be helpful for emergency responders, it is no substitute for the protection afforded by information on the individual containers to workers who might be working directly with, or in the presence of containers, or to the community that might be exposed to the substances in a particular container. To adequately protect individuals, it is essential for them to know exactly the chemical name and chemical abstracts service number of the hazardous substances (or risks from non-hazardous substances) they are faced with. The current labeling scheme provides that information while the substitute warning system proposed by A.B. 1232 limits the information in a manner that increases the dangers posed by hazards in the workplace.

(cc) and (dd) The definitions of "quality control laboratory" and "pilot facility," in conjunction with the exemption for research and development laboratories, would greatly limit the scope of the current Act, as discussed above.

2. This section would change the responsibilities of the DEPE in implementing the Right To Know Act. First, as mentioned above in discussing the amendment in 1(j), the DEPE's discretion to develop a wide-ranging list of environmental hazardous substances would be eliminated. The DEPE potentially has the authority to add 2200 additional hazardous substances to its list; this bill would freeze the ability of the agency to require that the Act's protections be extended to other substances which pose a harm to the environment and the public. Also, by not including all the substances on the list required by the

Pollution Prevention Act, the Legislature will be essentially repealing part of a list it recently required for the protection of the environment.

Second, the environmental survey would also be limited to the substances on the specific source lists cited in the statute. Third, the provision requiring Spanish translation of the survey and other information prepared by the DEPE would be eliminated.

The effects of these provision would be to reduce substantially the protections provided by the current Act in two significant respects. As mentioned above, the worker protections in the Right To Know Act, while pre-empted in the private sector because of the OSHA Hazard Communication Standard, are still applicable to public sector employers and employees, since the OSHA Standard does not cover public employers. Therefore, the Act's protections for employees in the public sector will be sharply curtailed.

Moreover, the Spanish workforce will no longer provided information and other materials in readily comprehensible language; as a result, a substantial segment of the workforce in this State will be left uninformed of the Act's provisions and the essential information that the statute requires for protection of their health and safety.

3. This provision would essentially eliminate all of the worker protections that have been provided for public employees under the Right To Know Act. The bill repeals the provisions requiring the development of a workplace hazardous substance

list, a special health hazard substance list and a workplace survey. In short, the broad and comprehensive protections for public employees would no longer be available.

As mentioned above in 1(t), the proposed bill would also eliminate the only readily accessible list in the State -- the special health hazard substance list -- of carcinogens, mutagens, teratogens, and highly flammable, explosive or reactive chemicals and corrosives. In addition, trade secret protection could be claimed under A.B. No. 1232 for these highly dangerous substances, and workers and the community would no longer be provided notification or information about the presence of these serious dangers in the workplace. The DOH would authorize, not develop, fact sheets on hazardous substances, a weakening of the present bill which is discussed in 1(n). Furthermore, the DOH would not have to provide Spanish translations of authorized fact sheets or of other materials developed by the agency, as currently required under the Right To Know Act.

4. The workplace survey requires information on a comprehensive list of hazardous substances. This survey would be eliminated and would be replaced by the Community Right To Know Survey, which requires information on a much more limited number of chemicals.

5. The obligation of employers to complete the workplace survey has been eliminated in the public sector and replaced by the obligation to complete the more limited DEPE survey.

6. This provision eliminates the responsibility of the DOH to transmit hazardous substance fact sheets for hazardous

substances in the public sector workplace. Instead, the DEPE will now advise the employer that an authorized hazardous substance fact sheet is required for each environmental hazardous substance. The DOH would then presumably have to review documents submitted by the employer, or the MSDSs, to determine whether the information contained in these documents meets the requirements for an authorized fact sheet. The additional administrative burdens and costs of implementing this scheme have been discussed in 1 (n); these additional costs would have to be assumed by the State and local governments to implement provisions that have the end result of providing less protections for workers in the public sector than the current Act. Section (b) contains language changes to reflect the new responsibilities of the DEPE and the elimination of the obligations of the DOH.

7. This provision substitutes "community right to know" for "environmental."

8. This provision eliminates the obligation to provide Spanish translations of various information to employees whose native language is Spanish. Section (b) also eliminates a similar requirement imposed upon county health departments.

9. Section (a) eliminates the responsibility of public employers to maintain a copy of the workplace survey and instead replaces the environmental survey, which now must be kept by private and public sector employers, with the community right to know survey. In addition, because the authorized hazardous substance fact sheets will now be limited to substances on the community right to know survey, private employers will have a new



obligation under the proposed bill to maintain authorized hazardous substance fact sheets. The provision also eliminates the posting of notices in Spanish and the obligation to provide public employees with access to the workplace survey.

Section (b) requires employers to post "outside the main points of entry of any building, area or field" the Chemical Warning Symbols for the single most potentially lethal or environmentally hazardous substance. The employer is also required to post the Chemical Inventory Placard at the same location or immediately inside the point of entry. This warning system replaces container labeling under the present Act and results in a complete loss of essential information on the true identity of substances in containers, the core of the information required for worker and community protection under the current Act. The increased dangers from the substitution of the proposed warning system for chemical labeling have been discussed in 1(aa) and 1(bb) above.

10. The effect of this provision would be to limit education and training in the public sector, which presently encompasses the expansive list of hazardous substances, to programs on the much more limited list of environmental hazardous substances. On the other hand, private employers, who are now exempt from the training requirements because of federal pre-emption by the OSHA Hazard Communication Standard, would be required under A.B. No. 1232 to train their employees on environmental hazardous substances, an area not pre-empted by the court decisions. This could lead to new litigation by employers

challenging the States newly asserted authority to compel training in 30,000+ private sector worksites. The education and training under this provision must include training in the use of and understanding of the Chemical Inventory Placard and Chemical Warning Symbols; these requirements would be imposed on both public and private sector employees. The likelihood of extensive litigation over the education and training provisions would undoubtedly generate substantial confusion about the effects of the amended Act.

In addition, the DOH would be required to certify the additional education and training programs given by consultants to the private employers who will have to provide such programs under the proposed legislation. This would substantially increase the costs, administrative burdens and obligations of the DOH. The DOH would also be thrust into the area of education and training in the private sector, an involvement which would likely generate more litigation on whether the State has such authority in the private sector or whether these provisions are pre-empted by the federal OSHA Hazard Communication Standard.

11. This provision would eliminate the labeling of containers with environmental hazardous substances and the universal labeling provisions of the current Act. In place of these provisions, the employer would only have to label containers with environmental hazardous substances. Therefore, the number of containers that would have to be labeled under the proposed bill would be substantially more limited. Second, the labels would only have to comply with federal law. Therefore, for

example, pipeline labeling, which is not required by federal law, would be eliminated.

Finally, the very purpose of requiring the chemical name and CAS number of hazardous substances was to ensure that workers, emergency responders and the community would know the true identity of hazardous substances, since federal law does not require this specific and essential information on labels. A.B. No. 1232 would eliminate the obligation to provide this information and would enable employers to conceal the precise identity of chemicals on labels as long as the labeling complied with federal law. Furthermore, the broad labeling requirements in the public sector, which encompassed workplace hazards as well as environmental hazards, would be eliminated under the proposed legislation.

12. This provision gives DOH the discretion, rather than the mandatory obligation, to determine trade secret claims and makes certain changes in the process for obtaining trade secret protection. The effect of these provisions on trade secrets is difficult to judge at the present time.

#### **CONCLUSION**

A.B. No. 1232 would destroy the fundamental concepts and underpinnings of the Right To Know Act. The proposed bill would eliminate worker right to know for public employees; would dramatically alter and reduce the protections afforded under the community right to know provisions of the current Act; would significantly increase the number of exempted employers, including most chemical and pharmaceutical companies; would

enable employers to claim trade secret protection (and exemption from the Act) for the most dangerous and potentially lethal substances in the workplace; would abolish state container labeling requirements and would deprive Spanish employees of information that is essential to enforce their rights. The bill would create additional, costly requirements for state and local governments and private employers. A.B. No. 1232 would also undoubtedly spawn a new round of time-consuming and expensive litigation that will seek to question the validity and legitimacy of the new State requirements imposed on private employers.

The Right to Know Act established unprecedented essential protections for New Jersey citizens when it was enacted, and the need for these worker and public protections is no less today. Private and public sector employers have sought to comply with the provisions of the Act, and there are settled expectations on behalf of industry and the public as to the rights and duties established by the Act. The proposed rule would radically change these expectations, and the ground rules for worker and community right to know in New Jersey, at great cost to the state and private industry. Most importantly, it would significantly increase the dangers and risks to the health, safety and environment of New Jersey citizens from hazardous substances in the workplace.

Summary of the New Jersey Chamber of Commerce v. Hughey  
Litigation (1984-1989)

On August 29, 1983, the Governor signed the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., which became effective on August 29, 1984.

On August 10, 1984, the New Jersey State Chamber of Commerce, three chemical and business associations, and eight pharmaceutical companies filed a complaint in the United States District Court for the District of New Jersey attacking the constitutionality of the Right to Know Act. The complaint alleged, among other things, that (1) the Right to Know Act was preempted by OSHA's Hazard Communication rule, 29 C.F.R. 1910.1200, which was promulgated under the federal Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C.A. 651 et seq., and (2) the provisions of the Right to Know Act requiring the disclosure of certain trade secrets constituted an unconstitutional taking of property without due process of law.

On September 21, 1984, a separate complaint was filed by two associations whose members were engaged in the manufacture and sale of fragrance and flavor materials, and thirteen corporations which compound, mix, blend, or manufacture fragrances and flavors. This complaint set forth the same claims as the Chamber of Commerce case, and both cases were later consolidated.

On October 19, 1984, the Public Advocate and twenty-nine unions, environmental organizations and other interested parties filed a motion to intervene in both cases as defendant-intervenors supporting the constitutionality of the Right to Know Act. The district court granted this motion to intervene on November 15, 1984.

On January 3, 1985, the district court entered summary judgment (1) declaring that the Right to Know Act is preempted by the federal OSH Act and the federal Hazard Communication provision to the extent that the Right to Know Act affects employers in the manufacturing sector; and (2) permanently enjoining defendants from enforcing the Right to Know Act against such employers until the Act and regulations adopted pursuant to it have been approved by the Secretary of Labor under appropriate federal statutory provisions. The district court also determined that the absence of trade secret protection for certain extremely hazardous substances under the Right to Know Act does not constitute a taking requiring compensation under the Due Process Clause. The district court entered an order into the Chamber of Commerce suit and final judgment in the Fragrance Materials action on January 10, 1985, setting forth these conclusions. The court's opinion is set out in New Jersey State Chamber of Commerce v. Hughey, 600 F. Supp. 606 (D.N.J. 1985).

All parties appealed this decision. On October 10, 1985, the United States Court of Appeals for the Third Circuit issued an opinion that held that the Right to Know Act was preempted by the Occupational Safety and Health Act of 1970 and by the Hazard Communication Standard promulgated pursuant to it, but only insofar as it pertained to the protection of employee health and safety in the manufacturing sector. The Third Circuit affirmed the district court decision in part, reversed in part, and remanded the case to the district court for further proceedings consistent with its opinion. The Third Circuit's opinion is set out in New Jersey State Chamber of Commerce v. Hughey, 774 F. 2d 578 (3d Cir. 1985).

On remand, the district court heard evidence on whether the container labeling provisions, to the extent that they were not expressly preempted, were nevertheless impliedly preempted because, due to the confusion allegedly caused by multiple labeling systems, they "in fact stand as an obstacle to the accomplishment of the purposes of the federal standard." 774 F.2d at 596. After a trial on this issue, the district court issued a decision on March 25, 1988 that found that the New Jersey Act was not an obstacle to the accomplishment of the purposes of the federal standard and consequently held that the Act was not impliedly preempted by the OSH Act or OSHA's regulation. Under the district court's reasoning, New Jersey requirements under the Right to Know Act could be properly integrated into any compliance plan under the OSHA Hazard Communication Standard.

On appeal after remand, the Third Circuit Court of Appeals held that the Occupational Safety and Health Act did not implicitly preempt provisions of the Right to Know Act. The Court, therefore, affirmed the judgment of the district court. The Third Circuit's opinion, issued on February 28, 1989, is found in New Jersey Chamber of Commerce v. Hughey, 868 F. 2d 621 (3d Cir. 1989).

The United States Supreme Court denied certiorari review of this case in 1989. See 492 U.S. 920 (1989).

# ***CREATIVE RISK SERVICES, INC.***

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January 11, 1993

Chairman Paul DiGaetano and Members  
Assembly Policy & Rules Committee  
State House  
Trenton, NJ 08625

RE: New Jersey Right to Know Amendments  
Bill No. A-1232

Dear Committee Members:

I am sorry that I am not able to meet with you on January 14, 1993, but prior business commitments require me to be out of town on that date.

I would like to express my concern about proposed amendments to the Right to Know law which are being sponsored by Assemblymen Shinn and Doria.

I am a small business owner operating in New Jersey. My company offers risk reduction consulting services to insurance companies. I work closely with companies concerned with adhering to the current Right to Know law in New Jersey.

**I urge you to oppose Assembly Bill 1232** as it substantially weakens the current New Jersey Right to Know law and will have an adverse effect on our businesses, workers, emergency responders and other citizens.

I believe that the most important aspect of the New Jersey Right to Know law as currently stated is its significant educational value. The proposed amendments would substantially reduce the beneficial effects of educating our businessmen, workers, emergency responders, and other citizens of hazards in the work place and community.

I have found while working with various clients that many of them purchase substantial amounts of chemicals and store them on premises, following traditional purchasing practices. Although some of these chemicals are needed, many times they are not needed in the quantities purchased.

Many companies in the past have stockpiled chemicals because buying larger quantities enables them to purchase materials at lower rates. What they are doing, in fact, is placing their limited capital resources into stockpiling materials they will never use or never be able to use before the

materials age past their limited shelf lives. Money is wasted not only on purchasing products that will never be used, but also on warehousing costs to store the unused products. Thus they are wasting their resources and creating unnecessary hazardous waste stockpiles.

The New Jersey Right to Know law has had a positive effect in making companies inventory their products and carefully invest their resources in only those products necessary to their operations.

The current law has assisted in educating workers. It has kept them informed of the hazards of the materials which with they are working. It has assisted in substantially improving working conditions, lessening illnesses and injuries as a result of on-the-job exposures, and has reduced insurance and health costs.

We are providing our emergency responders with information on the chemicals at hand and giving them an opportunity to pre-plan for emergencies, thus improving the potential to handle adverse situations before they become catastrophic. Because companies are now beginning to watch their inventories, our Right to Know law has had a tremendous positive effect in limiting the amount of toxic substances which could eventually become a hazardous condition to emergency responders.

It seems that the proponents of the amendment to our Right to Know law are attempting to deny our citizens, business people and emergency responders with the knowledge which they need to responsibly purchase, handle and work with chemical products.

The current NJ Right to Know law is not a difficult law for businesses to comply with. The major problem with compliance is that it requires a new way of conducting business. However, once a company has complied with the law, maintenance of the current law requirements is not that difficult.

Thank you for considering my comments. Again, I urge you to oppose Assembly Bill 1232 as it is a bill which takes us backwards instead of forwards. Please feel free to call me should you have any comments or thoughts concerning my letter to you.

Sincerely yours,



Rodger Nogaki  
President

RN/gn







STATE OF NEW JERSEY  
DEPARTMENT OF STATE  
CN-300  
TRENTON, NEW JERSEY 08625-0300  
FAX # (609) 292-7685

JIM FLORIO  
GOVERNOR

DANIEL J. DALTON  
SECRETARY OF STATE

January 11, 1993

Assemblyman Robert C. Shinn, Jr.  
Larchmont Commons Shopping Ctr., 3111-23  
Rt. 38  
Mt. Laurel, NJ 08054

*Bob*  
Dear Assemblyman Shinn:

I am writing to you to express my opposition regarding recent efforts to amend New Jersey's Right to Know Law. As the author of this law which was enacted in August of 1983, I would caution against any efforts that would undo the law's many benefits. Residents and workers of New Jersey now have information regarding the hazardous substances that are used or are stored in their workplace and communities. As you may be aware, a tremendous amount of litigation has surrounded this and similar measures following their enactment throughout the 1980's. As a result, we must proceed very carefully if we want to ensure that we do not undo any of the benefits this law has come to guarantee.

However, I would be the first to acknowledge that over the last decade, much has changed. As such, there is always room for fine-tuning and improvements particularly in the area of implementation. It is my understanding that both the Department of Health and the Department of Environmental and Energy are working with the affected constituencies to address these concerns.

In fact, I believe that regulatory changes are being drafted to address these issues such as research and development labs. I would hope that you would delay any formal action on legislative revisions to the Right to Know Law until you have had an opportunity to review the regulatory changes. In this way we can move quickly to address key changes that should be offered, without risking our landmark law to unnecessary legal challenges as have arisen in other states.

If you would like to discuss this matter with me, please feel free to call me at 609-777-0884.

Sincerely,



Daniel J. Dalton  
Secretary of State

DJD:CM:20

# *Oil, Chemical and Atomic Workers International Union*

LOCAL NO. 8-149  
MARK DUDZIC, President  
ERIC SCHERZER, Secretary-Treasurer



90 LEWIS STREET  
RAHWAY, N.J. 07065  
(201) 381-3920

January 19, 1993

Paul DiGaitano, Assemblyman  
71 Union Avenue  
Rutherford, NJ 07070

Dear Assemblyman DiGaitano:

I appreciated the chance to testify at the hearing last Thursday on the Right-to-Know Reform Act (A. 1232). I'm pleased that the committee will hold action on this bill pending consideration of the new regulations being issued by the Departments of Health and Environmental Protection and Energy.

During my testimony, the question of labeling came up. I am enclosing an article by two physicians from UMDNJ reprinted from the Archives of Internal Medicine which will clarify the issue. As the article notes, (see highlighted sections) the OSHA Hazard Communication Standard does not require labeling of so-called "non-hazardous chemicals".

To make matters worse, the MSDSs may not include this information either. The physicians even cite a case of how a deficient MSDS could have had an adverse implication for the kind of medical treatment for a worker exposed to a floor sealant. (see highlights on page 982).

This article makes a very strong case for universal labeling and for the Hazardous Substance Fact Sheets without mentioning either topic. The Right to Know & Act Coalition would like you to consider these arguments and our testimony again as we all look at the new regulations.

Sincerely,

Eric Scherzer  
Co-chair,  
NJ Right to Know & Act Coalition

# NEW JERSEY RIGHT-TO-KNOW AND ACT COALITION

223 Park Avenue  
Atco, New Jersey 08004  
(609)767-1110(609)866-9405(908)381-3920

February 7, 1993

TO: Members of the Assembly Policy and Rules Committee

FROM: Eric Scherzer, Co-Chair -- (908) 381-3920  
Jane Nogaki, Co-Chair -- (609) 767-1110

RE: Right-To-Know "Reform" - A 1232

We were disappointed that most members of this Committee did not attend either of the two recent meetings concerning A 1232. As you may be aware, in our view, this bill would have a devastating impact on the current Right-To-Know program and on public health in New Jersey.

We are enclosing some of the materials that we have prepared concerning this legislation. Given that you were not present at the recent Committee meetings to hear our concerns and those of many others about A 1232, we hope you will examine the enclosed materials carefully.

The Departments of Health and Environmental Protection are proposing new regulations to modify the Right-To-Know program's implementation. We think these regulations will likely accomplish the sponsor's objectives without risking the destruction of the Act. We appreciate the willingness of Assemblymen DiGaetano and Shinn to consider these regulations prior to moving ahead. We believe that the regulations proposed last week, plus others to follow, combined with some improvements in program implementation, will make statutory amendment unnecessary. Thank you for your review of these materials.

**NEW JERSEY STATE**  
**INDUSTRIAL UNION COUNCIL, AFL-CIO**  
**Occupational Safety and Health Office**

452 East Third Street • Moorestown, NJ 08057  
(609) 866-9405      FAX: (609) 866-9708

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Howard Samuel, IUD



February 25, 1993

Ms. Adriana Machado  
Executive Director  
NJ Democratic State Committee  
150 West State Street  
Trenton, NJ 08608

Dear Ms. Machado:

Congratulations on your appointment as Executive Director of the State Democratic Committee. I know that Archer Cole and Ray Lesniak have been discussing ways that the IUC and the Democratic State Committee can cooperate in the upcoming months.

Unfortunately, I must bring to your attention a very destructive effort by one of the State's top Democratic legislators. Assembly Minority Leader Joe Doria has introduced a bill (A1232) that purports to reform the New Jersey Worker and Community Right-to-Know act. As you may well be aware, this act was passed in 1983 and has proven a tremendously valuable asset in preventing both occupational and environmental health problems. It is widely recognized as a national model. Unfortunately, Assemblyman Doria, apparently at the behest of the chemical industry, has chosen to introduce legislation along with Assemblyman Robert Shinn that will dismantle the act. I have enclosed some materials that explain in detail how A1232 would accomplish this end. I should also point out, in light of the State Committee's appointment of a Hispanic task force, that A1232 would eliminate the current statutory requirement that the Department of Health develop information about chemical dangers in Spanish. We have no idea why this mean spirited provision was included in this ill advised bill, but we thought we should point this out in that it seems to me not a very smart thing for the Democratic Party to be involved in.

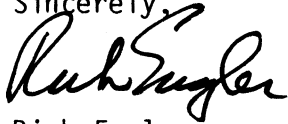
I would like to know if there is any way you can help disengage the Democratic party from its apparent support -- or at least the apparent support of one of its main leaders -- from this destructive effort that could prove a liability during the election.

Ms. Adriana Machado  
February 25, 1993  
Page Two

On Wednesday, April 28th, the National AFL-CIO holds Worker Memorial Day. The purpose of this day is to remember those who have lost their lives at work and to highlight the current need for strong safety and health laws. The Industrial Union Council, along with other organizations, will be holding a memorial service in Trenton that morning. We would be most appreciate if a group of us could meet with you in the early afternoon of that day to discuss our concerns about occupational safety and health (including A1232). We would also like to invite you to attend the morning Worker Memorial Day ceremonies which will probably be located at a Union office near to yours.

I look forward to hearing from you concerning your views on A1232 and whether we may meet on April 28th.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Engler". The signature is fluid and cursive, with the first name "Rick" and last name "Engler" clearly distinguishable.

Rick Engler  
Vice President

Enclosure

**Testimony by the New Jersey Right to Know and Act Coalition  
on Proposed New Right-to-Know Rules  
Assembly Policy & Rules Committee - March 4, 1993**

We are testifying on behalf of the New Jersey Right to Know and Act Coalition which represents 160 labor, community, environmental, emergency response, and public health organizations in New Jersey.

Thank you for the opportunity to testify today concerning rules proposed last Monday, March 1, 1993 by the New Jersey Departments of Health and Environmental Protection and Energy regarding the New Jersey Worker and Community Right to Know Act.

We also thank you for focusing on these proposed **rules** rather than Assembly Bill 1232 or other statutory approaches toward revising chemical right to know protections. As you know from our past testimony on A1232, we believe that amendments to the Right to Know Act by the legislature -- regardless of whether they "strengthen," "weaken," or simply modify the Act will substantially increase the likelihood of litigation and the possibility that our **entire** Right to Know program will be jeopardized. Therefore we are most appreciative that the sponsors and the committee are taking seriously this attempt to fine tune the right-to-know program through the regulatory process.

Our testimony today pertains only to Proposals PRN 1993-105 and PRN 1993-116. We understand that the DEPE is about to propose additional rule changes. We will provide comments after we have a chance to review a pre-proposal or proposal. (We also will be providing testimony to the Right to Know Advisory Council on March 26 at their public hearing on these proposals).

Overall, we support most of the proposed rule changes that have been published to-date. We believe that most of these changes will reduce unnecessary employer burdens without endangering worker, firefighter, or public health. We believe that the Departments have made a good faith effort to address key employer concerns and at the same time have remained focused on the legislative intent of the Act to insure public health.

**A. RULE CHANGES SUPPORTED BY THE COALITION**

These are just some of the proposed rule changes supported by the Coalition:

- 1) Expanding the definition of products excluded from being considered hazardous, such as food, drugs, cosmetics, or alcoholic beverages in retail establishments.

- 2) Reducing labeling requirements on shipping containers.
- 3) Modifying the rules that apply to retain samples, batch samples, and laboratory requirements. These proposals were developed by a Right to Know Advisory Council Task Force that included the Research and Development Council of New Jersey.
- 4) Clarification that certain solid articles do not have to be labeled.
- 5) Clarification that certain products sold in very small quantities, such as "White Out" do not have to be labeled. The "White Out" example has been used to trivialize the value of entire program. This explicit new rule should clear this issue up for once and all.
- 6) A new section that would exclude office areas from labeling requirements.
- 7) Perhaps most significantly, we are willing to support the DOH proposal for a five pound threshold under which chemicals would not have to be labeled under these regulations, *unless* they were Special Health Hazards. Special Health Hazards, as defined in the Act, include about 1000 chemicals of the tens of thousands of chemicals in use in industry today. They include "...substances which, because of their known carcinogenicity, mutagenicity, teratogenicity, flammability, explosiveness, corrositivity, or reactivity pose a special hazard to health and safety..."

This five pound threshold was proposed to the Department of Health by the New Jersey Business and Industry Association in a letter last April 11th. In this letter the BIA also wrote that certain chemicals "due to their extreme toxicity or danger even when present in very small quantities" should still be labeled even in quantities below five pounds. We agree with this BIA position.

8) The Coalition also supports the Proposal PRN 1993-105 central provision which would allow employers seeking to protect certain trade secret information on container labels to retain the information at their facility unless the information is needed for evaluation of a trade secret claim by the DOH or to assist emergency responders or medical personnel in an emergency. Our recent experience has suggested that when chemical information is needed to protect health, even through employers have said that it comprises trade secrets, they have been increasingly willing to provide it. Our Coalition, which includes the major unions representing chemical workers in New Jersey, has not learned, to-date, of examples when an employer has refused, claiming trade secrets, to provide chemical identities when needed for health protection. (Nor, we might add, have we learned of even one unauthorized disclosure of a trade secret in the entire history of the Act.)

These eight changes that we have highlighted will reduce unnecessary employer burdens, will reduce costs, and will reduce paperwork without endangering health.



## **B ADDITIONAL SUGGESTIONS FOR REDUCING EMPLOYER REQUIREMENTS**

The Coalition would also like to suggest two changes, beyond those in the proposed regulations, to ease employer burdens and costs. (These two suggestions resulted from our review of the ~~April~~ proposals and are being presented to the Health Department today).

First, *with regard to the trade secret proposal on labeling*, we think it is unnecessary for employers to now have to notify the Department of Health through submitting an annual certification to the Department that trade secret information is being maintained. This new report simply isn't necessary. Instead, we propose adding a simple yes or no question to the DEPE Right to Know Survey concerning whether the employer maintains label-related trade secret information at the facility. The DEPE can provide this information to the DOH.

Second, *we have a major proposal with regard to the labeling rules*. Under the current state regulations, only the employer -- whether they produce chemicals or not -- is responsible for insuring that containers are properly labeled. we believe that the burden to comply with these requirements for the overwhelming majority of both private and public sector employers can be substantially eased by **adding** a new rule that would place a clearer responsibility to label containers on the producers and suppliers of chemicals who clearly must know the identity of what they produce in order to produce it.

**We strongly urge the Department of Health to issue a regulation that would say that *chemical manufacturers or supplier, as a condition of doing business in this state, shall insure that containers of chemicals which are delivered to a point within this state or which are produced within this state, are clearly labeled pursuant to these regulations.***

Almost 45,000 private and public sector facilities are covered by the labeling rules under the New Jersey Right to Know Law. Of these New Jersey facilities only about 1,000 produce chemicals. In the remainder of the United States, according to the Bureau of the Census (1987), there are 11,127 facilities that produce chemicals. (A facility refers to a single establishment; the numbers of firms would be substantially lower).

The firms that produce and supply chemicals -- particularly the ones producing chemicals outside of New Jersey and shipping them into our state -- should have a clearer obligation to properly label their products. **Adoption of this proposal would mean that a higher percentage of containers would arrive in New Jersey already labeled.**

This would clearly lessen the practical burden for a vast majority of New Jersey businesses. While they would retain their current legal duty to insure labeling, the manufacturer or supplier would have already done it.

(If a unlabeled container came into a facility, the employer could notify the manufacturer or supplier and the DOH using a form letter that would be included in the Right to Know Surveys. We also understand that the DOH has not written all out of state chemical producers/suppliers informing them of New Jersey's requirements; this would be appropriate even if our proposal is not adopted).

### **C. OUR CONCERNS ABOUT THE REGULATIONS AS PROPOSED**

The Coalition also has the following suggestions to make the regulations more effective in protecting worker and public health:

1) The Health Department proposes excluding from labeling "Any product which contains a hazardous or other substance in the same form and concentration as a product packaged for distribution and use by the general public, if the primary use container of the product is 5 pounds... or 0.5 gallons...or smaller."

We do not support this. Currently many containers of chemicals, including the one quart solvent containers that can be bought at any neighborhood hardware or paint store, are labeled with their chemical contents according to the New Jersey rules. These chemicals are brought into the workplace or home. Their contents should be known, particularly if they contain Special Health Hazards.

The New Jersey Poison Information and Education System wrote Assemblyman Shinn and Doria on December 4, 1992 pointing out the vital necessity of keeping specific chemical name information on labels in order to save the lives of children and workers in the thousands of chemical poisoning incidents that they respond to.

The Health Department should reexamine this issue and should *minimally* require chemical suppliers to label all containers, including consumer products, under five pounds that contain Special Health Hazards.

2) We also have concerns with the new exemption for large quantities of chemicals which are labeled under the Food, Drug, and Cosmetic Act (FDCA). Currently, chemical containers over 5 gallons regulated under the FDCA that do not list the names of all their components are required to be labeled under the N.J. law. It appears that the proposed regulations would remove this requirement, thus allowing poorly labeled *large* containers in New Jersey workplaces. It is even possible that Special Health Hazards in large quantities may not be labeled under this exemption posing a risk to firefighters and workers. We see no rational for this exemption.

3) The proposed rules only **suggest** that employers should use the Hazardous Materials Information System (HMIS) for containers that are 55 gallons or larger in conjunction with the existing labeling requirements. Use of the HMIS labeling system has been suggested by firefighter organizations for years as an additional aid to better chemical identification during pre-fire planning and firefighting . We think the HMIS system should be mandatory and should be phased in over a reasonable time period.

4) We are troubled by the proposed rule suggested by the Bureau of Fire Safety (DCA) which would allow volunteer fire fighters to fight toxic chemical fires for six months (instead of thirty days) after becoming a volunteer firefighter without having had the appropriate right-to-know training. According to the N.J. Department of Labor, New Jersey volunteer fire departments have had an occupational injury and illness incidence rate nearly double the rate for other public employees (1990). In January the DOH issued an excellent booklet on firefighter health that recognized the severe dangers posed by toxic smoke and chemical burns.

We recognize that volunteer fire companies have trouble getting volunteers and have limited resources. But given the increasing array of toxic chemicals, we believe that it is imperative that volunteers be properly trained **before** we rely on them to put out chemical fires. Firefighter injuries and illnesses resulting from the Chemical Control fire in Elizabeth over a decade ago was an impetus for this law to be enacted. How to provide greater training resources for fire departments should be examined. This provision should not be adopted.

5) We believe that the Hazardous Substance Factsheets produced by the Department of Health are extremely valuable. The Health Department has done an excellent job of getting them to hospitals, doctors, local health departments, fire departments and public sector facilities.

We urge the Department to evaluate additional ways to get these factsheets to private sector employees and employers and facility neighbors. One way might be to require that employers post a notice (or add to the existing Right to Know poster) indicating that these factsheets are available, upon request, from either the employer or DOH.

6) Private sector employees should have the opportunity to accompany DOH inspectors on workplace inspections concerning labeling. This is similar to the right they have to simply accompany federal OSHA compliance officers. While public sector employees have such a "walkaround right," the DOH has incorrectly concluded that private sector employees do not have such a right. Employees and particularly members of labor/management safety and health committees now play an important role in both pre-fire planning and pollution prevention activities that benefit the public at-large. They intimately know the location of potential hazards. Therefore they should be able to participate in the inspection process.

**In conclusion, we again would like to thank this Committee for focusing on the regulatory process to make the Right to Know program better. We will work with all those concerned about this issue to make that end a reality.**

# **NEW JERSEY RIGHT-TO-KNOW & ACT COALITION UPDATE**

March 16, 1993

## **Right to Know Public Hearing**

On Friday, March 26, 1993 the Annual Right to Know Public Hearing will be held. Mandated by the Act, the hearing this year will focus on the new proposed regulations issued by both the Departments of Health and Environmental Protection & Energy. The Coalition supports reasonable reform of the Act through the regulatory process -- as opposed to A1232 which essentially repeals the Act.

The Coalition has already presented testimony indicating qualified support for the DOH proposals at an Assembly Policy & Rules Committee meeting (see enclosed coverage). However, the DEPE proposals would eliminate chemicals from the RTK Survey and impose hazardous reporting thresholds that would especially endanger firefighters. Pete Smith, Chairman of the Right to Know Advisory Council, has already announced his opposition to this DEPE proposal.

The hearing will be held from 10 AM to 5 PM at the Human Resources Development Institute, 600 College Rd. East, Princeton. For directions or to sign up for a specific time slot, contact Eva McGovern at 609 984-2202. You can also request a copy of the DOH proposals from her. For a copy of the DEPE proposals, call 292-6714.

If you would like a copy of the Coalition position on the proposed regulations, please call Jane Nogaki at 609 767-1110 or Rick Engler at 609 866-9405.

## **Have **YOU** Written Your Letter Yet Opposing A1232 -the Right-to-Know Nothing?**

Governor Jim Florio, CN-001, State House, Trenton, N.J. 08625, with copies to:  
Sec. of State Dan Dalton, CN-300, Trenton, N.J. 08625  
Assembly Speaker Chuck Haytaian, 1500 Rt.517, Hackettstown,N.J. 07840  
Assemblyman Paul DiGaetano, 71 Union Ave., Rutherford,N.J. 07070  
Assemblyman Robert Shinn, Larchmont Commons, 3111-23 Route 38, Mt. Laurel 08054  
Assemblyman Joseph Doria, 235 Broadway, Bayonne, N.J. 07002

Ask your members, co-workers, etc. to sign-on to this letter. Send us a copy. We'll copy it and get it to every legislator.

***Please send copies of letters that you have sent to the Coalition, c/o Jane Nogaki, 223 Park Avenue, Atco, N.J. 08004***

# ACTION IN TRENTON

The Assembly &  
Monday, March 8;  
Senate, March 11

A special section reporting major actions during yesterday's meeting of the state Legislature

## Health Dept. and DEPE join in move to streamline right-to-know law

By TOM JOHNSON

The Florio administration is proposing sweeping revisions to the state's Workers and Community Right-to-Know law with the aim of significantly streamlining the reporting and labeling requirements long attacked by industry as an onerous burden to doing business in New Jersey.

The proposals to dramatically revamp the right-to-know law were outlined by officials from the Department of Health and Department of Environmental Protection and Energy (DEPE) yesterday to the Assembly Policy and Rules Committee, which is weighing its own legislative plan to reform the program.

The issue has become one of the more volatile of this legislative term, with environmentalists fearful that the once-heralded right-to-know law would be gutted by a pending bill (A-1232) and business interests pressing hard for reforms in the decade-old law.

Yesterday's hearing focused largely on regulatory proposals developed by the DEPE and the Health Department to address frequent criticisms of the program, particularly relating to reporting and labeling requirements. If implemented, the proposals would ease some reporting and labeling requirements for the 45,000 industries covered by the law.

Richard V. Sindig, an assistant DEPE commissioner, said the proposals seek to bring state and federal right-to-know laws into closer conformity and to focus on the most hazardous chemicals.

"I think we're doing what the original law intended to do and that is to make the community and emergency responders aware of the hazards and to help them respond quickly,"



Photos by Frank DiGiacomo

(Above) DEPE Assistant Commissioner Richard V. Sindig testifies on the right-to-know bill. (Right) Assemblyman Robert Shinn (R-Burlington), left, a member of the Assembly Policy and Rules Committee, confers with Chairman Paul DiGaetano (R-Bergen) on the legislation

Sindig said. "In my own mind, our own original definition of hazards got carried away."

Under the DEPE's proposal, the number of substances that would be covered under its community environmental survey would be dramatically reduced, by perhaps up to one-half or two-thirds, according to Gerald Nich-

ols, a DEPE administrator. For example, more than 3,000 substances on a Department of Transportation (DOT) hazardous substances list would be dropped from reporting requirements.

The state also is proposing to increase the threshold reporting requirements for hazardous substances, which would also ease paperwork bur-

dens for certain industries. In addition, a Department of Health proposal would reduce labeling requirements significantly on both consumer and non-consumer products.

Also, the state would substantially ease provisions dealing with trade secret claims made by industry, a source of much controversy over the years.

Environmental groups, which have bitterly opposed any effort to reopen the right-to-know law to legislative scrutiny, were cautiously supportive of many of the proposals outlined by the departments.

However, Rick Engler, an official with the Industrial Union Council and a member of the New Jersey Right to

Know Coalition, said the coalition opposed plans to drop labeling requirements for consumer products of less than 5 pounds or a half gallon or less.

Holding up a can of degreasing solvent bought in a local hardware store, Engler noted it contained a label from California warning the substance was known to cause cancer and birth defects. If the proposed labeling requirement in New Jersey was dropped, it would still contain that warning, but consumers in the state would not know what chemicals were in the product. "It makes no sense," Engler said.

Industry lobbyists praised some of the provisions in the regulatory proposals—especially dealing with trade secret claims, labeling requirements and reporting mandates—but nonetheless argued the reforms did not go far enough.

Alan Bograd, a senior staff engineer for Exxon Chemical Co., said only legislative changes as proposed in the bill before the committee would bring about the fundamental changes needed in the program, including eliminating the duplicative reporting requirements mandated under the state and federal right-to-know programs.

Assemblyman Robert Shinn (R-Burlington), a sponsor of the bill, however, said he thought the departments have taken strides to improve efficiency of the program. "I saw some positive things today," Shinn said at the conclusion of the hearing, "but I didn't see anything that negated the need for legislation."

One key issue yet to be addressed, Shinn said, is whether to consolidate the right-to-know program in one state department, instead of having the DEPE, the Health Department and the Department of Labor administer different aspects of the law.

The Honorable Robert Shinn  
The Honorable Paul DiGaetano  
House of Representatives  
New Jersey State Legislature  
Trenton, NJ 08625

March 30, 1993

Dear Sirs:

We, the undersigned, citizens of New Jersey and students of Woodbury Jr.-Sr. High School, strongly oppose the relaxation of hazardous substance labeling requirements as proposed in legislation A-1232. We feel that such deregulation serves specialized interests, and not those of New Jersey employees and citizens, for whom this requirement was established by the New Jersey Worker and Community Right to Know Act of 1983. We also oppose effective reduction of disclosure and labeling requirements under claims of "trade secrets" by manufacturers of products containing hazardous substances.

We urge you to not vote passage of this legislation in its present form, and to reject these modifications to the Public Law.

Sincerely,

Vicki Moore  
Jo Ann Orlando  
James Monaghan  
James McLaughlin  
Lashonda Martin  
Robert Long  
Mike Madden  
L. R. Hall  
Doug Michalak  
Jana Reddin  
Anne Quinn  
Angela Kelly  
Sharon Jackson

Joseph A. Warell, Jr.  
Susan Williams  
Margaret Meyer  
Vicki E. Palma  
Ramon Miller  
Christy Cunningham

**New Jersey Business & Industry Association**

To: Rick Engler

**Regulatory Changes  
in the  
Workplace**

**Legislative and Regulatory Review: 1993-94**

**NJBIA • 102 West State Street • Trenton, NJ 08608-1102 • (609) 393-7707**



- Facilities may be forced to reimburse the local fire district for the cost of suppressing a fire that results directly or indirectly from an unabated violation. This "compensatory" penalty may be as high as \$150,000, regardless of the actual cost of the fire. Penalties can be higher if the cost of fighting the fire exceeds \$150,000.
- Fire districts may include attorneys fees and other costs in a compensatory penalty to reflect the cost of collecting that penalty fee from a facility owner.
- The funds collected as penalty fees will be placed in a special municipal or fire district trust fund to pay for new firefighter equipment and training.

### **Right-to-Know Reform**

A-1232 (Shinn) which would have amended the Right-to-Know Act did not move out of committee. The Legislature and business community were waiting for the DEPE and the Health Department to amend the regulations. While these State agencies made some modifications on trade secrets, research and development and quantity, their efforts did not go far enough.

In 1994 the NJBIA will support legislative revisions to the Worker and Community Right-to-Know Act that would:

- Exempt research and development laboratories, quality control laboratories, and pilot plants from the provisions of the law.
- Allow a Material Safety Data Sheet, instead of a hazardous substance fact sheet prepared by the Department of Health, to be used by an employer for purposes of hazard communication.
- Exempt from the labeling requirement of the law any container generally available for retail sale in the State.
- Replace the container labeling system established in the law with a requirement that all containers be labeled as required by federal law, and that appropriate areas of a facility be posted with chemical warning symbols and chemical inventory placards.
- Delete the requirement in the law that employers complete workplace surveys, and rename the environmental survey the Community Right-To-Know Survey.
- Provide that the list of environmental hazardous substances (on which the Community Right-To-Know Survey would be based) would consist only of substances on certain federal lists of hazardous substances.

The Association supports legislation to reform and improve New Jersey's Right-to-Know labeling and reporting system. This has been a high priority of the Association for many years. NJBIA believes that the economic and social costs of the in-plant labeling provisions of the New Jersey Worker and Community Right-to-Know Act have generated a tremendous negative impact on manufacturing and on the State's economy without providing an equivalent improvement in the environment or in worker protection.