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MICHAEL S. BOKAR
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August 5, 1986

Daniel Thompson, Esq.
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John J. Carlin, Esq.
Farrell, Curtis, Carlin & Davidson
43 Maple Avenue
P.O. Box 145
Morristown, N.J. 07960

Re: New Jersey State Chamber of Commerce
et al. v. Robert E. Hughey, et al.

Dear Gentlemen:

This will summarize the concepts that Richard Goldberg and I discussed with you at our July 28 meeting, which was attended by representatives of the Department of Health and of the fire-fighters' unions. Both sides agreed to meet at the request of Judge Debevoise who, during the recent meeting in chambers, strongly urged the parties to engage in discussions of this nature. The items offered for discussion by Mr. Goldberg and me are summarized below.

1. All single substance (non-mixture) containers shall be labeled with the chemical name and Chemical Abstracts Service Registry number of the substance.

2. Any substance included on the Environmental Hazardous Substance List present in a mixture in an amount of 1% or more of the mixture shall be labeled with the chemical name and CAS number of each such substance. Any substance on the Special Health Hazard Substance List present in a mixture in an amount

equal to or greater than the thresholds prescribed in N.J.A.C. 8:59-10.1(e) shall be labeled with its chemical name and CAS number.

3. All mixtures shall be labeled with an identifying chemical or common name permitted by the OSHA Hazard Communication Standard. The name on the mixture label shall be referenced to a material safety data sheet or other information sheet that shall identify the chemical name and CAS number of the five predominant substances constituting 1% or more of the mixture, or constituting an amount equal to or greater than the thresholds prescribed in N.J.A.C. 8:59-10.1(e) in the case of substances on the Special Health Hazard Substance List; provided that trade secret claims may be made for substances not on the Special Health Hazard Substance List in accordance with the New Jersey act and regulations. All such material safety data sheets or information sheets shall be distributed to the Department of Health, county health departments and other county Right to Know lead agencies, and local fire departments.

4. All containers shall have a hazard warning label conforming to the Hazardous Materials Information System (HMIS).

5. The exception contained in Section 14b of the act relating to substances present at a facility in an aggregate amount of 500 pounds or more will be deleted.

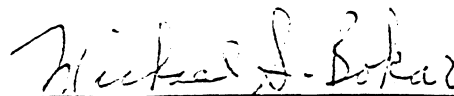
6. The definition of "changed frequently" contained in the definition of "process container" in N.J.A.C. 8:59-1.3 will be amended to read "at least once every 24 hours."

We are presenting the above concepts for review by you and your clients. We emphasize that these ideas are presented at this juncture for discussion purposes only and are subject to review, modification and rejection by the Attorney General, the Public Advocate and the clients of the defendants and defendant-intervenors. We would appreciate an early reply.

Sincerely,

W. CARY EDWARDS
Attorney General of New Jersey

By:



Michael S. Bokar
Deputy Attorney General

MSB:wlm

cc: Richard E. Shapiro, Director
Richard A. Goldberg, Assistant
Deputy Public Advocate
Edward H. Tetelman, Assistant
Deputy Public Advocate
bcc: Jeanne Herb, Research Scientist

bcc: Kenneth D. Rosenman, MD, Director
Thomas Burke, Director
Kathleen O'Leary, Chief
Richard Willinger, Project Coordinator
Michael Catania, Deputy Comm.
Jorge Berkowitz, Ph.D., Director
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*ALSO ADM. MD., **ADM. VA. ONLY

October 7, 1986

Michael Bokar, Esquire
Deputy Attorney General
Labor & Commerce Section
Hughes Justice Complex
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Trenton, New Jersey 08625

Re: New Jersey State Chamber
of Commerce v. Hughey,
et. als. Civil Action
Nos. 89-3892, 89-3255

Dear Mr. Bokar:

This is in response to the settlement offer set forth in your letter dated August 5, 1986. Due to vacation and travel, I have been unable to respond earlier.

As you know, for these settlement negotiations to be successful, each party must be willing to compromise. It appears that under your proposal, you would give up little if anything that you could possibly obtain through the litigation, and would in fact, seek to obtain something in addition.

We are prepared to make the following counter-proposal which would require all parties to make significant concessions:

1. Labeling of Single Substance Containers. Every single substance container shall be labeled with the chemical name of the substance.

2. Labeling of Mixture Containers. Each container of a mixture that contains any substance on the current environmental hazardous substance list in the requisite amount shall be labeled with the chemical name of the substance. Provided that, except for substances also on the special health hazard substance list, trade secret claims may be made in accordance with the trade secret provisions of the Hazard Communication Standard.

3. List of Substances. Every company shall prepare and maintain a list of the names of all individual chemicals known to be present at their manufacturing plants. They shall make such lists available upon request to the New Jersey Department of Health and local fire departments.

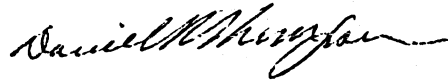
no

DANIEL R. THOMPSON, P.C.

4. Definition of Process Container. The definition of changed frequently should be amended to read that the process is "normally completed within 24 hours. Provided, however, that processes which are normally completed within 24 hours, but from time to time reasonably exceed 24 hours shall be considered process containers."

As with your proposal, this counter-proposal is presented for discussion purposes only and is subject to review, modification and approval by our clients.

Sincerely,



Daniel R. Thompson

cc: Richard A. Goldberg, Esquire
John J. Carlin, Esquire

DRT/kw

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TARA LEVY *

* ARKANSAS AND MISSOURI BARS ONLY

October 22, 1985

Re: New Jersey Chamber of Commerce, et al.
v. Robert E. Hughey, et al.
(Right-to-Know Act)

Dear Friends:

We are pleased to report that the Third Circuit Court of Appeals has rendered a favorable decision in our appeal from Judge Debevoise's injunction against enforcement of New Jersey's Right-to-Know Act in the manufacturing sector.

The decision upholds the constitutionality of almost the entire Act. Under the Third Circuit's decision, all those portions of the Act that deal with general environmental and community concerns were held to be fully enforceable.

In so holding, the court gave the preemptive reach of Federal OSHA standards a very limited scope. Accordingly, only compliance in the manufacturing sector with the New Jersey Act's workplace survey requirements were enjoined. One issue regarding labeling in the manufacturing sector was also sent back to the District Court for further consideration. However, as explained more fully below, we believe that this remand does not present a serious problem and that the New Jersey Act's requirement of labeling for environmentally hazardous substances will be sustained even in the manufacturing sector. The Third Circuit also affirmed that portion of Judge Debevoise's decision where we had prevailed, namely, his finding that the New Jersey Act did not unconstitutionally take any trade secrets. Thus, taken as a whole, the court's decision is a major victory for the Right-to-Know proponents.

In order to fully understand the Third Circuit's decision, it is necessary to review some of the requirements of the law and Judge Debevoise's findings with regard to it. New Jersey's Right-to-Know Act in probably the farthest reaching



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Right-to-Know Act in the country. It requires most employers in the State to provide the government, the public, and their employees with information regarding substances used in the workplace.

In its initial stages of enforcement, the information was to be gathered by the Department of Environmental Protection and the Department of Health through two surveys. The Department of Environmental Protection was to prepare an environmental survey based upon its list of environmentally hazardous substances. The Department of Health was to prepare a workplace survey which, in addition to all environmentally hazardous substances, was required to survey the existence of substances deemed by OSHA or the Department to pose a threat to the health or safety of employees. After these surveys were completed, they were required to be made public through a variety of channels and also to be available to workers.

The Act requires the Department of Health to develop additionally a hazardous substance fact-sheet for each item in the workplace survey which, of course, includes all of the environmentally hazardous substances. The New Jersey Act also requires labeling of all substances.

Following the passage of the New Jersey Act and similar acts in other states, the Reagan OSHA promulgated its own hazard-communications standards that are less stringent than the New Jersey requirements. Due to opposition from manufacturing interests, OSHA had been resisting promulgation of such a standard for several years despite the pressure of labor and environmental groups. What seems to have happened, however, is that the manufacturing interests grew alarmed at the State regulations and convinced Reagan's OSHA to promulgate less restrictive standards which would preempt the tougher State standards.

It is a fundamental concept of Federal constitutional law that Federal enactments preempt both conflicting State enactments and any State enactments that Congress intends to preempt whether or not they actually conflict. In the case of OSHA, Congress intended to preempt State regulations in the workplaces of those areas where OSHA actually promulgated standards. The issue in this case was not so much whether there was any preemption as it was the scope of that preemption.

OSHA's regulation was itself limited to the so-called manufacturing sector, which is defined as those industries included in SIC Nos. 20 through 39. SIC numbers are simply a widely-accepted list categorizing virtually all types of economic activities to facilitate different types of regulation and analysis. Judge Debevoise's ruling was that the Right-to-

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While we obviously disagree with the Third Circuit's conclusion, this has to be viewed as a relatively minor loss in the overall picture. As a practical matter we should try to get the Department of Environmental Protection to include on its survey all those substances we are concerned about as worker hazards. The environmental survey is not preempted and it may be sufficient to provide us with the information needed.

There remains the issue of labeling. The Third Circuit held that there was no express preemption of New Jersey's labeling requirements and that even in the manufacturing sector the labeling requirements connected to the environmental survey may be enforceable. Labeling connected to the workplace survey is, of course, preempted. The Court, nevertheless, remanded the issue of labeling in the manufacturing sector with regard to items on the environmental hazard list back to the District Court.

This remand was based on implied preemption arguments, whereby the manufacturers claimed that the New Jersey labeling requirements were in conflict with the Federal requirements and, therefore, had to be preempted. This claim of the manufacturers was basically premised on a theory that too much labeling would provide too much information and thereby create confusion. We view this theory as a bunch of nonsense, but it was supported by affidavits supplied by the manufacturers. In the procedural stance of this case the Court was required to assume that everything the manufacturers said in their affidavits was correct, and they were required to remand this issue under their analysis so these disputed factual questions could be resolved.

Along with the other attorneys working along with us in this case, namely, the Public Advocate's Office (Richard Goldberg) and the Public Interest Law Center of Philadelphia (Jerome Balter), we are preparing to litigate this issue and are quite optimistic. While nothing in litigation is certain, we believe that the labeling requirements with regard to environmental hazards will be fully enforced in the manufacturing sector.

Assuming our forecast is correct, the Third Circuit's decision preserves virtually the entire New Jersey Act. If the Department of Environmental Protection takes a progressive attitude in its definition of environmentally hazardous substances, then workers and citizens of this State will have readily available to them, both in the form of labels and files available at local departments of health, complete and reliable information as to hazardous substances utilized in the State.

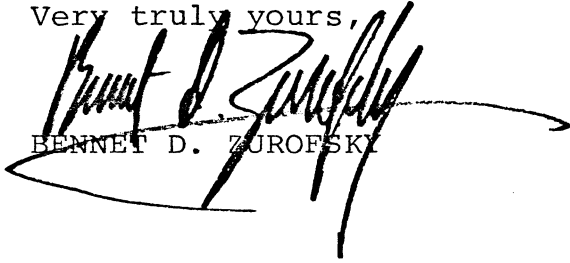
The manufacturing interests, of course, may attempt to

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appeal the Third Circuit's decision to the Supreme Court or seek recourse from an en banc panel of the Third Circuit, but we are hopeful that the Third Circuit's decision will stand as the law and provide a guiding precedent for similar litigation around the country.

If you have any questions about this case, or would like to obtain a copy of the Third Circuit's opinion, please do not hesitate to call or write to us.

Very truly yours,



BENNET D. ZUROFSKY

BDZ:rc



State of New Jersey

**DEPARTMENT OF THE PUBLIC ADVOCATE
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October 31, 1986

Daniel Thompson, Esq.
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John Carlin, Esq.
30 Vreeland Road
Florham Park, NJ 07932

Re: New Jersey State Chamber of
Commerce et al. v. Hughey et al.

Gentlemen:

Following is an outline of the settlement proposal offered by defendants and defendant-intervenors. This proposal was developed as a result of meetings and other discussions that we have had with you and/or your clients over the past few months. We have assumed that the intent of all parties is to attempt to develop a mutually acceptable settlement document that will be formally agreed to by all involved.

1. Universal Emergency/Hazard Labeling System (Section 14(b) of the Right To Know Act).

All substance receptacles falling within the definition of container shall be labeled. Using the current Hazardous Materials Information System (HMIS) or a complete equivalent, container labels shall state the following information associated with the substances in the container:

- (a) health effects;
- (b) flammability;
- (c) reactivity;
- (d) personal protective equipment; and
- (e) the chemical name(s) and CAS number(s) of the contents or a specific reference code identifier keyed to a universal list of specific chemical names and CAS numbers of all substances in the worksite. (See Sections 2 and 3, below).

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Any employer wishing to assert a trade secret claim concerning the identity of a substance not appearing on the Special Health Hazard Substance (SHH) List may do so pursuant to N.J.S.A. 34:5A-3(u) and 34:5A-15.

2. Universal List Of Worksite Chemical Names And CAS Numbers

Subject to the trade secret provisions set forth above, employers shall prepare for each New Jersey worksite or facility a complete list of the chemical name(s) and CAS number(s) of all substances in each container at the worksite or facility. This list shall be cross-referenced to all label code identifiers required under Section 1 of this proposal, above.

A copy of each facility's universal list shall be transmitted by the employer to the appropriate local fire and county health departments located in the area in which the facility is situated and to the State Departments of Health and Environmental Protection. Any person may request in writing from the Department of Health a copy of the list for a facility, together with any appropriate hazardous substance fact sheets. See N.J.S.A. 34:5A-10. The Department of Health shall transmit any material so requested within thirty (30) days of the request.

3. Chemical Name and Chemical Abstracts Service (CAS) Labeling

All containers holding a substance that is included on the Environmental Hazardous Substance (EHS) List, N.J.S.A. 34:5A-4(a), shall bear a label stating the chemical name and CAS number of the EHS substance; provided that the EHS substance is present in an amount of 1% or more of the container contents.

All containers holding a substance that is included on the Special Health Hazard Substance (SHH) List, N.J.S.A. 34:5A-5(b), shall bear a label stating the chemical name and CAS number of the SHH substance; provided that a carcinogen, mutagen, or teratogen SHH substance is present in an amount of .1% or more of the container contents and that any other SHH substance is present in an amount of 1% or more of the container contents. N.J.A.C. 8:59-10.1.

4. Employers Covered By The Act

In addition to those employers presently covered by the Act and identified in N.J.S.A. 34:5A-3(h), all suppliers of chemical substances shall be required to label containers shipped to employers or customers within the state. See 35 Pa. Stat. Ann. §§ 7304 (a) and 7306; Manufacturers Association of Tri-County v. Knepper, slip op. at 6-7, 18-19. (3rd Cir. 1986)

5. Definition of Container

The present definition of "container" set forth in the Act, N.J.S.A. 34:5A-3(d), shall remain in the Act; provided, however,

that: (1) all process or batch containers and reaction vessels shall be identified pursuant to the requirements of N.J.A.C. 8:59-5.2(h), and (2) all containers holding eight (8) ounces or less of substances not on the Special Health Hazard Substance or Environmental Hazardous Substance Lists shall be excluded from the definition of container.

6. Pipeline Labeling

Employers shall label all normally operated inlets and outlets on pipelines, pursuant to the labeling requirements set forth above. "Normally operated inlets and outlets" shall be defined as those valves, outlets, drains, and sample connections: (a) designed to allow the release of a substance from a pipeline at least once during a 24 hour period or (b) repaired or maintained at least once per month; provided, however, that any pipeline which does not require any label pursuant to (a) or (b) shall be labeled at or near the header connection. Where there exist multiple valves on a single pipeline connected to a process container, only one valve out of the series need be labeled (i.e., area labeling). See N.J.A.C. 8:59-5.2.

In addition, all inlets and outlets which control the emission or discharge of any waste material from a facility shall be labeled pursuant to the requirements set forth above. All containers labeled pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC § 121 et seq., shall be exempt from this requirement.

7. Pre-Fire and Emergency Response Planning

Employers shall prepare a complete pre-fire and emergency response plan with respect to each facility in the State. This plan shall be prepared in consultation with and subject to the approval of the appropriate local fire department.

* * * *

It is our position that the United States Court Of Appeals upheld the constitutionality of the New Jersey Right To Know Act under the Supremacy Clause of the United States Constitution with respect to all covered non-manufacturing employers. New Jersey State Chamber of Commerce v. Hughey 774 F.2d 587 (3d Cir. 1985). See also Manufacturers Association of Tri-County v. Knepper F.2d ____ (3rd Cir. 1986) (Pennsylvania Worker and Community Right to Know Act). Further, the appellate court determined that State right to know provisions not primarily designed to serve occupational safety and health purposes are also not expressly preempted by the operation of federal law. Id.

It is also our position that any settlement of this litigation and change in the current statutory scheme must include a comprehensive chemical identification component that provides for public access to the chemical name of substances that are stored, used, packed, or handled at New Jersey worksites, and that are not accorded trade secret protection. This require-

October 31, 1986

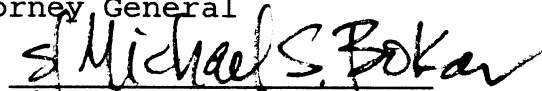
ment, we believe, is consistent with the intention of the New Jersey Legislature to make such information available to the citizenry, emergency response personnel, government agencies, and public health professionals.

We are presenting this proposal for review by you and your clients. Naturally, any change in this proposal is subject to review, modification and/or rejection by the Attorney General, the Public Advocate, and our clients. Finally, any settlement of this litigation is contingent upon a Legislative enactment embodying the agreed upon changes in the Act. We would appreciate an early reply.

Sincerely,

W. CARY EDWARDS
Attorney General

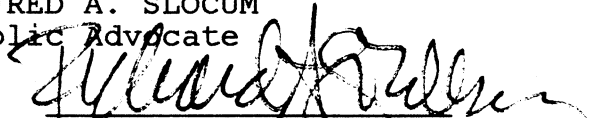
BY:



Michael S. Bokar
Deputy Attorney General

ALFRED A. SLOCUM
Public Advocate

BY:



Richard A. Goldberg
Assistant Deputy Public
Advocate

Feb 26 + 27



Call

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ALFRED A. SLOCUM
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RICHARD E. SHAPIRO
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TEL: (609) 292-1693

November 19, 1986

Mr. Richard Engler
IUC
16 Commerce Drive
Cranford, N.J. 07106

*- Chamber
- Programs*

Re: New Jersey Chamber of Commerce v. Hughey

Dear Mr. Engler:

On Tuesday, November 25, 1986 at 3:30 p.m., a meeting will be held at the Public Advocate's office in Trenton to discuss the latest plaintiffs' settlement proposal. Basically plaintiffs are proposing a three tier labeling scheme:

?
•
Tier I: Tier I chemicals would receive an HMIS label (with a rating as to Health, Flamability, Reactivity and needed personal protection) and either the chemical or common name, or an identifier cross-referenced to a list with the chemical's identity. Included would be all chemicals in the Environmental Hazardous Substance list and in the Special Health Hazards list prepared by the Health Dept.;

Tier II: Tier II chemicals would receive the HMIS label and an identifier, like the UN number, cross-referenced to the DOT list, with a possibility of expanding the DOT list to include chemicals presently not in it. Included would be all chemicals which are not in the environmental or health hazards lists, and which present more than a minimal hazard under the HMIS system, i.e. HMIS ratings 1 through 4;

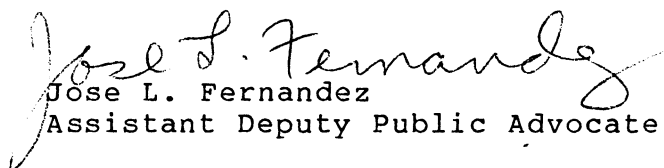
[Tier III: Tier III chemicals would be labeled with a white zero and no chemical identity. Included would be all chemicals receiving the HMIS zero rating.

This is a simplified version of the proposal for your preparation for the meeting. Many other details need to be discussed including the labeling of pipelines and minimum container size.

I have also enclosed a copy of the recently enacted Superfund "Right to Know" provision. Please review it, especially sections 301, 311, 312, 313, 321, 322 and 324, for possible implications on the present negotiations.

Please call me and let me know if you cannot come on the 25th, and with any questions or comments.

Very truly yours,


Jose L. Fernandez
Assistant Deputy Public Advocate

JLF:cc

Enclosures



State of New Jersey

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Sent
Jan 9/87

January 9, 1987

Daniel Thompson, Esquire
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John Carlin, Esquire
30 Vreeland Road
Florham Park, New Jersey 07932

Re: New Jersey State Chamber of Commerce
et al. v. Hughey, et al.

Gentlemen:

After considerable deliberations and discussions with our clients, we offer the following for the purposes of settlement discussions. We request that you discuss this with your clients and that we meet on January 22, 1987, to consider this proposal in greater detail. Of course, any final agreement or settlement of this matter would be subject to the approval of our respective clients.

I. HMIS Labeling

All substances with an HMIS rating above "0" in any category (Health, Flammability, Reactivity, or Personal Protection) would bear an HMIS label. *Chem name for haz in mix cross ref to MSDS sheet*

open
2,500 def.
(try for CAS #)

II. Container-Label Chemical Identification

1. Chemical name labeling would be required on a list of substances being prepared by the appropriate state agencies. We expect to provide you with copies of the list prior to the next meeting. Considered for inclusion in this list are the substances enumerated in the Environmental Hazardous Substance list, N.J.S.A. 34:5A-4a, the Special Health Hazard Substance List, N.J.S.A. 34:5A-5b, the Acutely Toxic Chemicals list contained in EPA's Chemical Emergency Preparedness Program, and the Hazardous Materials list in the

Department of Transportation Emergency Response Guidebook. The source lists are also being reviewed to avoid duplication. Containers with substances on the above named list would require chemical name labeling.

2. All substances rated above zero on the HMIS scale but not included in the proposed list would be identified on the label by either the chemical name or a common name as defined in the OSHA Hazard Communication Standard. However, if the common name is chosen, the manufacturer will provide local emergency response personnel and the treating health professional, upon request, with the common name and the equivalent chemical name of all substances so labeled. For mixtures in this category (above zero on the HMIS scale but not included in the list in 1 above) the manufacturer would provide, upon request, the chemical and common name of each ingredient in the mixture.

III. List of Chemicals Present at a Facility

All manufacturers upon request will provide local emergency response personnel with a list of all the chemicals present in a particular facility. The list shall provide the chemical name of all substances present at the facility over a threshold amount to be determined by the State and ~~shall be available to the public upon request.~~ The proposed list would not include common names or amounts in storage and would not divulge the identity of a substance in a specific container or pipe.

IV. Pipelines

In accordance with regulations to be adopted, pipelines shall be labeled as containers at such places and in such manner so as to provide prompt identification of their contents for emergency response personnel. Area labeling would be permitted under the contemplated regulations.


V. Trade Secrets

Any manufacturer wishing to assert a trade secret concerning the chemical identity of a substance not appearing on the Special Health Hazard Substance (SHH) List could do so pursuant to N.J.S.A. 34:5A-3(u) and 34:5A-15.

We look forward to your response and to further discussions of this proposal.

Sincerely,


Richard Shapiro, Director


Jose L. Fernandez
Assistant Deputy Public Advocate

JLF:cc



State of New Jersey

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February 2, 1987

Peter Smith, I.A.F.F.
20 West Lafayette Street
Trenton, New Jersey 08608

Richard Goldberg
N.E.L.P.
475 Riverside Drive - Suite 240
New York, New York 10115

Dear Pete & Rich:

Jan 19, 87
Exxon
Here is a short synopsis of the last negotiation session. Present were Dave Mahoney, Dan Thompson, John Carlin, Cathleen O'Leary, Rich Williger, Richard Shapiro and I. We presented the list of chemicals prepared by Cathleen (2,550 approx, copy enclosed), that would require chemical name labeling. Carlin then explained that he felt our proposal was close to what might be acceptable to his clients but he wanted to know if we had "authority" from our clients to commit our side to the proposal. I told him that whatever resulted from the meeting would have to be presented to our clients for their approval. Carlin, Mahoney and Thompson were very upset and argued that if we could not commit ourselves to our own proposal, we were not negotiating in good faith. At one time, Carlin threatened to walk out.

After the outburst, Carlin sat back down and he and Thompson discussed the issues they wished resolved in future negotiations. Some of these issues Carlin claims have been already addressed and agreement might already exist. They include, from Carlin:

- The aggregate 500 lbs. threshold per facility,
- Batch time (claims we had accepted 24 hours),
- Possibility of continued use of NFPA system where currently in use and phase in of HMIS-like system,
- Container size threshold, maybe varying according to a classification table.
- Labeling where DOT system is already in use,

- Willing only to label hazardous substances, will "walk out" if he has to label "harmless substances". (Willing to use white zero for HMIS zero-rated substance),
- Problem with current threshold for labeling substances in a mixture,
- On pipelines Carlin claims that Pete Smith and Whaley have reached an agreement that Carlin could live with.

From Thompson, the concerns raised included:

- Greater trade secrets protections, something between the OSHA provision and the one in New Jersey's Act,
- Labeling-threshold amounts in a mixture, our proposal called for labeling every substance in a mixture. The Act only requires 5 predominant unless on DEP's or Special Health Hazards list,
- In addition, Thompson had some concerns with the interpretation of the 3rd Circuit opinion, whether Sec. 14a of the Act applied to mixtures.

We told them that we would consult with our clients and get back to them. I feel it is important that we reach consensus as a group on a proposal that we would be willing to commit ourselves to subject to the negotiation of details. I hope that we can reach such a consensus at the next meeting on February 10, at 7:00.

Sincerely,

Jose L. Fernandez
Assistant Deputy Public Advocate

JLF:cc

Enclosure



State of New Jersey

DEPARTMENT OF THE PUBLIC ADVOCATE
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February 11, 1987

Rick Engler
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Re: New Jersey Chamber of Commerce v. Hughey

Dear Mr. Engler:

Enclosed is a draft proposal that attempts to embody the suggestions made at the February 10 meeting. Please review the draft and call me no later than Tuesday, February 17, 1987 by 3:00 p.m. with your comments or questions. After receiving your input, the proposal will be mailed to all defendant-intervenors with a notice to attend the February 26 meeting.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jose L. Fernandez".

Jose L. Fernandez
Assistant Deputy Public Advocate

JLF:cc

Enclosure



State of New Jersey

DEPARTMENT OF THE PUBLIC ADVOCATE DIVISION OF PUBLIC INTEREST ADVOCACY

CN 850

TRENTON, NEW JERSEY 08625

ALFRED A. SLOCUM
PUBLIC ADVOCATE

RICHARD E. SHAPIRO
DIRECTOR
TEL: (609) 292-1693

DRAFT SETTLEMENT PROPOSAL

I. HMIS Labeling

All Containers with substances with an HMIS rating above "0" in any category (Health, Flammability, Reactivity, or Personal Protection) would bear an HMIS label.

II. Container-Label Chemical Identification

1. The Chemical name and the CAS number would be required on the label of containers of substances included in a list prepared by the Department of Health. (attached) Included in this list are the substances enumerated in the Environmental Hazardous Substance list, N.J.S.A. 34:5A-4a, the Special Health Hazard Substance List, N.J.S.A. 34:5A-5b, the Acutely Toxic Chemicals list contained in EPA's Chemical Emergency Preparedness Program, and the Hazardous Materials list in the Department of Transportation Emergency Response Guidebook. If a mixture is included in the list, its container would be labeled with the chemical name and CAS number of the mixture, and the chemical name and CAS number of any substance in the list which constitutes one of the five predominant ingredients and is present in excess of 1% of the mixture. If a mixture is not included in the list, the container may be labeled with a common name and cross referenced pursuant to 2 below. The label must still provide the chemical name and CAS number of any substance in the list which constitutes one of the five predominant ingredients and is present in excess of 1% of the mixture.
2. All containers holding substances rated above zero on the HMIS scale but not included in the list would be labeled with either the chemical name or a common name as defined in the OSHA Hazard Communication Standard. However, if the

common name is chosen, the manufacturer will provide local emergency response personnel and the treating health professional, upon request, with the common name and the equivalent chemical name of all substances so labeled.

3. Substances with a rating of zero on all four HMIS categories (Health, flammability, reactivity and personal protection) may be labeled solely with a large white visible -0-. A list of substances so labeled will be provided to the State Department of Health and emergency response personnel upon demand.

Pre-fire Planning

No later than 30 days after a request by the local fire department, a representative of the facility in question will meet with firefighting personnel to develop a pre-fire plan for emergency response. The representative of the facility will provide the local fire department with a list of all chemicals labeled under 1, 2 and 3 above, and such other information that would assist in responding to emergencies at the facility.

III. List of Chemicals Present at a Facility

All manufacturers upon request will provide local emergency response personnel with a list of all the chemicals present in a particular facility. The list shall provide the chemical name of all substances present at the facility over a threshold amount to be determined by the State and shall be available from the local emergency response agency to the public upon request. The proposed list would not include common names or amounts in storage and would not divulge the identity of a substance in a specific container or pipe. The list will indicate whether a Material Safety Data Sheet exists for the particular substance pursuant to the OSHA Hazard Communication Standard.

IV. Pipelines

Discussion will center around the proposal developed by Pete Smith and Tom Whaley.

V. Trade Secrets

Any manufacturer wishing to assert a trade secret concerning the chemical identity of a substance not appearing on the Special Health Hazard Substance (SHH) List could do so pursuant to N.J.S.A. 34:5A-3(u) and 34:5A-15.

Sincerely.

Richard Shapiro, Director

Jose L. Fernandez
Assistant Deputy Public Advocate

JLF:cc



State of New Jersey

**DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY**

CN 850

TRENTON, NEW JERSEY 08625

ALFRED A. SLOCUM
PUBLIC ADVOCATE

RICHARD E. SHAPIRO
DIRECTOR
TEL: (609) 292-1693

February 13, 1987

Rick Engler
I.U.C.
16 Commerce Drive
Cranford, NJ 07016

Re: Chamber of Commerce v. Hughey
(Right To Know Case)

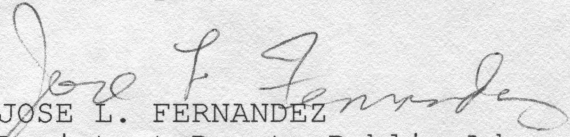
Dear Mr. Engler:

As you know, we have been in the process of conducting ongoing settlement negotiations in this case. We have now reached a critical point in the negotiations, making your input essential. A settlement proposal on several key issues is being prepared for submission to the plaintiffs in the coming weeks. This draft proposal incorporates the recommendations of a number of client groups as well as the views of individuals who attended recent client meetings. The settlement proposal has been drafted because of the latest developments in the litigation, the enactment of the Superfund Right to Know provision in late 1986, and recent court decisions.

Therefore, a meeting will be held at our office at 6:00 P.M. on Thursday, February 26, 1987. At the meeting we expect to reach some final decisions regarding the negotiations and the settlement proposal. Since the decisions made at the meeting will very likely affect the future course of the litigation and could bind all the clients, it is important that you attend. If you will not be able to attend, please feel free to contact us with your views on the proposal.

If you have any questions, Jose L. Fernandez at (609) 292-1692.

Sincerely,


JOSE L. FERNANDEZ
Assistant Deputy Public Advocate



State of New Jersey

**DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY**

CN 850

TRENTON, NEW JERSEY 08625

ALFRED A. SLOCUM
PUBLIC ADVOCATE

RICHARD E. SHAPIRO
DIRECTOR
TEL: (609) 292-1693

February 19, 1987

Rick Engler
I.U.C.
16 Commerce Drive
Cranford, NJ 07016

Re: Settlement Proposal in
Right to Know Case

Dear Mr. Engler:

Enclosed for your review is a draft settlement proposal on some of the key issues of the case. This proposal will be discussed at the February 26 meeting at 6:00 p.m. at the Public Advocate's office. Since the draft will serve as the basis for a settlement offer in the current negotiations, it is important that you read it and bring your input to the meeting. If you will be unable to attend, review the proposal and call Jose L. Fernandez with your comments before February 26. If we do not hear from you by the 26th of February, we will proceed on the assumption that you have no objections to the proposal.

Given the complexity of the enclosed proposal, we offer the following outline of the labeling provisions contained in the proposal. Since the decision made at the February 26 meeting will bind all clients, it is very important that you attend or give us your input prior to the meeting. Keep in mind that in addition to the labeling requirements proposed, manufacturers would have to provide hazard warning labeling as required by the OSHA Hazard Communication Standard where applicable.

OUTLINE

I. HMIS Labeling

a. All containers holding a substance that under the Hazardous Materials Identification System hazard would deserve a rating of 1 or above would receive an HMIS label such as:



b. All containers with substances rated zero would only be labeled with a white -0-.

II. Chemical Identity

In addition to the HMIS label, chemicals would be identified on the container label as follows:

A. Single Substances

a. A single substance on the proposed list would be identified on the label by:

- i) chemical name, and
- ii) CAS number

b. Single substances not on the list but with an HMIS rating above zero would be identified on the label by:

- i) the common name or
- ii) the chemical name.

B. Mixtures

a. A mixture would be identified as follows:

1. If the mixture is on the list, e.g. gasoline, the label would provide:

- i) the chemical and
- ii) the CAS number if applicable.

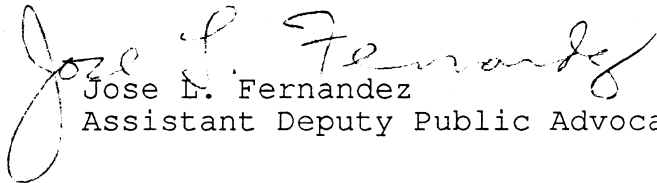
2. If a mixture is not on the list, the label would provide:

- i) the chemical, or
- ii) the common name

3. In addition, the container of any mixture, whether listed or unlisted, must provide on the label the identity of the five predominant ingredients present in excess of 1%.

If you have any questions, please contact Jose L. Fernandez at (609) 292-1692.

Sincerely,



Jose L. Fernandez
Assistant Deputy Public Advocate

JLF:cc

Enclosure



State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY

CN 850
TRENTON, NEW JERSEY 08625

ALFRED A. SLOCUM
PUBLIC ADVOCATE

RICHARD E. SHAPIRO
DIRECTOR
TEL: 609-292-1693

May 29, 1987

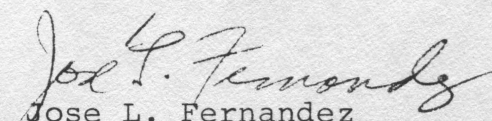
Rick Engler
I.U.C.
16 Commerce Drive
Cranford, NJ 07016

Re: Chamber of Commerce v. Hughey (Right to Know)

Dear Defendant - Intervenor:

Enclosed for your information and review is a copy of the plaintiffs' response to our last settlement proposal. If you have any comments, please call me.

Sincerely yours,


Jose L. Fernandez
Assistant Deputy Public Advocate

JLF/lc
Enclosure

LAW OFFICES
JOHN J. CARLIN, JR., P.C.
30 VREELAND ROAD
FLORHAM PARK, NEW JERSEY 07932

(201) 377-3350

JOHN J. CARLIN, JR.
LAURENCE R. MADDOCK
DONALD J. FAY
MARTIN CRONIN

May 6, 1987

Jose Fernandez, Esq.
State of New Jersey
Department of the Public Advocate
CN 850
Trenton, New Jersey 08625

Re: New Jersey State Chamber of Commerce,
et als. v. Hughey, et als.

Dear Mr. Fernandez:

The following is in response to your letter of March 12, 1987. The delay in responding has occurred because our immediate reaction was to call a cessation to all negotiations as the letter appears to be a regressive step after what seemed to be several productive meetings. It frankly seems to be more onerous than the statute as enacted. Nevertheless, we shall make one final attempt at negotiation.

Response to Introductory Paragraph.

The areas of agreement should be set forth as outlined.

Response to Paragraph I HMIS Like Labeling.

Plaintiffs had proposed labeling under the NFPA system on substances on the United States DOT list. Plaintiffs suggest than an option to use either HMIS or NFPA would be a sensible approach, provided the list of hazardous substances used in conjunction with the labeling program would be comparable to

the DOT list. The size of containers required to be labeled would have to be agreed upon.

Response to Paragraph II.

1. The containers would contain the name of the substances on the list or an approved common name. Plaintiffs believe that the U.N. Number is of more use to emergency response personnel.

2. Plaintiffs do not object to providing information to local emergency response agencies but object to duplication of reporting requirements under the Emergency Services Information Survey ("ESIS") and the amendments to Superfund ("SARA").

3. Labeling of non-hazardous materials even in this manner serves little or no purpose.

4. (a) Plaintiffs would agree that any mixture contained upon a finally determined list of hazardous substances should be labeled in the appropriate manner.

(b) Plaintiffs do not understand the intent of this section.

(c) Plaintiffs have made it clear at all conferences that a requirement to list the five predominant substances is an item which they will not agree to and is not negotiable. The inclusion of this in the current proposal indicates that you are not making a serious effort to effectuate a compromise.

III. Plaintiffs have no objection to providing information to treating health professionals under appropriate confidentiality safeguards.

IV. Plaintiffs have no objection to Pre-fire Planning under appropriate confidentiality safeguards.

V. Plaintiffs do not object to providing local emergency response personnel with a list of hazardous materials with appropriate safeguards. Again, it should not be duplicative of the ESIS Survey or the list required under SARA.

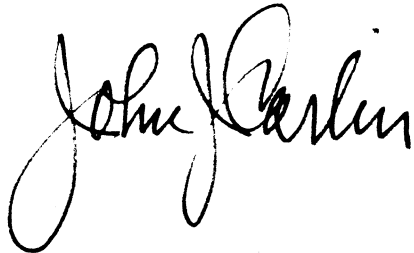
VI. Plaintiffs await a definite outline of this proposal before commenting on it.

VII. Plaintiffs believe that the Trade Secrets procedure should be modified along the lines of the OSHA Hazard Communication Standard.

Very truly yours,

LAW OFFICES OF JOHN J. CARLIN, JR., P.C.

By

A handwritten signature in black ink, appearing to read "John J. Carlin, Jr.", written in a cursive style.

JJC,JR:ja

cc: Michael Bokar, DAG
Daniel Thompson, Esq.
John P. McKenna, Esq.



State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY

CN 850
TRENTON, NEW JERSEY 08625

June 1, 1987

ALFRED A. SLOCUM
PUBLIC ADVOCATE

RICHARD E. SHAPIRO
DIRECTOR
TEL. 609-292-1693

Re: Right to Know Case
Chamber of Commerce v. Hughey

Dear Defendant/intervenor:

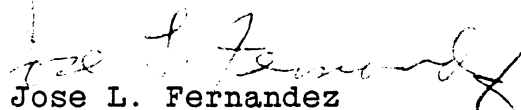
At today's session we reached an impasse in our negotiations with Chamber of Commerce. The impasse was reached on a position that had been adopted at our last client's meeting as "nonnegotiable," the listing of the 5 predominant substances on a mixture's label. John Carlin, attorney for the Chamber of Commerce, stated that his position is that plaintiffs would be willing to list only the hazardous components of the mixture, but he was adamant that his clients would not list on a mixture label any nonhazardous substance.

Since a change in our position on mixture labeling was made a predicate to negotiating the other points of difference, the negotiations immediately broke down over this point. In addition to the differences about mixture labeling, the other key issues remaining include; the definition of "hazardous", (they would like a number of substances approximating 2300); container size (they argue for 55 gal. drums but are willing to negotiate on different sizes for substances that are especially hazardous); and their refusal, at least in their proposal, to provide a list to the public of the entire chemical contents at a facility. These items they are willing to negotiate only after we move from our present demand that the 5 predominant substances in a mixture be listed on the label regardless of whether or not they are hazardous.

It is clear that no further negotiations will take place unless we move from our present position on mixture labeling. If enough of you think that such a change is likely, I will arrange another clients' meeting to discuss it. Please either write or call me with your response. You should be aware that it is likely that legislation may be introduced in the near future to change the statutory provision as to mixture labeling. Also, we are currently scheduled to go to trial on June 18 and 19 to present our testimony in support of the environmental hazard labeling and universal labeling provision in the present statute.

I would appreciate your response as soon as possible.

Very truly yours,


Jose L. Fernandez
Assistant Deputy Public Advocate

JLF:cc

LAW OFFICES

REITMAN, PARSONNET, MAISEL & DUGGAN

744 BROAD STREET

SUITE 1807

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WILLIAM H. COVERT
JESSE H. STRAUSS
BENNET D. ZUROFSKY

THOMAS L. PARSONNET (1923-1977)

SOL D. KAPELSOHN, OF COUNSEL

TARA LEVY *
WILLIAM J. VOLONTE
JOSEPH S. FINE

June 11, 1987

* ARKANSAS AND MISSOURI BARS ALSO

OUR FILE:

Rick Engler, Esq.
Industrial Union Council
16 Commerce Drive
Cranford, N. J., 07016

Re: New Jersey Chamber of Commerce
v. Hughey, et al.

Dear Rick:

Enclosed please find a copy of the Public Advocate's letter of June 1, 1987. I believe that you also received a copy of this letter, but I am forwarding it to you in case you have not. I would like you to review it and let me and Jose Fernandez know as soon as possible what your view of it is.

My own reaction is that the Chamber of Commerce is over-reaching and that negotiations should end. While trial of this may be onerous, I don't think we should give anything we don't have to based on their trade secret nonsense.

? In saying this, I recognize I probably have the strongest anti-trade secrets view of any of the lawyers or people involved. What is really needed is a practical evaluation of where you want to go. There is also the practical question of whether the Public Advocate really wants to spend its resources over these types of details. I know it would be difficult for our office to get fully involved in the hearing at this time, although we would certainly do our best to provide material assistance.

I have taken the liberty of copying this letter to Jose Fernandez so that he can have the benefit of my initial reactions and input.

DESTRUCT COUR

Very truly yours,

BDZ:rc

cc: Jose L. Fernandez


BENNET D. ZUROFSKY





State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY

ALFRED A. SLOCUM
PUBLIC ADVOCATE

CN 850
TRENTON, NEW JERSEY 08625

RICHARD E. SHAPIRO
DIRECTOR
TEL 609-292-1693

June 1, 1987

Re: Right to Know Case
Chamber of Commerce v. Hughey

Dear Defendant/intervenor:

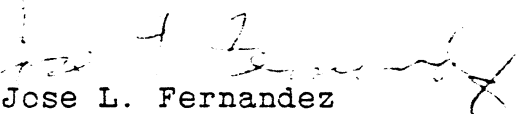
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I would appreciate your response as soon as possible.

Very truly yours,


Jose L. Fernandez
Assistant Deputy Public Advocate

JLF:cc