

Progress and Problems:

1997 Whitman Administration Policy on the Right to Know about Chemical Hazards in the Workplace and Community



**Issued by the New Jersey Work Environment Council
and the New Jersey Right to Know and Act Coalition**

January 9, 1998

This report was written by Rick Engler, Director of the New Jersey Work Environment Council and a participant in the N.J. Right to Know and Act Coalition.

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Office of the Governor

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The Governor's office, DEP, and DHSS received a draft of this report on November 21, 1997 and were asked for their comments. Their responses led to some technical corrections. This report's analysis and recommendations remain those of the coalition and WEC.

About the N.J. Right to Know & Act Coalition

The N.J. Right to Know and Act Coalition was formed in 1982 and was responsible for passage of the 1983 New Jersey Worker and Community Right to Know Act. The grassroots campaign for New Jersey's law helped catalyze efforts in other states and the nation, resulting in passage of OSHA's Hazard Communication Standard and the federal Community Right to Know Law (SARA Title III). The Coalition includes over 100 labor, environmental, firefighter, and public health organizations.

About the N.J. Work Environment Council

The N.J. Work Environment Council, formed in 1986, has developed public education campaigns for "the right to act" to prevent hazards. Current programs include working for a "just transition" for workers impacted by environmental regulation and addressing conflicts between labor and environmental organizations.

Copies of this report are available for \$8 from the N.J. Work Environment Council,
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Progress and Problems:

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Part I: Introduction and Background

New Jersey industry uses billions of pounds of toxic chemicals every year. Use of many chemicals is increasing. State Labor Department workers' compensation data indicates that reported occupational disease, including cancer, chemical poisonings, and lung and nervous system disease remain serious public health problems.

Governor Kean signed the Worker and Community Right to Know Act into law in 1983. The law requires labeling of chemicals, production of *Hazardous Substance Fact Sheets*, employer reporting of chemical use, storage, and releases to the environment, and public employee training on chemical hazards. The law benefits workers, consumers, physicians, public health professionals, firefighters, emergency responders, and community residents. The law also helps protect public school students and school personnel who face potential chemical exposure in laboratories, photography dark rooms, metal and wood shops, and other settings. In addition, the law encourages worker monitoring of toxic chemicals – which creates a first line of accident and spill prevention for plant neighbors and the environment.

A powerful coalition won the law by defeating the lobbying of the chemical industry and its allies. It included environmental, labor, firefighter, police, community, and public health organizations. To this day, polling data indicates that the public overwhelmingly supports the right to know about toxic exposures. Because of this public sentiment – and mobilization by the Coalition – bipartisan legislative attempts to gut the law have been soundly defeated.

Use of the law by New Jersey citizens to learn about potential hazards is substantial. For example, in 1995 the Department of Health and Senior Services received over 4,500 separate requests for *Hazardous Substance Fact Sheets*.

When Governor Christine Todd Whitman took office, she vowed that “New Jersey was open for business.” In the first three years of her administration, the Governor substantially weakened important right to know regulations. For example, the DEP issued a rule eliminating 2,000 chemicals from a list of 2,900 chemicals that New Jersey employers are required to report unless they used in huge quantities. Even chemicals implicated in the

1995 Napp explosion in Lodi, which killed five workers, no longer had to be reported. Also, the RTK program budgets of the Departments of Health and Senior Services and Environmental Protection were cut and staff reduced.

On January 8, 1997, after extensive discussion among the labor, environmental, firefighter, and public health organizations that comprise the New Jersey Right to Know and Act Coalition, thirty-two organizations sent Governor Whitman a memo with recommendations on how to improve this law's implementation and related protections.

In response, Governor Whitman issued a statement saying, "The New Jersey Worker and Community Right to Know Act is an important tool that protects the public. Throughout my administration, I have supported the intent of the Right to Know law. I will not endorse or propose any legislative or regulatory changes that weaken the current law or jeopardize the public health and safety. My staff and I will review and consider the recommendations outlined in the January 8 letter signed by members of the Right to Know Coalition."

On March 31, 1997 Governor Whitman wrote back (see attachments) and initiated eight meetings where Coalition representatives met with staff of the Office of Policy and Planning, Department of Health and Senior Services (DHSS) and Department of Environmental Protection (DEP).

One year after our recommendations were made, the Coalition finds that the Whitman Administration has made considerable progress in helping to insure the public's right to know about toxic hazards in seven of twelve important areas of concern:

- ✓ The Department of Health & Senior Services (DHSS) has begun to implement a four-year plan to complete the 2,500 legally required *Hazardous Substance Fact Sheets* in English and Spanish. These fact sheets provide thorough and readable explanations of health hazards and will be widely available on the Internet. The Governor and legislature allocated \$1.4 million in new funds for this in FY 1998.
- ✓ The Department of Environmental Protection (DEP) and DHSS have produced TV and radio Public Service Ads and other materials to promote citizen use of the law. The DHSS has also developed a plan to increase its outreach activities to firefighters, librarians, workers, and the public.
- ✓ The DHSS has developed a better policy for enforcing for both chemical labeling in all covered workplaces and for training and surveys in public workplaces.
- ✓ The DEP has taken, for the first time, enforcement action against violators of the Pollution Prevention Act.
- ✓ Both DEP and DHSS have promised to publicize the names of violators of the RTK law.

- ✓ With Administration support, legislation was enacted enabling Work First New Jersey (welfare-to-work) participants to have the right to know about potential toxic exposures.
- ✓ Governor Whitman provided key political support for funding a new federal agency --the Chemical Safety and Accident Investigation Board. This important board is responsible for determining root causes of chemical accidents and for making recommendations to prevent them.

However, during 1997 there was also a lack of action by the Whitman Administration in five of twelve important areas:

- The DEP has not restored more comprehensive employer reporting rules so that workers and the public could learn more fully about chemical hazards. Even chemicals involved in the 1995 Napp tragedy in Lodi that killed five workers have not been restored to reporting rules unless they are used in huge quantities. The DEP removed two-thirds of the listed chemicals from their reporting rules in 1994.
- The Administration has not supported amendments to the Uniform Fire Safety Act. to improve identification of chemical hazards for firefighters.
- There has been no progress in collecting the almost \$1 million in penalties owed to DEP by RTK violators who failed to return the *Community Right to Know Survey* as required by law.
- Adequate funding for the RTK program in DEP and DHSS beyond July 1, 1998 is still not assured.
- The Governor has not appointed members of the legally required Right to Know Advisory Council. This important oversight board is not functioning.

The Administration's performance in these twelve areas is detailed in Part II of this report.

Part II: Review of Progress on Specific Recommendations

This section reviews the responses of the Whitman Administration to the specific recommendations made on January 8, 1997 by the New Jersey Right to Know and Act Coalition. The January 8, 1997 letter to the Governor and two Administration replies are in the attachments.

Seven Areas of Progress

1) Producing *Hazardous Substance Fact Sheets*

Background: By law, the New Jersey Department of Health and Senior Services (DHSS) is required to produce Hazardous Substance Fact Sheets for each substance on the DHSS's list of 2,500 hazardous substances in English and Spanish. These fact sheets explain toxic hazards and precautionary measures. However, only 1,052 of the fact sheets have been produced to-date, with only 235 produced in Spanish.

Coalition Position: In January 1997, the Right to Know and Act Coalition sent a notice to the state saying we would sue if all required fact sheets were not produced.

Status: Governor Whitman's approved FY 1998 budget provides \$1.4 million to step up production of all the required fact sheets in English and Spanish. The DHSS estimates that it will require four years to produce these fact sheets. DHSS is hiring new staff to accomplish this task.

2) Encouraging Public Participation

Background: In the January 8, 1997 memo to the Governor, the Coalition made numerous suggestions for improved public outreach and participation in the state's Right to Know Program.

Coalition Position: Public outreach by DHSS and DEP to encourage understanding and use of RTK rights and information needs significant expansion.

Status: The DHSS and DEP have jointly prepared radio and TV public service announcements (PSAs) in English and Spanish encouraging citizens to request information about hazardous chemicals. These PSAs should reach thousands of New Jersey citizens.

Effective October 1, 1997, DHSS inspectors reviewing labeling compliance in private sector workplaces are requesting employers to allow employee representatives to accompany

inspectors on these inspections. Such employee participation will allow workers to point out problems with labeling practices.

The DHSS has developed an extensive education and outreach plan that builds on their existing efforts. New outreach initiatives will include:

- Development of an annual or biannual report on the DHSS Right to Know program with examples of how the law prevents hazards.
- An annual briefing on right to know developments for representatives from a wide array of organizations and the public. The initial briefing is tentatively scheduled for March 24, 1998.
- Greater outreach to organizations of firefighters and librarians.
- “Hands-on” demonstrations of how to get on-line computer access to RTK surveys and fact sheets.
- Preparation of a new flyer or poster about on-line availability of *Hazardous Substance Fact Sheets*.

The DEP and DHSS also prepared English and Spanish language notices, suitable for posting, about availability of *Hazardous Substance Fact Sheets*. These notices, reproduced in the appendix, will be included in the 1997 Community Right to Know Survey booklet that DEP sends to 32,000 private employers.

3) Department of Health & Senior Services Enforcement of RTK

Background: The Department of Health and Senior Services is responsible for enforcing the Act’s container labeling provisions in private sector facilities. DHSS also enforces labeling, employee training, and chemical inventory provisions in public sector facilities. DHSS enforcement has been lacking. In the period 1991 through 1997, DHSS has fined just two private sector employers and collected a total of \$500 for failure to label chemical containers.

Coalition Position: DHSS should issue meaningful financial penalties when employers break the law.

Status: DHSS is adopting new penalty assessment guidance criteria that will subject private and public sector employers to financial penalties. While the Coalition has some reservations about this policy, we believe that it could prove an important step forward. We will monitor its implementation over the next six months.

4) DEP Enforcement of the Pollution Prevention Act

Background: The Pollution Prevention Act is related to the Right to Know Act. It requires major polluting industries to consider how they might reduce toxic use and emissions. In June 1994, the DEP began a policy not to issue fines to companies that failed to submit pollution prevention plan summaries and progress reports.

Coalition Position: The Coalition requested that DEP abandon this approach and fine companies which violate the Pollution Prevention Act by failing to submit these public reports.

Status: On October 8, 1997, the DEP fined ten companies \$1,000 each for failure to complete these reports (names of companies fined are in the appendix).

5) Publicizing Violators of the Right to Know Law to Promote Compliance

Background: The DEP and DHSS each have two inspectors to inspect over 32,000 private facilities for RTK law violations. Inspections can reach but a small percentage of facilities.

Coalition Position: The DEP and DHSS should hire more inspectors and should publicize penalized companies through press releases to encourage compliance with the law.

Status: In her March 31, 1997 letter, the Governor pledged that "...the departments will make public the identity of egregious RTK violators." The DEP has agreed to publicize violators of 1996 survey requirements.

6) Protecting Workers in the Work First New Jersey Law

Background: Under the initial Work First New Jersey proposal, welfare recipients would be put to work in public and private, non-profit agencies without being trained about potential toxic exposures. Thus Work First participants would be working with other workers who do have these rights, exposed to the very same hazardous substances.

Coalition Position: Work First participants should have the same rights as other employees, including coverage under the Worker and Community Right to Know law.

Status: Work First was amended to include legal protections for workfare participants. New Jersey laws that now apply to these participants include the Worker and Community Right to Know Act, the N.J. Public Employees Occupational Safety and Health Act, the Conscientious Employees Protection Act, family leave act, laws against discrimination, and workers' compensation coverage.

7) Establishment of the federal Chemical Safety and Accident Investigation Board

Background: The Chemical Safety and Accident Investigation Board was created by Congress as part of the Clean Air Act in 1990 in response to a barrage of chemical fires and refinery explosions that killed scores of workers. It is modeled after the National Transportation Safety Board, which investigates airplane crashes. Its purpose is to find the root causes of chemical accidents and to make recommendations for preventing them. Until recently, Congress and President Clinton refused to fund the board, blocking its establishment.

The joint OSHA/EPA investigation of the 1995 Napp tragedy, in Lodi, N.J., in which five workers died provided an example of the need for the board. The OSHA/EPA report never examined the underlying causes of the disaster that were rooted in how Napp management operated.

Coalition Position: The Coalition supports establishment of the board.

Status: After a seven-year battle, congress and the president have approved funds for the new board. Governor Whitman played an important supportive role. The governor asked Congressman Rodney Frelinghuysen, a key congressional conference committee member, to back the board. She also wrote President Clinton expressing her support.

Five Areas of Lack of Progress

1) Restoring Chemical Inventory Reporting Requirements

Background: The RTK law requires 32,000 private employers to annually report use of certain hazardous chemicals to DEP through a *Community Right to Know Survey*. This publicly accessible survey is valuable, in part, because completing it makes the employer review what chemicals they store and use. This can lead to eliminating storage of unneeded chemicals or taking precautions for others used. Survey data compiled by the DEP provides vital information to citizens for a wide array of purposes.

On July 18, 1994, Department of Environmental Protection Commissioner Shinn issued rules allowing companies not to report to the DEP many hazardous chemicals listed in the US Department of Transportation *Hazardous Materials Table* unless they used over 10,000 pounds.* The DEP also allowed companies to report chemicals that remained on their list based on a threshold of 500 pounds or the federal Threshold Planning Quantity, whichever is less. Because of these rule changes, about 2,000 of the 2,900 chemicals were dropped from reporting requirements (245 chemicals were added back because of *federal* EPA reporting rules).

The DEP's justification for their rule changes is that "Focusing on these hazards and eliminating non-hazardous substances that did not belong on the list made it a more workable program for local officials and emergency responders, and reduced paperwork for businesses." (Source: January 8, 1997 DEP Statement).

However, the "non-hazardous" chemicals that no longer had to be reported pose serious safety and health dangers. The DEP never did **any** review of the scientific literature to determine which chemicals could be safely delisted or only reported at the higher thresholds.

The explosion at Napp Technologies in Lodi in 1995 that killed five workers provides a compelling example of why the DEP needs a comprehensive chemical list with low reporting thresholds. Three of the substances directly involved in this explosion were reportable in any quantity in 1993. Two of them were reported by Napp. In 1994, after the DEP weakened their regulations, none of these chemicals was reported. DEP spokesperson Amy Collings said at the time "The officers on site are using the 1993 data. It's a more comprehensive list." (Source: *The Record*, May 5, 1995, Page A-1).

*There has been controversy concerning whether the Florio or Whitman Administration was responsible for this action. While the Florio Administration proposed weakening inventory rules, they did not do so. On December 6, 1994, Governor Whitman told the New Jersey Business and Industry Association that "...the DEP already has removed more than 2,000 substances from the Right to Know list..." (Source: Text of Speech to NJBIA, December 6, 1994, Page 3).

The DHSS considers far more chemicals hazardous. They maintain a separate *Hazardous Substances List* that includes about 2,500 hazardous substances and triggers public employer inventory reporting. Every one of these chemicals includes scientific references justifying their inclusion. (Ironically, this means that a public office building has to survey whether they use far more specific toxics than a chemical plant!).

After the Napp explosion, Governor Whitman called for a review of the DEP and DHSS lists so the state could implement one comprehensive list. In March 1997, she directed her staff to establish a Chemical Inventory Working Group of industry and Coalition representatives to discuss what hazardous substances should be restored to DEP reporting requirements.

Coalition Position: DEP should issue a rule to restore the original list of covered chemicals, with a 100-pound threshold. Alternatively, we support using the DHSS Hazardous Substances List (with appropriate updates) with a 100-pound threshold.

Status: Despite the Governor's directive, the *Chemical Inventory Working Group* did not meet until September 25. This meeting featured demands by the Chemical Industry Council and Business and Industry Association to scrap the entire law and barely discussed what chemicals should be relisted or appropriate thresholds. The second meeting, on October 20, while focusing somewhat more on chemical inventory issues, also made no progress.

Before both of these meetings, the Coalition had requested (in writing) from the DEP that they prepare an options memo explaining potential hazardous substances that might be restored to inventory reporting rules. Finally, at the third meeting, on November 24, the DEP presented an options memo. No option appeared that restored the DOT list or used the DHSS list. Instead, the DEP made various suggestions to potentially restore a relatively small range of substances to the list.

For the DEP to add back any chemicals or change thresholds, they will have to go through a formal rule-making process. Since present regulations "sunset" in June 1999, DEP will begin work on new regulations in 1998.

2) Helping Firefighters Fight Chemical Fires; Supporting Chemical Hazard Placarding

Background: The existing labeling requirement of the Act, which requires that the real chemical name be labeled on all containers, is extremely important for workers, safety professionals, physicians, public school students, and others. It is also necessary for pre-fire planning when fire officials do facility inspections. However, in case of an actual fire, firefighters need additional labeling (or placarding) protections.

Coalition Position: The Coalition requested that the Governor support Assembly Bill 2118 (Zisa, Weinberg, Kelly). This bill would amend the Uniform Fire Safety Act to assist emergency responders by requiring all employers that use or store environmentally hazardous substances to post placards, at or near the point of building entry, indicating the type of hazardous chemical used or stored. This bill would also require owners of facilities in which environmental hazardous substances are stored for less than 72 hours to report immediately the quantity and type of such substances to the local fire district and to designate an official contact person.

Status: In her March 31, 1997 letter, Governor Whitman said, "...I support hazardous chemical placarding in concept and look forward to approving a suitable legislative remedy establishing such placarding as standard practice." In April, 1997 the DHSS issued a report, *Health Impact of the Napp Technologies Fire, Lodi, New Jersey*. One of the report's five recommendations was that, "Consideration should be given to a broader use of a building placarding system, such as the one developed by the National Fire Protection Association, so that key hazard information is conveyed to emergency responders in an appropriately timely manner."

The Whitman Administration has not taken any action to encourage the legislature to pass Assembly Bill 2118 or similar alternative legislation. Firefighters continue to be at unnecessary risk when responding to chemical fires and emergencies.

3) The Department of Environmental Protection's Failure to Collect RTK Penalties

Background: The Department of Environmental Protection is responsible for enforcing the Act's chemical inventory requirements in the private sector. Each year, private sector employers must complete a *Community Right to Know Survey* and return it to DEP. According to DEP statistics covering November 1, 1990 to June 30, 1997, about 1,000 firms owe the state \$ 955,942 for failing to return these surveys.

Coalition Position: DEP should adopt a more aggressive approach to collecting penalties. DEP should use state workers who possess the necessary training and experience to perform debt collection. This work should not be contracted out.

Status: According to DEP officials, uncollected penalties are a problem in many DEP programs and they are considering a plan to "privatize" penalty collection. The coalition is opposed to this proposal because we believe that this issue involves more than just debt collection. The enforcement of state laws and regulations is also at stake. Ensuring that companies who violate New Jersey laws, including the Right to Know Act, is the responsibility of the State of New Jersey. These responsibilities should not be contracted out to private firms who are primarily motivated by profit. *

*One such company used to perform debt collection work for the state Division of Taxation, Payco General American Credits, Inc. of Edison, N.J., was charged by the U.S. Department of Justice for violating the Federal Fair Debt Collections Act. This firm paid \$500,000 to settle a lawsuit, which is the largest fine ever paid under this Act. The settlement stipulated that Payco not only violated confidentiality, but also used abusive and obscene language and made unwarranted threats. Although the coalition feels strongly that companies who violate the RTK law should be required to pay all fines, we also believe that it is in the best interest of the state to deal with business in a professional manner. State workers can best accomplish these collections.

4) Adequately Funding the Right to Know Program

Background: The Right to Know program is funded by a fee on covered employers of \$2 per employee with a \$50 minimum. Fees are placed in a Right to Know Trust Fund. Since the law's passage in 1983, fees have not been increased. The decrease in available funds is the reason often cited for why the DHSS has not produced more *Hazardous Substance Fact Sheets*, why county lead agencies suffered budget cuts (17.8% in CY 1995), and for other program deficiencies. Governor Whitman reduced the Right to Know program budgets in FY 1996 by nearly one-third, from \$3.15 million to \$2.4 million; the staff was cut by about one-third, from 44 employees to 31. DEP even admitted that they devote inadequate funds to insuring community right-to-know (Source: EPA 1994 *Toxics Release Inventory*, 1995 State TRI Program Assessment).

Coalition Position: The Act should be amended solely to address this funding problem. To keep up with inflation, employer fees should be increased from the minimum \$50 to \$75 and from \$2 to \$3 per employee. This would increase program funding by roughly \$1.35 million. The Governor should help initiate and support such legislation.

The Governor should also insure that the DEP collects monies owed to the state by Right to Know lawbreakers. Despite the fact that collected RTK penalties are not given directly to the DEP, almost \$1 million could be added back to the DEP and DHSS Right to Know program budgets from these collected penalties.

The Governor should insure that her proposed FY 99 budget restores needed funds to ensure adequate Right to Know staffing by DHSS, DEP, and county agencies.

Status: The Governor took no position on a statutory fee increase and deferred to the legislature.

In response to Governor Whitman's request, the legislature approved a \$1.4 million increase to DHSS's RTK budget for production of fact sheets. This funding made possible the Department's increased activity in this area during FY 1998. However, the \$1.4 million allocated was from a surplus in the Right to Know Trust Fund. In order for the Governor to meet her legal obligation and written pledge to produce all fact sheets, it will be necessary for her to allocate monies from general fund appropriations in FY 1999 or increase the RTK fee.

5) Appointing the Right to Know Advisory Council

Background: According to the Right to Know Act, the Governor must appoint, with Senate confirmation, an eleven member "Right to Know Advisory Council" to advise the state on implementation of the Act. The council is to include knowledgeable representatives of unions, environmental organizations, public interest and community organizations, firefighters, the chemical and oil industries, trade associations, small business, public health and epidemiology. The council is not functioning. Of the eleven required members, there are now no confirmed members.

Coalition Position: The Governor should obey the law and appoint the required number of qualified council members.

Status: Last Spring DHSS solicited various organizations for suggestions concerning council appointments. Coalition member organizations submitted suggestions. However, no nominations have been presented to the Senate for confirmation to-date.

Part III: Coalition Recommendations

The New Jersey Right to Know and Act Coalition makes these recommendations to the Whitman Administration and/or the New Jersey legislature for consideration in 1988:

- **Defend the Right to Know Act and protect public health and the environment.**

Industry continues to want the entire Right to Know Act gutted. At the October 20, 1997 meeting of the Governor's Chemical Inventory Working Group, Hal Bozarth, Director of the Chemical Industry Council, said "We should scrap the law and contemplate a new one."

We urge opposition to all legislative, regulatory, or budgetary changes that weaken the Worker and Community Right to Know Act or related laws such as the Pollution Prevention Act or Toxic Catastrophe Prevention Act. This includes opposition to so-called "environmental audit" legislation that would encourage companies to cover-up information about occupational health and environmental hazards.

- **Follow-through on existing commitments.**

In 1997, the state strengthened its overall commitment to insuring the public's right to know about toxic hazards by agreeing to implement many Coalition proposals. The state should follow-through on these commitments. Of central importance, the state must insure that there is adequate funding for implementing the DHSS four-year plan to develop all legally mandated *Hazardous Substance Fact Sheets*.

- **Address the issues not resolved in 1997.**

- The DEP has not restored strong DEP chemical inventory reporting requirements. As this report points out, not even the chemicals implicated in the 1995 Napp tragedy have been restored to reporting requirements (unless over 10,000 pounds are used). **DEP should restore the hazardous substances they delisted in 1994 with a 100-pound threshold.** (If the DEP can demonstrate that a substance is *not* hazardous, that substance should not be relisted). Alternatively, the DEP could use the DHSS Hazardous Substances list with a 100-pound threshold. Every chemical on the DHSS list has a documented scientific source indicating that it is a hazardous substance.
- **Firefighters still need more information about chemicals when responding to fires and about chemical storage in warehouses.** The Coalition supports amendments to the Uniform Fire Safety Act to address this need.
- **Funding for the RTK program must be increased** by either a fee increase or an appropriation of general funds.
- The DEP could help resolve this problem by **collecting the almost \$1 million owed to the state by RTK violators.** The state could use this money to fund the RTK program.
- As required by law, the Governor still must **nominate members to the Right to Know Advisory Council.**

Part IV: Background Information

Undisclosed Dangers; A Special Report, by Kelly Richmond and Dunstan McNichol, The Record, June 25, 1996.

Health Impact of the Napp Technologies Fire, Lodi, New Jersey, April 21-22, 1995 Summary and Final Technical Report, N.J. Department of Health & Senior Services, April 1997.

EPA/OSHA Joint Chemical Accident Investigation Report, Napp Technologies, Inc., Lodi, New Jersey, EPA and OSHA, October 1997.

Toxic Ignorance; the Continuing Absence of Basic Health Testing for Top-Selling Chemicals in the United States, Environmental Defense Fund, 1997.

Tracking Toxic Chemicals; The Value of Materials Accounting Data, by Mark H. Dorfman and Marian Wise, INFORM, 1997.

Claim to Shame: Industry Scorecard on Pollution Prevention, N.J. Public Interest Research Group and National Environmental Law Center, 1997.

The Community Right to Know Annual Report for Survey Year 1994, N.J. Department of Environmental Protection, December 1996.

**The attachments to this report are available
on request from the
New Jersey Work Environment Council.**

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Attachments

- 1) January 8, 1997 Letter and Memo to Governor Whitman.
- 2) March 31, 1997 Reply from Governor Whitman.
- 3) May 30, 1997 Letter from Eileen McGinnis, Chief of Policy & Planning.
- 4) Text of Public Service Advertisement (English version).
- 5) Copy of new DEP Community Right to Know Survey poster on availability of *Hazardous Substance Fact Sheets*.
- 6) November 13, 1997 article on enforcement of *Pollution Prevention Act*.
- 7) September 30, 1997 letter from Governor Whitman to President Clinton supporting funding of Chemical Safety and Hazard Investigation Board.

**Issued by the New Jersey Work Environment Council
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New Jersey Right to Know & Act Coalition

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January 8, 1997

Governor Christine Todd Whitman
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Dear Governor Whitman:

Thirty New Jersey environmental, labor, and firefighter organizations are writing to ask you to re-evaluate your position on the implementation of New Jersey's *Worker and Community Right to Know Act* law.

We believe your approach to the *New Jersey Worker and Community Right to Know Act*, as reflected by your support of weakened regulations and reduced budgets over the last three years, undermines the Act's effectiveness. The accompanying memo offers specific recommendations on how to change that policy.

The *Worker and Community Right to Know Act* was signed into law by Governor Kean in 1983. The law requires labeling of chemicals, production of *Hazardous Substance Fact Sheets*, employer reporting of chemical use, and public employee training on chemical hazards. The law benefits workers, consumers, physicians and public health professionals, firefighters and other emergency responders, and community residents. The law helps protect public school students and school personnel who face potential chemical exposure in laboratories, photography dark rooms, metal and wood shops, and other settings. The law also encourages worker monitoring of toxic chemicals -- the first line of prevention for plant neighbors and the environment.

Billions of pounds of toxic chemicals are used in New Jersey. State Labor Department workers' compensation data indicates that reported occupational disease, including cancer, chemical poisonings, and lung and nervous system disease remain serious public health problems. Thus, we urge you to take three actions to protect worker and public health and the environment:

- First, we urge that you oppose any more legislative, regulatory, or budgetary changes that weaken the *Worker and Community Right to Know Act*.

■ Second, we urge you to comply with the law by producing the required number of *Hazardous Substance Fact Sheets*. You should also, as required by the Act, appoint the Right to Know Advisory Council. (See areas 1 and 2 in the memo).

■ And third, we ask you to strengthen the Act's implementation. (See areas 3-8 in the memo). Most of our recommendations can be simply accomplished at your direction through program and administrative changes.

We ask to meet with you to hear your response to these recommendations and to discuss your policy on this important law. Thank you for your consideration.

Sincerely,

Jane Nogaki, Co-Chair, N.J. Right to Know & Act Coalition
Eric Scherzer, Co-Chair, N.J. Right to Know & Act Coalition
Bill Kane, President, New Jersey Industrial Union Council, AFL-CIO
Thomas Canzanella, First Vice President, Professional Firefighters Association of
New Jersey, IAFF, AFL-CIO
Richard Mikutsky, Legislative Director, N.J. Firemen's Mutual Benevolent Association
Tim Dillingham, Director, New Jersey Chapter, Sierra Club
Rick Engler, Director, New Jersey Work Environment Council
Amy Goldsmith, Executive Director, New Jersey Environmental Federation
John Loos, Legislative & Political Coordinator, Communications Workers District 1
Mark Dudzic, President, Oil, Chemical, and Atomic Workers Union, District 8 Council
Cindy Zipf, Executive Director, Clean Ocean Action
Curtis Fisher, Program Director, N.J. Public Interest Research Group Citizen Lobby
Sherryl Gordon, Executive Director, American Federation of State, County &
Municipal Employees
Marie Curtis, Executive Director, New Jersey Environmental Lobby
Don Silberman, President, Council of N.J. State College Locals, AFT
Jim Moran, Executive Director, Philadelphia Area Project on Occupational Safety & Health
Phyllis Salowe-Kaye, Executive Director, New Jersey Citizen Action
Bob Meade, Vice President, International Chemical Workers Union Council, UFCW
Philip J. McLewin, President, Bergen County Central Trades & Labor Council, AFL-CIO
Dolores A. Phillips, Director, Center for Environment and Public Health Policy
Wynn Falkowski, Chairperson, Coalition Against Toxics
Hal English, Executive Director, N.J. Advisory Council on Occupational Safety and Health
Frank DeMaria, President, New Jersey State Council of Machinists
Madelyn Hoffman, Director, Grass Roots Environmental Organization
F.S. Pendzinski, President, Burlington County Central Labor Union, AFL-CIO
Peter Guzzo, Executive Director, Consumers for Civil Justice
Myles O'Malley, Executive Director, White Lung Association of New Jersey
Stephen Hornik, Sr., President, Monmouth-Ocean Counties Central Labor Union, AFL-CIO
Ira Stern, Education/Political Director, N.Y.-N.J. Regional Joint Board, UNITE!
Donald Norcross, President, Southern New Jersey, AFL-CIO
Lois Cuccinello, Executive Vice President, Passaic County Labor Council, AFL-CIO

cc: Commissioners Fishman & Shinn, and Commissioner Designate Gelade
Chief of Staff Derman

TNG10/CWA/AFL-CIO rtk97L



New Jersey Right to Know & Act Coalition

January 8, 1997

To: Governor Whitman

From: New Jersey Right to Know and Act Coalition
Signing Organizations on Accompanying Letter

RE: Recommendations Concerning the Right to Know About
Chemical Hazards in the Workplace and Community

1. Comply with the Law: Produce Hazardous Substance Fact Sheets

Background Under the law, the state Department of Health and Senior Services (DHSS) is required to prepare *Hazardous Substance Fact Sheets (HSFS)*. These fact sheets, using simple language and a standard format, explain the hazards of particular hazardous substances and precautions that should be taken when working with them. Unlike many Material Safety Data Sheets produced by chemical companies, these fact sheets accurately and fully explain potential hazards.

The DHSS is, **by law**, required to produce 2,500 fact sheets in both English and Spanish. To-date, only 1,052 have been written in English and only 235 in Spanish. Despite the Act's mandate, the DHSS says it only plans to maintain 500 fact sheets.

Recommendations 1) The DHSS should comply with the existing requirements of the Right to Know law and produce the required Hazardous Substance Fact Sheets, including Spanish language versions. Production of Spanish language versions is important because many Spanish speaking workers labor in hazardous workplaces.

2) The DHSS should insure that all fact sheets are appropriately updated. For example, scores of respected scientists are calling for accelerated research into the human health impacts of synthetic chemicals in the environment that disrupt the endocrine system. They warn that a variety of hormone-disrupting substances now in everyday use may contribute to an increased incidence of prostate and testicular cancers, immune system problems, and even behavioral problems like attention deficit disorder. Updated fact sheets should cover these potential dangers to our health and future generations.

3) According to the Act, upon receipt of a completed Right to Know Survey from a *public* employer, the DHSS shall transmit to that employer a *Hazardous Substance Fact Sheet* for each hazardous substance reported. Under amendments to the law, this Survey is sent to public employers every five years. Under these same amendments, public employers must submit an annual update on new chemicals they are using. Despite the legal requirement to do so, the DHSS has not promptly sent out fact sheets for the newly used hazardous chemicals shown on these updates. The DHSS should not deny public workers their right to know. They should comply with the law and send out these fact sheets promptly, not after someone is made ill or injured.

4) Under the law, the DHSS must transmit *Hazardous Substance Fact Sheets* to the roughly 7,000 New Jersey *public* sector facilities that use hazardous substances. These HSFS are accessible to public employees on-site. While private sector employers can request HSFS, the DHSS does not automatically distribute them to private sector employers. We ask that the DHSS also transmit HSFS to private sector employers with the greatest chemical hazards. One cost-efficient way to accomplish this would be on CD-ROMs (compact disk-read only memory) since most personal computers have this capability and the fact sheets have already been put on CD-ROM.

Once employers have this information on-site, federal Occupational Safety and Health Administration rules guaranteeing ready worker access to exposure and related data would allow private sector employees to get to this information. The DHSS or Department of Environmental Protection (DEP) should issue a rule allowing employee access because HSFS help employees understand the dangers of environmental emissions. *Minimally*, the Departments should require private sector employers to post a notice that HSFS are available from the DHSS and how employees can obtain them.

2. Comply with the Law: Appoint the Right to Know Advisory Council

Background By law, the Governor is supposed to appoint, with Senate confirmation, an eleven member "Right to Know Advisory Council" to advise state government on the implementation of the Act. The Council is to include knowledgeable representatives of unions, environmental organizations, public interest and community organizations, firefighters, the chemical and oil industries, trade associations, small business, public health and epidemiology. The Council has fallen into complete disarray. *Of the eleven required members, there are now no confirmed members.* The term of the Council Chair, John Carnall, representing the chemical industry, expired in December 1990. Often meetings are canceled due to lack of a quorum.

Recommendation The Governor should implement the law and appoint the required number of qualified Council members. The Right to Know and Act Coalition and other organizations should be consulted as part of the selection process.

3. Help Firefighters Fight Chemical Fires; Support Chemical Hazard Placarding

Background The existing universal labeling requirement of the Act is extremely important for workers, safety professionals, physicians, public school students, and others. It is also important for pre-fire planning. However, in the event of a fire, existing container labeling provides insufficient protection for fire fighters.

Recommendation The Governor and legislature should support Assembly Bill 2118 (Zisa, Weinberg, Kelly). This bill would amend the *Uniform Fire Safety Act* to assist emergency responders by:

- requiring all employers that use or store environmental hazardous substances to post placards, at or near the point of building entry, indicating the type of hazardous chemical used or stored. Placards would be in conformance with the U.S. Department of Transportation Hazardous Materials Warning Placard system, in conjunction with the Hazardous Materials Identification System, which designates a four digit number for certain hazardous substances.
- requiring owners of facilities in which environmental hazardous substances are stored for less than 72 hours to report immediately the quantity and type of such substances to the local fire district and to designate an official contact person.

This bill is supported by both the Professional Fire Fighters Association of New Jersey and the New Jersey Firemen's Mutual Benevolent Association.

4. Disclose the Dangers: Restore Chemical Reporting

Background In 1994, Governor Whitman and Department of Environmental Protection Commissioner Shinn issued rules allowing companies not to report to the DEP hazardous chemicals listed in the US Department of Transportation Hazardous Materials Table. Beginning in 1994, the DEP also allowed covered companies to report based on a threshold of 500 pounds or the federal Threshold Planning Quantity, whichever is less. Thus this Administration dropped more than 2,000 of the 2,900 chemicals once covered by the law (245 chemicals were added as a result of new federal EPA reporting rules).

Many of the deleted chemicals can pose serious safety and health dangers, as revealed by the *The Record* report on right to know of June 25, 1996. The DEP never conducted any studies to determine which chemicals could be safely delisted. Two of the delisted chemicals were involved in the explosion at Napp Technologies in Lodi in April, 1995 that killed five workers.

Recommendation The DEP should issue a rule to restore the original list of covered chemical, with a 100 pound threshold.

5. Encourage Public Participation

Background Key to the effectiveness of the Act is the role that the Departments of Health and Environmental Protection play in promoting its use. Currently the DHSS sponsors a training program for public employers on RTK. The DEP holds workshops for private sector employers on how to complete RTK surveys. Public demand for RTK information is significant. For just one example, the DEP's Public Access System, accessible by personal computer and modem, received 6,321 information requests from over 3,000 users in 1994 and 1995. However, DHSS and DEP efforts to encourage public participation remain inadequate.

Recommendations 1) The DEP and DHSS should develop public service announcements (PSAs) in English and Spanish explaining how to obtain right-to-know information. These PSAs should be distributed to all radio and TV stations broadcasting in New Jersey.

2) The DEP and DHSS should hold annual workshops for neighborhood residents, firefighters and employees concerning their rights and new developments under the Act. All individuals and organizations which have made right-to-know requests to the Departments over the last year should be invited to attend.

- 3) The DHSS should develop, in consultation with teacher unions, administrators, and parent organizations, a RTK training program designed specifically for public school personnel and students. One part of this program should be developed for high school chemistry classes.
- 4) The DEP and DHSS should hold an annual workshop on RTK for New Jersey librarians. According to a Georgetown University study, public libraries are the first place citizens look when searching for information on hazardous materials in their community. Pennsylvania and Massachusetts have already developed successful librarian education programs on toxic hazards.
- 5) The DHSS should adopt a new policy allowing an employee representative the right to accompany DHSS inspectors on inspections of facilities to assist them in determining whether their employers are complying with labeling requirements. Employees are most familiar with their workplaces and could be of invaluable assistance in locating unlabeled or improperly labeled chemical containers. This accompaniment right has been implemented by the federal Occupational Safety and Health Administration since 1970 with few problems.

6. Make Employers Think Twice -- Enforce the Law!

Background Since 1991, the DHSS has fined just one private sector employer a total of \$500 for failure to put labels on containers identifying chemical names. Since there are only two DHSS inspectors to check labels at 32,000 covered private sector facilities, the only way to insure labeling is to issue and publicize fines.

In FY 1995, the Department of Environmental Protection issued 616 Administrative Orders to private firms and fined them \$603,000 for failing to return a 1994 Right to Know Survey. The DEP actually collected only \$100,880 of these fines -- less than 17%!

The Pollution Prevention Act is closely related to the Right to Know Act. It requires major polluting industries to consider how they might reduce toxic use and emissions. In June, 1994 the Whitman Administration began a DEP policy to not issue fines for company failure to submit mandated and publicly accessible plan summaries and progress reports.

Recommendations 1) The DHSS should issue meaningful financial penalties when corporations break the law by failing to properly label chemicals.

2) Private corporations owe the DEP \$502,120 in uncollected penalties from just the 1995 fines. To collect these fines, the DEP clearly needs a more aggressive approach.

- 3) The DEP should fine companies if they violate the Pollution Prevention Act by failing to submit public reports.
- 4) Both DHSS and DEP should issue press releases naming firms that refuse to let workers and the public know about the chemicals they may be exposed to.
- 5) The two Department of Environmental Protection RTK inspectors should be trained and should have authority to do inspections for labeling violations since they are already auditing private sector workplaces for Community Right to Know Survey compliance.

7. Adequately Fund the Right to Know Program

Background The Right to Know program is funded by a fee on covered employers of \$2 per employee with a \$50 minimum. Fees are put in a Right to Know Trust Fund. These fees have not been increased since the law's passage in 1983. The decrease in available funds is the reason often cited for why the DHSS is not producing Hazardous Substance Fact Sheets, why county lead agencies have suffered large budget cuts (17.8% in CY 1995), and for other program deficiencies. Governor Whitman slashed the Right to Know program budgets in FY 1996 by nearly one-fourth, from \$3.15 million to \$2.4 million; the staff was cut by about one-third, from 44 employees to 31. The DEP has even admitted that they devote inadequate funds to insuring community right-to-know (Source: EPA 1994 Toxics Release Inventory, 1995 State TRI Program Assessment).

Recommendations 1) Just to keep up with inflation, employer fees should be increased from the minimum \$50 to \$75 and from \$2 to \$3 per employee. This would increase program funding by roughly \$1.35 million. The Governor should help initiate and support such legislation.

2) The Governor should insure that the DEP collects the \$500,000 owed to the state by Right to Know law breakers. At least this amount should be added back to the DEP and DHSS Right to Know program budgets.

3) The Governor should insure that her proposed FY 98 budget restores needed funds to ensure more effective Right to Know efforts by DHSS, DEP, and county agencies.

8. Right to Know Protection for Workers in Governor Whitman's *Work First* New Jersey Proposal.

Background Under the Governor's *Work First* New Jersey proposal now before the legislature, welfare recipients are being put to work in the public sector and in private, non-profit agencies. However, they are not being defined as "employees" and thus may not be covered by federal OSHA, the N.J. Public Employees OSHA law, workers' compensation and other statutes providing worker rights. Thus *Work First* participants will be working along side other workers who do have these rights, exposed to the very same hazardous substances. For example, New Jersey hospital employees face a wide array of toxic dangers. Under the RTK law they receive training about these hazards. *Work First* participants working in hospitals should also have the right-to-know?

Recommendation *Work First* participants should have the same rights as other employees, including coverage under the Worker and Community Right to Know law.

9. Improve Right to Know Protection for Public Employees

Background State legislation was enacted in November, 1995 allowing New Jersey to potentially receive 50% of the costs from the federal government for funding its occupational safety and health standards and inspection program for public employees. Getting federal moneys is conditioned, in part, on New Jersey insuring that its safety and health standards are *at least* as strong as those of federal OSHA.

For most health and safety problems, this should not prove an issue because New Jersey adopts the federal standard as its own. However, in the case of public employee right to know about hazardous chemicals, there could be two sets of rules in place, our state law plus the OSHA Hazard Communication Standard (HCS). Rationalization of the two provisions needs to be done. This would provide an opportunity for protections to be strengthened.

For example, under RTK, health hazard warnings do not need to appear on container labels. Under the HCS, hazard warnings must be on labels. Therefore, hazard warnings should be added to the existing state requirement for the chemical name.

Recommendation The DHSS should begin work to strengthen and clarify public employee RTK protections. This should be done with the involvement of public worker unions and management, firefighters, industrial hygienists, and OSHA.

10. Support Our Right to Know More

Background There are major deficiencies with the *federal* Community Right to Know Act. H.R. 4234 would require reporting of more information, including chemical use data and the number of employees potentially exposed to toxic chemicals. H.R. 4234 would also require disclosure of hazardous chemicals in children's food or children's consumer products. H.R. 4234 would also require warning labels for products containing substances which are endocrine disrupters. Sponsors of this bill include Representatives, Pallone, Andrews, and Markey.

The Chemical Safety and Accident Investigation Board was created by Congress as part of the Clean Air Act in 1990 in response to a barrage of chemical fires and refinery explosions that killed scores of workers. It was modeled after the five-member National Transportation Safety Board which investigates airplane crashes. So far, President Clinton has refused to fund this independent Board.

Recommendations The Governor should write the New Jersey Congressional delegation endorsing this legislation and related EPA rulemaking (61FR51322). The Governor should also write President Clinton and ask him to propose funding for the Chemical Safety and Accident Investigation Board.

For more information, contact:

Rick Engler, Director, New Jersey Work Environment Council (609) 866-0920
Jane Nogaki, Co-Chair, New Jersey Right to Know & Act Coalition (609) 767-1110



State of New Jersey

OFFICE OF THE GOVERNOR

CN-001

TRENTON NJ 08625-0001

CHRISTINE TODD WHITMAN
Governor

March 31, 1997

Ms. Jane Nogaki
Co-Chair, New Jersey Right to Know and Act Coalition
223 Park Avenue
Atco, New Jersey 08004

Dear Ms. Nogaki:

I was pleased that Eileen McGinnis and Liz Murray of my policy staff were able to meet with you and other members of the Community Right to Know and Act Coalition to discuss your concerns about the Community Right to Know Act (RTK). As promised during that meeting, I am providing a written response to your January 8, 1997 correspondence to me.

Foremost among the concerns expressed in that correspondence is the availability of Hazardous Substance Fact Sheets developed by the New Jersey Department of Health and Senior Services (DHSS). As indicated during the meeting, I will direct the department to develop fact sheets in English and Spanish for the substances identified in the department's Hazardous Substance list. An accounting of currently available fact sheets will begin shortly. Updating of existing fact sheets and production of new ones will initially focus on ensuring that up-to-date fact sheets are available for all those substances currently being used in New Jersey. I have been informed that the development and updating process will last approximately one to four years. In the meantime, the department will also develop a plan for distributing fact sheets in the most timely manner possible.

On a separate point, I want to assure you that DHSS continues to coordinate bi-monthly meetings of the Right to Know Advisory Council as well as the annual public hearing. Additionally, the process of appointing members to the council is underway. As statutorily required, Health and Senior Services Commissioner Len Fishman is soliciting organizations for their suggestions for council appointments and is awaiting their responses before forwarding his recommendations to my appointments office. I anticipate delivering my nominations to the Senate prior to their recess. The Right to Know and Act Coalition should feel free to forward appointment suggestions to Commissioner Fishman.

I appreciated learning your views on Assembly Bill No. 2118 (A-2118), which concerns chemical hazard placarding. I understand that having ready-access to certain information is

Ms. Jane Nogaki
March 31, 1997
Page Two

critical to firefighting and other emergency operations. That's why I support hazardous chemical placarding in concept and look forward to approving a suitable legislative remedy establishing such placarding as standard practice. My staff will begin discussing a legislative strategy and the substance of a proposal with the legislative leadership this month.

I trust that my staff was able to correct any misconceptions your organization may have had about my administration's role in altering the substance reporting requirements under the Community Right to Know Act. Not only were the substances on the US Department of Transportation Hazardous Materials Table excluded from the scope of RTK prior to the start of my administration, the fact is that more substances are reportable under RTK today than when I first took office. The increase in the number of reportable hazardous substances includes some of those substances that are included on the USDOT Table.

Additionally, you know that the previous administration's changes to New Jersey's RTK law did not cause or lead to the explosion at Napp Technologies. As you know, federal regulations preempt state law with respect to both worker safety and private sector employee right to know.

Nonetheless, I understand your concerns about restoring to our Community Right to Know Act additional substances on the USDOT list. Acknowledging that a balance must be struck between reporting requirements and "information overload," I would ask that members of your coalition coordinate with the Chemical Industries Council, the Business and Industry Association, and the Department of Environmental Protection to review the USDOT list and to develop a consensus about which substances should be restored to the list. My policy staff will be responsible for convening the first meeting of this group.

Your recommendations for increasing public knowledge about RTK were excellent, and I appreciate them. As you know, the DHSS and the Department of Environmental Protection (DEP) have done substantial outreach at trade and association shows and functions. RTK workshops and educational videos are available, and department staff routinely offer training opportunities. Additionally, most counties use state funds to provide some level of training outreach.

I am pleased to confirm that DEP and DHSS will produce public service announcements in both English and Spanish. Additionally, department staff will reach out to firefighter associations to work with them in identifying grant money to further expand educational efforts. Department staff will also offer educational opportunities to librarians, teachers associations, school boards, and other groups.

Ms. Jane Nogaki
March 31, 1997
Page Three

DEP's issuance of \$603,000 in fines in 1995 should be taken as a clear indication that the State takes enforcement of RTK seriously. While I understand your concerns about issuing fines to RTK violators, I am sure that you can appreciate DHSS's efforts to use fines to promote compliance with the law rather than to generate revenue. As discussed at the meeting, I will direct DHSS to issue suitable fines to habitual labeling violators and DEP to fine those who fail to submit public reports under the Pollution Prevention Act. Additionally, the departments will make public the identity of egregious RTK violators, and DEP will continue to pursue aggressively the collection of outstanding fines through the administrative court process.

I appreciate your comments about funding for the RTK program. The program was intended to be fee-driven, so its budget was reduced in order to bring annual expenses in line with annual fee revenues. Because employer fees are statutorily set, an increase from \$2 to \$3 in the per-employee fee and from \$50 to \$75 in the minimum fee would require legislative action.

My staff informs me that you were pleased to learn that administration amendments to my Work First New Jersey proposal call for welfare recipients placed in work experiences to be considered employees for the purposes of PEOSHA, RTK, and other safety standards.

You mention in your correspondence the need to strengthen RTK protection for public employees by rationalizing the New Jersey Worker and Community RTK law against the OSHA Hazard Communication Standard. At OSHA's request, the DHSS is preparing a review and comparison of these two provisions. Federal funding for our occupational safety and health standards and inspection program for public employees is dependent on the results of this comparison.

Clearly, my administration supports making useful and relevant information available to the public. That is why I have asked my Washington office to closely monitor the progress of HR 4234 as it moves through the legislative process. I have also asked that office to inquire about the funding for the federal Chemical Safety and Accident Investigation Board.

Again, thank you for the opportunity to address your concerns. Best wishes.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Christine Todd Whitman", with a long horizontal flourish extending to the right.

Christine Todd Whitman
Governor



State of New Jersey
OFFICE OF THE GOVERNOR
CN-001

CHRISTINE TODD WHITMAN
Governor

TRENTON, NJ 08625-0001

EILEEN MCGINNIS
Chief of Policy and Planning

May 30, 1997

Ms. Jane Nogaki
Co-Chair
New Jersey Right to Know & Act Coalition
223 Park Avenue
Atco, New Jersey 08004

Dear Ms. Nogaki:

Thank you for your letter of May 27, 1997. I want to again assure you that the Whitman Administration is committed to the Worker and Community Right to Know Act and fully intends to follow through on the directives and policy commitments outlined in Governor Whitman's letter of March 31, 1997.

As to the written inquiries that your group submitted on April 14, 1997, it was my hope that we would discuss them when we met, but since I realize your eagerness to learn more about our commitment, I am taking this opportunity to provide our comments to your questions immediately. In fact, your group may conclude that another meeting is not necessary based on the positive steps we are taking to fulfill the Governor's commitments.

I will attempt to address each of your concerns and requests for clarifications in the order in which you listed them in your April 14 memorandum.

Issue #1: The Whitman Administration has submitted OMB Resolution No: 4606 increasing funds available to the Worker and Community Right to Know Program by \$1,400,000. This appropriation language, if approved by the Legislature, will provide the additional revenues necessary to begin the important tasks of updating fact sheets and printing versions in English and Spanish. After the additional money is appropriated, the Department of Health and Senior Services (DHSS) will finalize its implementation schedules and share this information, including its plans to distribute the fact sheets in a more timely manner, with your group. Insofar as your request that the State of New Jersey require private sector employees to post notices that HSFS information can be

obtained from the DHSS is concerned, we believe such action would require legislative approval. We are, however, willing to work with your group to develop a public information campaign designed to inform private sector employees as to the availability, contacts, etc. We do not believe a Consent Order is necessary since the commitments are being carried out from both operational and budgetary perspectives.

Issue #2: We appreciate your genuine desire to work with us.

Issue #3: We are very willing to work with the groups you mention in your memorandum and to listen to your suggestions regarding modifications to A-2118. We obviously do not control the Legislature's schedule, but are willing to work with legislative leaders and their staffs at any time.

Issue #4: We appreciate your desire to work with us.

Issue #5: We feel it would be advisable to form a working group comprised of the public information offices from the Departments of Environmental Protection and Health and Senior Services and representatives from your group to create innovative outreach programs and public service announcements. It is our belief that your group would supply valuable input and would offer creative and exciting suggestions. As indicated before, we could even devise campaigns specifically targeted to employees in the private sector. We have no objection to allowing an employee representative to accompany DHSS inspectors during inspections, but a protocol will have to be detailed and agreed upon. The inspectors must have the ability to do their jobs, cannot be unduly hindered and cannot be expected to deal with matters not related to Right to Know. Perhaps the OSHA arrangement would be a good model.

Issue #6: Normally, more than three offenses would be considered "habitual," but we are open to your suggestions. The Departments will issue press releases when those who habitually violate the law are penalized.

Issue #7: See Issue #1.

Issue #8: The Governor was extremely supportive of the amendments to Work First that allowed participants to be considered employees under RTK and PEOSHA.

Issue #9: We will provide a copy of the comparison when it is completed.

Issue #10: The Governor's commitments remain the same.

I want to also advise you that the Departments have been fully apprised of the Governor's position and directives with respect to Right to Know. They are working closely with my office to make sure Governor Whitman's policies are followed.

If you have any further questions, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Eileen McGinnis".

Eileen McGinnis

Chief of Policy and Planning

c: Commissioner Len Fishman, NJDHSS
Commissioner Robert Shinn, Jr., NJDEP

RitaManno
Director of Communications

[REDACTED]

PUBLIC SERVICE ANNOUNCEMENTS FOR RIGHT TO KNOW

RADIO: 15 sec.

Learn about hazardous chemicals in facilities in your community. Call the New Jersey Department of Environmental Protection at 609-292-6714 for information available to you under New Jersey's Worker and Community Right to Know Act. That's 609-292-6714 for your Right to Know.

RADIO: 15 sec.

Concerned about hazardous chemicals in your workplace? Call the New Jersey Department of Health and Senior Services at 609-984-2202 for more information. You have that right under New Jersey's Worker and Community Right to Know Act. That's 609-984-2202 for your Right to Know.

TV: 30 sec.

Hazardous chemicals can be a threat in your workplace or neighborhood. The New Jersey Worker and Community Right to Know Act gives you the right to information that can prevent chemical-related illnesses, fires, explosions, or harm to the environment. Learn more about your Right to Know. Call the New Jersey Department of Environmental Protection at 609-292-6714 to learn about hazardous chemicals in your community. Or call the Department of Health and Senior Services at 609-984-2202 for fact sheets about hazardous chemicals.

Tag lines on bottom with numbers for DEP and DHSS



NOTICE

HAZARDOUS SUBSTANCE FACT SHEETS

Did You Know?

A copy of the Community Right to Know Survey is required to be kept at this facility and be made accessible for review upon request.

Additional information about the chemicals present at this facility may be available from the New Jersey Department of Health and Senior Services (DHSS). DHSS has prepared Hazardous Substance Fact Sheets for many chemicals subject to reporting under the New Jersey Worker and Community Right to Know Act. Fact Sheets may also be available in Spanish.

To obtain Hazardous Substance Fact Sheets, please call 609-984-2202 or visit the DHSS Web Site at:

<http://www.state.nj.us/health/eoh/rtkweb/rtkhsfs.htm>

Suitable for Posting





¡ ATENCIÓN !

**HOJAS INFORMATIVAS
DE
SUBSTANCIAS
PELIGROSAS**

**¿ Sabía Ud.
Que ... ?**



Suitable for Posting



Se debe tener una copia de los Inventarios Comunales del Derecho a Saber en este establecimiento. Esta copia debe estar disponible para ser examinada cuando sea solicitado.

Información adicional, sobre los químicos presentes en este establecimiento, puede solicitarse al Departamento de Salud y Servicios para Ancianos de Nueva Jersey (DHSS).

DHSS ha preparado Hojas Informativas sobre Substancias Peligrosas de muchos químicos que deben ser reportados bajo el Decreto de Nueva Jersey del Derecho de Saber del Trabajador y la Comunidad. Las Hojas Informativas sobre Substancias Peligrosas pueden solicitarse en su versión en español.

Para obtener las Hojas Informativas, por favor, llame al teléfono 609-984-2202 o visite al DHSS Web Site:

<http://www.state.nj.us/health/eoh/rtkweb/rtkhsfs.htm>



DEP changes course, fines firms that failed to submit toxics plan

By Tom Johnson

STAR-LEDGER STAFF

In a dramatic departure from past policy, the state has quietly fined several manufacturers for failing to submit plans detailing how they aim to reduce use and generation of hazardous substances.

The Department of Environmental Protection fined 10 companies \$1,000 each for failing to complete pollution prevention plans, which were due by July 1994.

The law mandating the prevention plans, enacted with much fanfare and bipartisan support in 1991, was hailed as a national model for encouraging manufacturers to reduce the use of toxics in the workplace voluntarily. Though the program does not require companies to reduce the use of toxics, many advocates argued that if the companies simply prepared the plans, they would find it in their economic interest to curb hazardous substances used in manufacturing.

But in a move that irked many labor and environmental groups, DEP Commissioner Bob Shinn announced shortly before the 1994 deadline that he would not fine companies if they failed to submit pollution prevention

plans as required by the law.

In recent years, business lobbyists have pressed the Whitman administration and the Legislature to revamp the current law, arguing that the program forces companies to spend more time on needless paperwork than actually curbing the use of toxics.

Indeed, one of the rationales advanced by the DEP for not fining companies was that, at the time, the Legislature was considering a bill to overhaul the program. But that bill died amid strong opposition from environmentalists and after a study of the program suggested that the law was accomplishing its goals.

The study concluded that businesses that had aggressively tried to reduce their waste generation are likely to be doing better economically than competitors that do not participate in the effort.

The agency warned the companies they must complete the plans by October, then gave them 90 days to do so or face the fines, according to a letter issued by the DEP's enforcement division. So far, more than 500 companies have done so, according to the agency.

Unhappy with the noncompli-

ance, New Jersey's Right to Know Coalition, an umbrella organization representing more than three dozen labor and environmental groups, urged the Whitman administration to enforce the law this past January, noted Rick Engler, director of the Work Environment Council.

"Our position is it's an appropriate reversal of past policy," Engler said of the DEP enforcement actions. "We feel that not to penalize these companies would be a violation of both the spirit and intent of the law."

The state never intended not to enforce the law, but only wanted to give companies time to comply with the planning requirement, according to John Spinello, a special assistant to the commissioner. "It's more of an evolution than a shift," he said.

The companies that have been cited by the agency include: Alfred Heller Heat Treating of Clifton; Dye Specialties, Jersey City; Electrum Recovery Works, Rahway; Exact Anodizing, Elizabeth; H.K. Metalcraft, Lodi; Henkel Corp., Hoboken; Kirker Enterprises, Paterson; Madison Industries and Old Bridge Metals & Chemicals, both in Old Bridge; and Peerless Tube Co., Bloomfield.



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CHRISTINE TODD WHITMAN
Governor

September 30, 1997

The Honorable William J. Clinton
President of the United States
The White House
Washington, DC

Dear Mr. President:

I am strongly urging you and your administration to support a bipartisan effort to establish an independent federal Chemical Safety and Hazard Investigation Board.

Currently, the Board's duties and responsibilities to inform the public are shared by the U.S. Environmental Protection Agency and the federal Occupational Safety & Health Administration. However, if New Jersey's experience is any indicator, investigations by these two agencies have not been done in a timely manner. Almost 31 months after a major accident at Napp Technologies in Lodi, NJ, which claimed the lives of five workers, there is still no official accident investigation report from EPA/ OSHA.

If established separately from EPA and OSHA, I believe the Chemical Safety board would be an independent non-regulatory body that could effectively investigate the root causes of industrial accidents as well as conduct research and recommend improvements in chemical manufacturing.

I unequivocally support the measure which would sanction an independent board and supply the necessary resources to protect America's workers and the rest of the public.

Thank you for your consideration and attention to this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Christine Todd Whitman".

Christine Todd Whitman
Governor