

New Jersey Citizen Action

380 Main Street
Hackensack, New Jersey 07601
201.488.2804

46 Paterson Street, 2nd floor
New Brunswick, New Jersey 08901
201.246.4772

21 November 1984

EXPRESS MAIL

Governor Thomas Kean
125 West State Street
Trenton, New Jersey 08625

Dear Governor:

The purpose of this letter is to request an immediate meeting with you to discuss the potential destruction of the New Jersey Worker and Community Right to Know law. The law is endangered both by recent amendments to regulations proposed by Health Commissioner J. Richard Goldstein and by the approach of the Attorney General's office in the industry pre-emption lawsuit now in progress in the U.S. District Court.

On November 19, 1984 Commissioner Goldstein and NJDOH Right-to-Know Unit staff members met with Senator Daniel Dalton, Chairman of the Senate Energy and Environment Committee and members of the N.J. Right-to-Know Coalition. The meeting was called by Senator Dalton.

Unfortunately, Commissioner Goldstein decided to walk out of the meeting and refused to listen to Senator Dalton's concerns or those of Coalition representatives. (In contrast, at a meeting on November 15, 1984, Senator Dalton's and Coalition concerns received a sympathetic hearing from DEP Commissioner Hughey).

We have two concerns. First, proposed amendments issued by the NJDOH on October 15, 1984 to the Right-to-Know regulations threaten to administratively gut the Act's labeling requirements. Some of the proposed amendments are arbitrary and capricious. They contradict clear statutory requirements. No rationale whatsoever was given for these amendments when they were published on October 15 by the NJDOH. Nor was any rationale attempted by Commissioner Goldstein or his staff when Senator Dalton met with them on November 19.

Many organizations within the Right-to-Know Coalition have submitted detailed comments opposing the proposed amendments. Commissioner Goldstein's behavior at this meeting convinced us that he meant to ignore them.

Secondly, we are deeply concerned about the representation of the Attorney General's office in the legal defense of the Right-to-Know law. As you must know, industry has filed to enjoin the entire law in federal court in Newark. At a hearing before Judge Dickinson R. Debevoise on November 15, Deputy Attorney General Michael Bokar indicated that discussions were in progress with the U.S. Department of Labor concerning submission of a state plan to the Occupational Safety and Health Administration. On



November 20, 1984 we understand that Mr. Bokar traveled to Washington, D.C. to meet about this issue with OSHA officials. If this, in fact, is the state's official approach to defense of our law, we are convinced that the entire law could be pre-empted.

We are particularly concerned about the state's legal defense and the statements of Mr. Bokar in light of statements by Commissioners Hughey and Goldstein that they are totally unaware of any discussion between the state and federal OSHA.

The New Jersey Right-to-Know Coalition knows of your personal commitment to an effective Right-to-Know law that will truly help protect both workers and the public. But that commitment must now be backed by your immediate action to: 1) insure that Right-to-Know regulations are not eviscerated by Commissioner Goldstein; and 2) to insure that a proper legal defense is made of our law by the Attorney General's office in close coordination with attorneys from the DEP, DOH, and office of the Public Advocate.

On December 10, 1984 hearings on the pre-emption lawsuit will resume in Federal Court. Unless action is taken by you before that time, the Right-to-Know law could be lost.

Because we know that you are a firm supporter of the Right-to-Know law, we want to meet with you at this critical time to discuss the necessary actions required to maintain the viability of the Act.

Please contact Jeanne Otersen at 201 488-2804 to arrange a meeting.

Sincerely,

James Lanard
James Lanard
Environmental Lobby

Ken Estes
Ken Estes
Ind. Oil Workers

Archer Cole
Archer Cole
N.J. Industrial Union
Council

Charles Morris
Charles Morris
Chemical Workers Assoc.

Peter Carson
Peter Carson
Clean Water Action

Rick Engler
Rick Engler
PHILAPOSH

Jane Nogacki
Jane Nogacki
Citizens Against Toxics

William Kane
William Kane
UAW Region 9

Jerome Balter
Jerome Balter
Delaware Valley
Toxics Coalition

Eric Scherzer
Eric Scherzer
Oil, Chemical, and Atomic
Workers

Jeanne Otersen
Jeanne Otersen
N.J. Citizens
Action

cc: Senator Daniel Dalton
Commissioner Goldstein
Commissioner Hughey
Commissioner Serraino
Attorney General Kimmelman
Joseph H. Rodriguez, Public Advocate
Carey Edwards, Chief Counsel to the Governor
Ollie Hawkins, Asst. Counsel
Jane Kelly, Asst. Counsel
Scott Dubin, DEP
Tom Burke, DEP
Ken Rosenman, DOH
Mark Conally, Senate Committee on Energy & Environment
Michael Bokar, Deputy Attorney General
Richard A. Goldberg, Office of the Public Advocate
Simone Tuchi, Governor's Office

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Larry Cohen
Communications Workers of America-Co-Chair

Alma Hill
Trenton Ecumenical Area Ministry-Co-Chair

Michael Shay
Amalgamated Clothing and Textile Workers-
Secretary

Ed Murphy
International Association of Machinists, 1445-
Treasurer

John Atlas
New Jersey Tenants Organization-Executive
Committee

Willie Baker, Jr.
United Food and Commercial Workers
Local #56-Executive Committee

Marina Padovani
Puerto Rican Congress-Executive Committee

Esla Bynoe-Andriolo
Association of Community Organizations for
Reform Now

Brant Carleton
International Ladies Garment Workers Union

Don Clark
Metropolitan Ecumenical Ministry

Vic DeLuca
Ironbound Community Corporation

Joe DiBella
International Union of Electrical Workers,
District 3

Angel Dominguez
CATA-Farmworkers Support Committee

Stanley Fischer
Oil, Chemical and Atomic Workers, 8-760

Andy Gottberg
Senior Citizen Clubs of Bergen County

Georgia Kampf
Womens Affirmative Action Committee

Joe Kara
Carteret Senior Citizens

Marco Lacotena
New Jersey Federation of Teachers

Mary Ellen Lister
People United for a Klean Environment

Rena McLeod
A. Philip Randolph Institute

Lorenzo Oakley
United Auto Workers Region 9

Walter O'Brien
New Jersey Education Association

Ray Peterson
New Jersey State Federation of Teachers

Joan Pransky
New Jersey Tenants Organization

Ana Rivera
Southwest Citizens Organized for Poverty
Elimination

Mary Rollins
Burlington Community Action Program

Hetty Rosenstein
Communications Workers of America,
Local 1037

Dick Sanfilippo
International Ladies Garment Workers Union
Retirees Council

Dudley Sarfaty
New Jersey Council of Churches, Community
Life Commission

Eric Scherzer
Oil, Chemical and Atomic Workers, 8-149

Geri Scott
Communications Workers of America,
Local 1024

Toni Westry
Communications Workers of America,
Local 1077

Johnny Williams
United Political Action Committee, Vineland

Leni-anne Zibor
Coalition of Labor Union Women

MEDIA ADVISORY

December 14, 1984

Contact: Jeanne Otersen
(201) 488-2804

or Rick Engler (215) 386-7000

Event: Press Conference

By: New Jersey Right-to-Know Coalition

Date: Wednesday, December 19, 1984

Time: 1:00p.m.

Place: NJ Statehouse

In response to the tragedy in Bhopal, India, Tony Mazzocch former Health and Safety Director of the Oil, Chemical and Atomic Workers, will join Rick Engler and Jim Lanard of the Right-to-Know Coalition at a press conference and briefing to warn of the consequences of the current industry lawsuit against New Jersey's chemical Right-to-Know law.

The industry lawsuit, filed in October, was brought against the state by a long list of chemical and trade associations representing companies such as Union Carbide, Merck Pharmaceutical, Exxon and American Cyanamid.

The Right-to-Know Coalition will present specific information describing toxic chemicals in use in New Jersey, and the vital protections that would be lost to NJ residents, workers and emergency personnel if the Right-to-Know law is enjoined.



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Leni-anne Zibor
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December 19, 1984

NJ's Right-to-Know Coalition warned the public that it would lose vital protections against exposure to toxic chemicals if the current industry lawsuit against the state's Right-to-Know law was successful.

Representatives of the coalition came to Trenton today to compare the potential for tragedy in New Jersey to the recent chemical disaster in India. Among the protections against such a disaster they claimed New Jerseyans would lose without a state Right-to-Know law are:

- * The right for community residents to know what chemicals they were exposed to from nearby plants, and the health hazards associated with those chemicals;
- * The right of firefighters and emergency personnel to know what chemicals were involved in a chemical fire or incident;
- * The right of workers to know what chemicals they were working with, and the health hazards of those chemicals.

"In light of the tragedy in Bhopal, one would think industry would want to comply with regulations that help avert future tragedies in our own country. Instead, they are involved in a full-scale effort to wipe out the first step in protection - the right-to-know," commented Tony Mazzocchi, former health and safety director for the Oil, Chemical and Atomic Workers.

According to the coalition, less than 30% of the workforce would be protected under federal law if the industry suit were successful, while community residents and firefighters would receive no information on toxic exposure whatsoever.

-more-



The Right-to-Know coalition is acting as a party-defendant in the current court suit brought by industry to block implementation of the law. A preliminary decision on an injunction requested by industry is due before the first of the year by Federal Judge Dickenson Debevoise.

IF INDUSTRY WON THEIR LAWSUIT AGAINST NJs RIGHT TO KNOW LAW

1. People living in communities nearby would have no rights to know what chemicals are being stored, used or emitted.
2. People living in communities would have no knowledge of the health hazards associated with chemicals they may be exposed to.
3. Firefighters and emergency personnel could not identify materials which could spill, burn or explode in a community.
4. Firefighters and emergency personnel would have no right to know what chemicals they were attempting to control. (20% of NJ fires are industrial fires.)
4. Lack of chemical labeling could hinder attempts to deal with emergency situations.

IF THE NATIONAL OSHA STANDARD PRE-EMPTED NJs RIGHT TO KNOW LAW

1. Chemicals would not have to be labelled with their chemical name.
2. The identity of chemicals would not have to be disclosed to workers.
3. Industry would be allowed to decide what chemicals were hazardous.
4. These workers would not be protected: workers in transportation, communications, electric & gas, sanitary services, wholesale trade, nondurable goods, health services, state and local government, educational services, automotive repair and garages and miscellaneous repair servies.
5. In fact, only manufacturing workers would be protected from unknown toxic exposures - that is less than 30% of the nation's workforce.
6. The law, instead of being administered by our own state departments, would be administered by the national Occupational Safety and Health Administration - which has been sharply cutback in inspectors and enforcement.
7. Only a fraction of the 40,000 chemicals manufactured or processed in NJ would be covered.
8. Workers would not have the right to safety information on 1,000 hazardous substances in their workplaces.

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



JAN 14 1985

*Rick
FYI
Jerry B.*

Honorable Charles Serraino
Commissioner
New Jersey Department of Labor
C N 110
Trenton, New Jersey 08625-0110

Dear Commissioner Serraino:

This is in response to your request for an informal review by the Occupational Safety and Health Administration (OSHA) of the New Jersey Worker and Community Right to Know Act in light of the "at least as effective as" criterion set forth in section 18 of the federal Occupational Safety and Health Act of 1970. The comments set forth below are based on a comparison of the Right to Know Act with federal OSHA's standard on Hazard Communication, 29 CFR §§1910.1200 et. seq, a review which is comparable to OSHA review of a standard submitted as part of an existing State plan. In the event a plan were to be submitted by New Jersey, the plan would not only have to contain "at least as effective as" standards but would have to meet all the remaining criteria set forth in 29 CFR part 1902 regarding an "at least as effective as" program for administration and enforcement of standards. In addition, the extent of such a plan's coverage would have to be shown to be "administratively practicable" as required by 29 CFR 1902.2(c). We have serious doubt as to whether a proposed plan limited in scope to hazard communication, and affording no protection from hazards covered by other OSHA standards, could be found to be administratively practicable. Following are our comments on the standard's aspect of the New Jersey Right to Know Act.

Several definitions contained in the Right to Know Act (N.J.S.A. 34:5A-3) are more restrictive in scope than corresponding provisions of the federal standard and thus render the State law less effective. The State law's definition of "container" excludes "process containers" and thus excludes many containers from labeling required under the federal standard. The definition of the term "employee representative" limits access to information pursuant to the State statute to the employee's attorney or certified collective bargaining agent, or to the parent or legal guardian if the employee is a minor; no

corresponding limitation is contained in the federal standard. The definition of "hazardous substance" found in the Right to Know Act is extremely limited, and contains several exemptions the effect of which on coverage is difficult to determine because terms, such as "acute" and "chronic," are not defined. It would appear that the state statute would apply to approximately 2,000 substances, compared to as many as 60,000 substances covered by the federal hazard communication standard.

In addition, the definition of "hazardous substance fact sheet" does not require these fact sheets to include threshold limit values, nor a statement whether the substance has been found to be a suspect or confirmed carcinogen, as is required federally. There is no clear requirement of fact sheets for mixtures.

The definition of "trade secret" in the federal standard is taken from the Restatement of Torts and states that competitors do not know or use the information to qualify it as eligible for trade secret protection. The State law contains only the provision that the competitors not know the information.

The State provision regarding employee access to hazardous substance fact sheets and workplace surveys (N.J.S.A. 34:5A-12) requires employers to provide such access within five days, while the federal standard at 29 CFR 1910.1200(g)(5) requires that such information be readily accessible to employees during each work shift. The five day delay makes the state statute significantly less effective than the federal standard in communicating hazard information to employees.

Employee training requirements found in the Right to Know Act (N.J.S.A. 34:5A-13) are less comprehensive and effective than corresponding federal requirements at 29 CFR 1910.1200(h), in that the state does not require an explanation of data sheets and labels, does not require an explanation of the requirements of the State law, and omits other detailed training requirements set forth in the federal standard.

The State's special requirements for laboratories (N.J.S.A. 34:5A-25(b)) apply only to research and development laboratories, while federal laboratory requirements at 29 CFR 1910.1200(b)(3) are not so limited. Thus, the State law would require quality control and other in-plant labs to comply with all provisions. The federal laboratory provisions require preservation of labels on incoming containers, accessibility of data sheets, and a training program for laboratories, while the State statute requires only a communication program to assist the fire department in responding to emergencies. State labeling provisions for R&D Laboratories are set forth using the term "may," rather than "shall," and thus do not

The labeling requirements of the Right to Know Act (N.J.S.A. 34:5A-14a,b) require information only as to the identity of the substance in the container, without requiring hazard warnings or the name and address of the manufacturer as specified federally at 29 CFR 1910.1200(f), thus rendering the state's labeling provisions significantly less effective than the federal. No state provision was found requiring labeling of shipped containers, and there is apparently no specific assurance that recipients would receive appropriately labeled containers. As has already been noted, the Right to Know Act significantly omits process containers from coverage and there is thus no requirement that such containers be labeled.

The Right-to-Know Act only requires trade secret information to be released to a physician or osteopath when such information is needed for medical diagnosis or treatment (N.J.S.A. 34:5A-15,e). The federal standard requires such information to be disclosed to a treating physician or nurse in the event of a medical emergency (29 CFR 1910.1200(i)(2)), and to a physician, industrial hygienist, toxicologist, or epidemiologist providing medical or other occupational health services to exposed employees (29 CFR 1910.1200(i)(3)). Thus the State's disclosure provisions are much more limited and thus less effective than the federal standard.

Based on the comparisons just described, OSHA believes that the New Jersey Worker and Community Right to Know Act is less effective, in many key respects, than the Federal Hazard Communication standard.

If you have any questions, or if we may be of further assistance, please let us know.

Sincerely,



Robert A. Rowland
Assistant Secretary



**State of New Jersey
DEPARTMENT OF HEALTH**

**JOHN FITCH PLAZA
CN 360, TRENTON, N.J. 08625**

**J. RICHARD GOLDSTEIN, M.D.
COMMISSIONER**

February 21, 1985

Mr. James Butler, Chairman
Safety and Health Committee
New Jersey State Firemens'
Mutual Benevolent Association
1544 Irving Street
Rahway, New Jersey 07065

Dear Mr. Butler:

Your letter to Governor Kean dated January 22, 1985, has been referred to me for reply. You have requested the Governor's support to include the requirement for labeling hazardous substances in new legislation being drafted to address the recent court decision concerning the Worker and Community Right to Know Act.

This Department has not yet seen the legislation that is being prepared for introduction in the legislature and thus cannot comment on its provisions.

However, we feel that the Department of Health has a role to play in any new Community Right to Know Act because of our significant activities in the field of environmental and public health, and we will evaluate new legislation with this in mind.

The Department recognizes the importance of labeling containers in the workplace with a chemical name and Chemical Abstracts Service Number, and the safety and health risks to firefighters from unlabeled containers.

I do not know the Governor's position on the specific issue you raised, but we will apprise him of the Department's concerns. We hope to be able to continue to work with you on this important public health issue.

Sincerely,

Allen N. Koplin, M.D., M.P.H.
Deputy Commissioner of Health

RA:RW/mrg

NEW JERSEY NEEDS THE

RIGHT-TO-KNOW!

- FACT:** NEW JERSEY HAS ONE OF THE LARGEST CHEMICAL INDUSTRIES IN THE COUNTRY, AND WE PRODUCE MORE TOXIC WASTE PER PERSON THAN ANY OTHER STATE.
- FACT:** 30,000 NEW CASES OF CANCER ARE REPORTED EACH YEAR IN NEW JERSEY.
- FACT:** 20% OF THE FIRES IN NEW JERSEY ARE INDUSTRIAL FIRES, MANY OF WHICH INVOLVE HAZARDOUS CHEMICALS. 10% OF NEW JERSEY FIRE INJURIES ARE DUE TO INHALATION OF TOXIC GASES.
- FACT:** SOME STUDIES SHOW THAT 117 CHEMICALS AS TOXIC AS THE CHEMICAL THAT KILLED 2,500 PEOPLE IN BHOPAL ARE USED OR STORED IN NEW JERSEY. OTHER STUDIES SAY 10. THE FACT IS — WE DON'T KNOW.
- FACT:** PEOPLE IN NEW JERSEY STILL DON'T HAVE THE RIGHT TO KNOW WHAT CHEMICALS ARE BEING USED BY CHEMICAL AND MANUFACTURING COMPANIES IN NEW JERSEY.



In January, 1985, NJ's comprehensive Right-to-Know law was gutted by a federal district court. That court ruled that 14,000 manufacturers in New Jersey are 'pre-empted' from the state law because they are covered under a federal Occupational Safety and Health regulation. This federal regulation is really a 'right-to-know-nothing' rule for workers. It does not require our 14,000 manufacturers to notify community residents or firefighters of any hazardous substances they are exposed to every day.

A new law would give residents, firefighters and emergency personnel access to the chemical identities, health hazards and precautionary measures for chemicals in use by our industries.

The Community Right-to-Know and Chemical Safety Act, sponsored by Senator Dan Dalton (D-Camden), would:

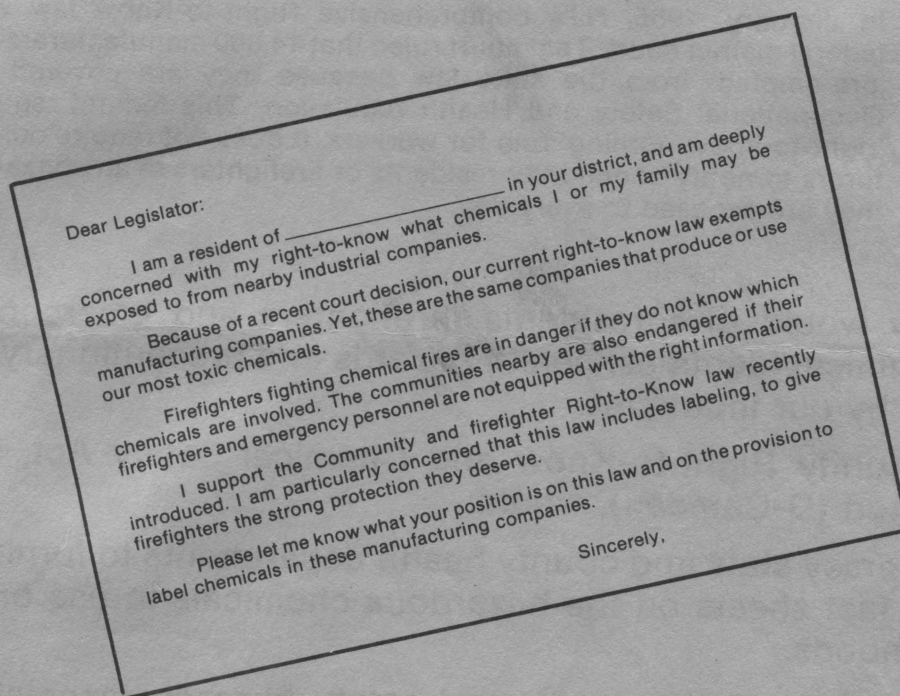
- Require New Jersey state and county health departments to furnish community residents with fact sheets on the hazardous chemicals in use or in storage in their neighborhoods.
- Provide information on the health and safety hazards associated with each chemical in use in the area.

New Jersey Right-To-Know Law Would . . .

- Provide the means by which firefighters could identify chemicals that could spill, burn or explode in your community.
- Require that all fire departments receive hazardous substance fact sheets on the physical properties, health and safety hazards and fire-fighting methods for each chemical in use in any manufacturing company.
- Require the labeling of all chemical containers to enable firefighters and emergency personnel to readily identify all hazardous substances in the midst of an emergency.

Win your Right-To-Know

- Demand Your Right-to-Know
Write a letter to your State Legislator telling them to support the Public Right-to-Know Act.
- Get your local community, school or parent groups to endorse the Public Right-to-Know law.
- Write a letter-to-the-editor in your local newspaper.
- Circulate a petition among your neighbors, co-workers.
- Ask your town or city council to endorse the Right-to-Know. Ask them to send their endorsement to the state legislator.
- Attend a meeting with your local legislator. Call the Coalition for more information.



FOR MORE INFORMATION CALL ANY OF THE FOLLOWING ORGANIZATIONS

New Jersey Citizen Action	(201) 488-2804 or (201) 246-4772
Clean Water Action	(201) 761-0142
Environmental Lobby	(201) 246-6832
PhilaPosh	(215) 386-7000



STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
CN-001
TRENTON
08625

THOMAS H. KEAN
GOVERNOR

July 10, 1985

Mr. Rick Engler
Philadelphia Area Project on Occupational
Safety and Health
3001 Walnut Street - 5th Floor
Philadelphia, Pennsylvania 19104

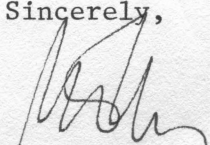
Dear Mr. Engler:

Thank you for your letter of June 28, 1985 regarding New Jersey's position on H.R. 2518.

As you know, Section 321 of that bill would preempt New Jersey's right-to-know law. Governor Kean's Administration has been working to oppose this provision for some time. The New Jersey Department of Environmental Protection and the New Jersey Washington Office have already met with staff of our Congressional Delegation who are in a position to influence this legislation as it moves through the legislative process. We have also been active in the National Governors' Association in opposing a federal preemption in this area.

Please continue to stay in touch on this matter.

Sincerely,


Molly Joel Coye, M.D., M.P.H.
Special Advisor for Health and
the Environment
Office of Policy and Planning



WMS