

RE

NJ Right to Know & Act Coalition NJ Work Environment Council

Press Conference Agenda
January 9, 1998

Introduction and Background

- Jane Nogaki, Co-Chair, N.J. Right to Know & Act Coalition
- Rick Engler, Director, NJ Work Environment Council & report author

Progress...

- **Hazardous Substance Fact Sheets (in English & Spanish)**
Milton Rosado, Intl. Representative, United Auto Workers
- **Public Service Announcements & DHSS Outreach**
Valorie Caffee, Organizing Director, N.J. Work Environment Council
- **National Chemical Safety & ~~Accident~~ Investigation Board**
Diane Stein, Coordinator, Oil, Chemical, and Atomic Workers
District 8 Resource Center

...and Problems

- **DEP Chemical Inventory**
Jane Nogaki
- **DEP Penalty Collection** (+ Pollution Prevention)
- **Funding of RTK Program**
Rick Engler

Questions

The **NJ Right to Know and Act Coalition** is a network of over 100 labor, community, environmental, firefighter, and public health organizations that was responsible for passage of the 1983 Right to Know Act.

The **NJ Work Environment Council** does education, policy development, and advocacy for good jobs, safe workplaces, and a healthy environment.

January 13, 1998

Shirlee Schiffman, Chief
Bureau of Chemical Release Information & Prevention
New Jersey Department of Environmental Protection
22 South Clinton Avenue Third Floor
Trenton, New Jersey 08625

Dear Ms. Schiffman:

WEC and the New Jersey Right to Know and Act Coalition have a number of outstanding concerns about the DEP Right to Know Program. Please respond, in writing, to the following questions:

- Please inform us when you plan to make a decision concerning what chemicals to restore or add to employer inventory requirements or related decisions (i.e. thresholds).
- Given DEP commitments to publicize the names of firms who did not return the *Community Right to Know Survey*, please confirm how and in what month DEP will accomplish this for the 1996 and 1997 surveys?
- The DEP Right to Know program staff has promised to develop for its own use and provide us a more accurate (and detailed) list of firms who have not returned the *Community RTK Survey*. We expected to receive this listing in December, 1997. By what date will we receive it?
- Please explain your specific plans for collecting the almost \$1 million in penalties owed by private sector employers to the DEP for not returning the *Community Right to Know Survey*.
- Please confirm how many full time staff the DEP has devoted to assisting unions, management, and communities retrieve, understand, and use data collected by the DEP under its administration of the Worker and Community Right to Know Act, and Toxic Catastrophe Prevention Act.

(Received
for 95) ←

Page Two

- Please explain what your regulatory process will be for RTK regulations that sunset within the next two years and provide a timeline.

Thank you for your assistance.

Sincerely,

Rick Engler
Director
NJ Work Environment Council

Jane Nogaki
Co-Chair
NJ Right to Know & Act Coalition

RTKIDEP1998



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Waste Compliance and Enforcement
and Release Prevention
P.O. Box 422
Trenton, New Jersey 08625-0422
Tel (609) 292-6704
Fax (609) 292-1803

Robert C. Shinn, Jr.
Commissioner

March 16, 1998

Mr. Rick Engler, Director
New Jersey Work Environment Council
198 West State Street
Trenton, New Jersey 08608

Dear Mr. Engler:

Thank you for sharing your concerns about the Department's Community Right to Know program. Your January 13, 1998 correspondence (attached) lists several items of particular interest. I will address them point by point below.

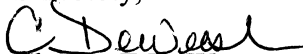
1. The list of chemicals to be added to the environmental hazardous substance (EHS) list is the focus of Governor Whitman's Office of Policy and Planning Chemical Inventory Working Group. It is my understanding that this Department suggested the addition of several chemical lists from various sources to the Working Group and that these chemical lists are being discussed by industry representatives and emergency response organizations. We will certainly consider the recommendations of the Chemical Inventory Working Group in the decision-making. Any necessary revisions to the EHS list will be incorporated into the 1999 readoption of the Community Right to Know regulations.
2. We plan to publish the names of employers who did not return the 1996 Community Right to Know surveys by July 1998. Enforcement actions will be proceeding for non-submitters of the 1997 survey at that time; names of employers who have not responded to administrative orders for failure to submit the 1997 CRTK survey will be published in 1999.
3. You have been mailed the list of employers who were sent administrative orders for non-submittal of the 1995 survey and have not paid their penalty assessments. It is my understanding that you indicated to Alan Bookman of the Bureau of Chemical Release

Information that this list would meet your requirements at the present time. The 1996 survey year administrative orders are being issued now, so a similar list for that year is not yet available.

4. It is my understanding that you have directed the question regarding the collection of unpaid penalties to the Commissioner and that he has responded to that question.
5. All staff members of the Bureau of Chemical Release Information and Prevention (BCRIP) have a role in assisting the community in obtaining and understanding the information collected pursuant to the Community Right to Know program and the Toxic Catastrophe Prevention Act (TCPA) program, whether they are working in enforcement, outreach, or data management. BCRIP is available to assist any organization in gaining a better understanding of the kinds of information available from these programs and how to obtain it.
6. The Department expects to propose the readoption of the Community Right to Know regulations (N.J.A.C. 7:1G) by the end of 1998, and adopt the rule no later than June 16, 1999, the expiration date of the current regulations.

I hope my response addresses your concerns. If you have further questions about these issues, please free to contact me at (609) 292-6704.

Sincerely,


Charles E DeWeese
Director

Attachment

l:\weesdocs\engler.ss

c: Jane Nogaki, CoChair
Right to Know and Act Coalition
Mark Smith, Deputy Commissioner
Marlen Dooley, Assistant Commissioner
Allan Edwards, Assistant Director
Shirlee Schiffman, Bureau Chief

New Jersey Right to Know & Act Coalition

c/o WEC, 198 West State Street, Third Floor, Trenton, New Jersey 08608
(609) 695-7100

January 22, 1998

Len Fishman
Commissioner
New Jersey Department of Health and Senior Services
P.O. Box 360
Trenton, New Jersey 08625

Dear Commissioner Fishman:

Please find enclosed a report on 1997 progress on implementing the New Jersey Worker and Community Right to Know Act. We appreciate the time, effort, and cooperation of DHSS staff over the last year that resulted in significant progress in assuring the public's right to know about chemical hazards.

In 1998, we ask that your department take these two specific new steps to make *Hazardous Substance Fact Sheets* even more useful to the public:


- The Department of Health and Senior Services should add a section on "potential environmental hazards" to *Hazardous Substance Fact Sheets*. Acid rain, smog, ozone depletion, and global warming are caused by some of the chemicals currently on DHSS's Hazardous Substance List. The Department has the authority and resources to accomplish this.
- The DHSS should add a section on "gaps in knowledge" to *Hazardous Substance Fact Sheets*. There should be a chart indicating when human health impacts are unknown. It should address all systems of the body, not only reproductive effects and cancer. The Environmental Defense Fund, in a 1997 study *Toxic Ignorance*, documents the continuing absence of health effects screening for 71% of the 3,000 highest volume chemicals in the United States. Until chemical producers make health effects data known, fact sheets should make clear these gaps in knowledge and should urge precautionary steps.

Please let us know of your decision about these two requests by February 16, 1998.

We would also appreciate an opportunity to meet with program staff concerning progress in implementing the department's fact sheet production plan. Thank you.

Sincerely,


Jane Nogaki, Co-chair


Eric Scherzer, Co-chair

cc: Robert Friant
Jim Blumenstock
Kathleen O'Leary



State of New Jersey

Department of Environmental Protection

Christine Todd Whitman
Governor

Robert C. Shinn, Jr.
Commissioner

Office of Legal Affairs
P.O. Box 402
Trenton, New Jersey 08625-0402
(609) 292-0716
FAX: (609) 984-3488

April 30, 1998

New Jersey Right to Know & Act Coalition
c/o WEC
198 West State Street, Third Floor
Trenton, New Jersey 08608

Attention: David Tylusker, Esq.

Re: Petition for Rulemaking - Right to Know Regulations and Reporting

Dear Mr. Tylusker:

Enclosed please find a copy of a Notice of Receipt of Petition for Rulemaking and a Notice of Action on the Petition regarding the above matter. Please note that the Notice of Receipt of Petition will be published in the May 4 New Jersey Register and the Notice of Action will be published in the May 18 New Jersey Register.

Please do not hesitate to contact me if you have any questions or would like additional information.

Sincerely,

A handwritten signature in cursive script that reads "Ann Zeloof/ly".

Ann Zeloof, Esq.

c: Chuck DeWeese, Director, Waste Compliance and Release Prevention Enforcement (w/enc)
Shirlee Schiffman, Chief, Bureau of Chemical Release Information and Prevention (w/enc)
Allan Edwards, Assistant Director
DAG Joanne Rabb (w/ enc)
Michael P. Marotta, Esq. (w/enc)
DEP Docket File: 97-98-02/656
File: RTK.1

ENVIRONMENTAL PROTECTION

Compliance and Enforcement

Notice of Receipt of Petition for Rulemaking

N.J.A.C. 7:1G, Community Right to Know Regulations Reporting Requirements

Petitioner: Right to Know and Act Coalition, on behalf of 24 Labor,
Environmental, Community, Emergency Response and Public
Health Organizations

Take notice that on March 24, 1998, the New Jersey Department of Environmental Protection (Department) received a petition for rulemaking from the New Jersey Right to Know and Act Coalition on behalf of 24 labor, environmental, community, emergency response and public health organizations in New Jersey concerning Community Right to Know chemical inventory reporting requirements and public access to material safety data sheets (MSDS).

Petitioner requests that the Department take appropriate rulemaking action amending N.J.A.C. 7:1G (Community Right to Know Regulations) to:

- 1) Ensure that all chemicals listed on the New Jersey Department of Health and Senior Services' Right to Know Hazardous Substances List also appear on the Department's Environmental Hazardous Substances List;

- 2) Restore the reporting threshold to zero; and
- 3) Require facilities to annually provide copies (or electronic transmission) of Material Safety Data Sheets (MSDS) to local libraries.

Petitioner also requests that the Department conduct a public hearing on this rulemaking petition.

It is the petitioner's position that the rule change is necessary in order to more adequately protect the rights of New Jersey citizens to understand the potential hazards of toxic substances.

In accordance with N.J.A.C. 1:30-3.6 and N.J.A.C. 7:1-1.2, the Department shall mail to the petitioner and file with the Office of Administrative Law a Notice of Action on the petition.

Date: _____



Richard J. McManus, Director,

Office of Legal Affairs

ENVIRONMENTAL PROTECTION**Compliance and Enforcement****Notice of Action on Petition for Rulemaking****N.J.A.C. 7:1G; Community Right to Know Regulations Reporting Requirements**

**Petitioner: Right to Know and Act Coalition, on behalf of 24 Labor,
Environmental, Community, Emergency Response and Public
Health Organizations**

Take notice that on March 24, 1998, the New Jersey Department of Environmental Protection (Department) received a petition for rulemaking from the New Jersey Right to Know and Act Coalition on behalf of 24 labor, environmental, community, emergency response and public health organizations in New Jersey, concerning Community Right to Know chemical inventory reporting requirements and public access to material safety data sheets (MSDS). A Notice of Receipt of the Petition was published in the May 4, 1998 New Jersey Register.

Petitioner requests that the Department take appropriate rulemaking action amending N.J.A.C. 7:1G (Community Right to Know Regulations) to:

- 1) Ensure that all chemicals listed on the New Jersey Department of Health and Senior Services' Right to Know Hazardous Substances List also appear on the Department's Environmental Hazardous Substances List;

- 2) Restore the reporting threshold to zero; and
- 3) Require facilities to annually provide copies (or electronic transmission) of Material Safety Data Sheets (MSDS) to local libraries.

Petitioner also requests that the Department conduct a public hearing on this rulemaking petition.

The Commissioner certifies that the petition was reviewed and duly considered pursuant to law and has determined that the Department should deny this petition for the reasons that follow:

- 1) The petition does not provide a sufficient basis upon which to make the requested rule modifications. The Environmental Hazardous Substances (EHS) list of chemicals reportable under the Community Right to Know rules (N.J.A.C. 7:1G) and the levels of reporting thresholds were the focus of several rulemaking actions that occurred during 1993-1994, including the readoption of entire chapter, N.J.A.C. 7:1G. The petition presented no new information which would cause the Department to reconsider its rationale for adopting the current rule. At that time, it was the intent of the Department, as directed by law, to review and revise the list to identify chemicals whose potential release to the community pose a threat to public health and safety. To that end, the list adopted by the Department is composed of such substances. Information about these substances is made available to emergency responders and to the public to increase awareness of chemicals in the community. The Hazardous Substances List maintained by DHSS for

public sector employee health and safety includes substances which may be harmful as a result of routine occupational exposures. All of the substances which make up the DHSS list are not substances whose potential release to the community pose a threat to the public health and safety. While the law requires that the DHSS list include this Department's EHS list as a component, (see N.J.S.A. 34:5A-5), the Department, cannot justify including all substances which appear on the DHSS list within the EHS list. A major component of the DHSS list is the United States Department of Transportation's Hazardous Materials Table. The rationale for not including this list in the EHS list is discussed at 16 N.J.R. 648 (April 2, 1984). The rationale for the 1993-1994 rulemaking action was to streamline reporting to make the data collected more meaningful and timely. The Department's position was, and is, that the expansion of the EHS list to include substances which do not pose a threat to public health and safety would make reporting and data management overly burdensome for facilities and, in particular, for users of the information.

Some of the organizations represented by the petitioner submitted comments on the rule proposals published during that time. Issues pertaining to petitioners' first two suggested rules were fully addressed during those rulemaking actions. At that time, a wide range of comments were submitted. Some commenters suggested that the reporting threshold be set at zero, while others suggested thresholds of up to 10,000 pounds, which is the Federal reporting level. The Department determined that a zero reporting level was overly burdensome and did not contribute to public safety or the protection of the environment. The basis for this determination, along with a summary of the issues, the comments and the Department's responses were published in the New Jersey Register at 25 N.J.R. 1631, 26 N.J.R. 123, 26 N.J.R. 200, 26 N.J.R. 2833 and 26 N.J.R. 4606.

2) The notices of rulemaking actions referred to above also described the rationale for developing the current EHS list. As stated above, the Department does not agree that the Hazardous Substances List maintained by the Department of Health and Senior Services, at N.J.A.C. 8:59, and the EHS list at N.J.A.C. 7:1G, should be identical since their purposes are substantially different. The DHSS list is intended for protection of public sector workers who come in contact with these hazardous substances in the workplace. The EHS list is intended for informing the public of potential risks from chemicals that may be released into their communities. In accordance with the statute, the Department developed its EHS list from several lists of State and Federal chemicals which may present a risk to public health and safety resulting from releases into the environment. Based upon those differing purposes, the differing lists and thresholds were developed and are appropriate.

3) Petitioner requests the Department to propose the following rule:

"Every covered private sector facility shall provide to the nearest local library a copy of each Material Safety Data Sheet (MSDS) maintained at that facility. The library shall make the MSDS publicly accessible. Facilities shall provide the initial set of MSDS within three months of the effective date of this regulation. Facilities shall provide new or updated MSDS by February 1st of each year. Alternatively, local libraries that have on-line computer capability may require facilities that have on-line computer capability to provide access to MSDS by electronic transmission or through provision of a compact disc."

Petitioner's request to require facilities to annually provide copies of Material Safety Data Sheets (MSDS) to local libraries is beyond the scope of the New Jersey Worker and Community Right to Know Act (N.J.S.A. 34:5A). The Department does not have the statutory authority to 1) require covered employers to send copies of MSDSs to libraries or 2) require local libraries to collect and make this information publicly accessible.

Requirements for public access to MSDSs are listed in Section 324 of the Federal Emergency Planning and Community Right to Know Act (EPCRA), also known as Title 3 of the Superfund Amendments and Reauthorization Act (SARA). Rules implementing public access to information reported under EPCRA are codified at 40 CFR 370. These rules designate the mechanism for requesting MSDS information. Petitioner is advised to contact USEPA for further guidance.

4) The Department notes that N.J.A.C. 7:1G will expire on June 18, 1999 in accordance with Executive Order 66. Executive Order 66 requires that existing rules be re-examined as part of the rule readoption process. The Department intends to thoroughly reexamine these rules prior to the development of a proposed readoption. In order to readopt N.J.A.C. 7:1G by June 18, 1999, the Department expects to publish a rule proposal by the end of 1998. As part of that rulemaking process, there will be an opportunity for all interested parties to review the proposed rulemaking and to submit comments, both written and at a public hearing. The petitioner is invited to review the proposed readoption when it is published and to submit comments at that time, including any additional information which may provide a basis for the rulemaking action sought by the petition. If the petitioner does submit comments on the proposed readoption, its

comments along with those of all interested parties will be considered during that rulemaking process.

The petitioner has requested a public hearing on this petition. The Department has decided to deny the petition for the reasons stated above. Accordingly, a hearing on these issues is unnecessary. However, the Department intends to hold a public hearing on its proposal to readopt N.J.A.C. 7:1G and all interested persons will have an opportunity to present comments.

A copy of this notice has been mailed to the New Jersey Right to Know and Act Coalition on behalf of the parties it represents in this Petition for Rulemaking.

Date: _____



Robert C. Shinn, Jr., Commissioner
Department of Environmental Protection

s:\asstdir\crip\action.doc



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Bureau of Chemical Release Information and Prevention
P.O. Box 405
Trenton, NJ 08625-0405
Phone: 609-984-3219
Fax: 609-633-7031

Robert C. Shinn, Jr.
Commissioner

October 19, 1998

Mr. Rick Engler, Director
NJ Work Environment Council
198 West State Street 3rd Floor
Trenton, NJ 08625

Dear Mr. Engler:

This letter is sent in response to your recent letters on behalf of the New Jersey Right to Know & Act Coalition concerning the Department's Community Right to Know (CRTK) program.

In your first letter, Ms. Jane Nogaki and you ask for a list of chemicals removed from CRTK reporting requirements in 1994 whose potential release does not pose a threat to public health and safety. The chemical substances that are no longer subject to the state's chemical inventory reporting requirements are those that are listed on the US Department of Transportation's (USDOT) Hazardous Materials Table but are not listed on any of the six lists that now comprise the environmental hazardous substances (EHS) list at N.J.A.C. 7:1G-2. As you pointed out, all of these chemicals are still federally reportable at the 10,000 pound federal threshold. The basis of the federal 10,000 pound threshold can be found in the preamble to EPA's adoption of the rules at 40 CFR 370, which implement Section 312 of the Emergency Planning and Community Right to Know Act (EPCRA), also known as the Superfund Amendments and Reauthorization Act (SARA) Title III.


As you know, the Department made no scientific study of the individual chemical substances on the USDOT list when these substances became subject to reporting on the Environmental Services Information Survey (ESIS) or in 1987 when they were administratively merged with the EHSs on Table A of the CRTK survey book for chemical inventory reporting. Likewise, an evaluation of the potential risk to public health and safety of reporting at 500 pounds vs. 10,000 pounds was not made in 1994.

In response to your three questions concerning the conversion of Standard Industrial Classification (SIC) codes to North American Industrial Classification (NAIC) codes, which is the new federal industrial classification system developed pursuant to NAFTA, the following answers are provided:

1. Conversion to the new NAIC coding system is required because the SIC codes will become obsolete by 2001. Hence, any new business entity will not be given an SIC code after that date. Since coverage under the NJ Worker and Community Right to Know Act is contingent upon having a specified SIC code, the NAIC system must be used after the SIC codes disappear. The NJ Department of Labor is already recoding all NJ employers so that businesses will have industrial classification codes after 2001. During this transition period, businesses will have SIC codes and NAIC codes. However, only NAIC codes will exist in this country, Mexico, and Canada beyond 2001.
2. Since coverage under the Act is defined by SIC codes, the Act must be amended to specify the industries subject to Right to Know. Because there is a direct conversion from one SIC code to one NAIC code for less than 48% of New Jersey employers, the Act must be amended to specify the industries that should be covered. A regulatory change may have been possible if there was a direct conversion from each covered SIC code to a particular NAIC code. Under the new classification system, it is possible that a currently covered SIC code may be given a NAIC code which is shared by industries not covered under the Act. An amendment to the law is required to determine which industries will be covered under the Right to Know program.
3. The Bureau has done a preliminary analysis of the conversion of SIC codes to NAIC codes to determine the possible impacts of the conversion on the program (see copy enclosed). Since the analysis was done, however, we were informed by NJDOL that additional changes to the NAIC codes were made by the federal Office of Management and Budget. Although we were alerted by NJDOL that recent changes have been made, we have not yet received a list of those changes, although we do know they involve SIC codes that were originally directly converted to a NAIC code and are now split into several different NAIC codes.

I hope I've answered your Community Right to Know questions. I appreciate your continued support of the program.

Sincerely,


Shirlee Schiffman, Chief
Bureau of Chemical Release
Information and Prevention

Enclosure
s:crip\engler

June 25, 1999

Chuck DeWeese, Director
Solid and Hazardous Waste Compliance and Enforcement
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625

Dear Mr. DeWeese:

Please respond to the following three informational requests:

1) Pursuant to common law and statutory requirements to disclose certain records and information, please provide us with the most current list of active covered companies that have not responded to administrative orders for failure to submit DEP's *Community Right to Know Survey* for the years 1995, 1996, and 1997, and 1998, separated by year. If the 1998 listing is not yet available, please consider this a continuing request for this information when it becomes available.

This list should indicate, for each firm, the NJEIN, Company Name, Address, City, Physical Location, and Log Number. If this list can also indicate the amount of assessed penalty, please do so.

2) In your letter of March 16, 1998, you indicated that "We plan to publish the names of employers who did not return the 1996 Community Right to Know surveys by July 1998." This statement was in the context of commitments to issue *press releases* naming firms that have not returned surveys. Please provide copies of all DEP press releases that have been issued since September 30, 1997 relating to the surveys and the names of employers who have not completed those surveys or who have otherwise not complied with the Act.

3) Finally, please indicate the total amount of money owed to the DEP from penalty actions concerning the DEP Right to Know Program and update us, in writing, on current DEP efforts to collect these penalties. Please include information on whether a private contractor is being or will be used to collect these penalties.

Thank you.

Sincerely,

Rick Engler
Director

DEP Corr 1999



NEW JERSEY WORK ENVIRONMENT COUNCIL

452 EAST THIRD STREET • MOORESTOWN, NEW JERSEY 08057-3020 • (609) 866-0920 • FAX (609) 235-3889

Return to Rick

July 14, 1999

Mr. Richard Willinger
Program Manager
Right to Know Program
N.J. Department of Health & Senior Services
P.O. Box 368
Trenton, New Jersey 08625

Dear Mr. Willinger:

On behalf of the New Jersey Work Environment Council and the New Jersey Right to Know and Act Coalition, we are responding to Proposal Number PRN 1000-212. Overall, we support this proposal.

However, we strongly disagree with the proposed change that the employee walkthrough in the update training program every two years is unnecessary and strongly urge that this requirement be maintained as it is under present rules. The employee walkthrough indirectly serves to complement efforts by the Department to insure compliance with the Act. Also, employees may note that *new* chemicals have been introduced without proper preventive measures, including additional training. In fact, the proposed deleted language specifically says its purpose is to "...identify the location of any **new** hazardous products."

Given the limited staff and resources of the DHSS Right to Know Program, which must insure compliance at roughly 10,000 public sector facilities (plus labeling compliance at over 30,000 private sector facilities), we urge that periodic employee walkthroughs be continued. Moreover, we urge DHSS to consider developing an enhanced walkthrough requirement to include participation by members of labor-management safety and health committees and to consider using the walkthrough provision to verify the accuracy of the Right to Know Survey and survey updates.

Sincerely,

Rick Engler, for WEC and the N.J. Right to Know & Act Coalition

C: Jane Nogaki



(a)

**DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL
AND OCCUPATIONAL HEALTH**

**Worker and Community Right to Know Act Rules
Proposed Readoption with Amendments: N.J.A.C.
8:59**

Authorized By: Christine Grant, Acting Commissioner, Department of
Health and Senior Services

Authority: N.J.S.A. 34:5A-1 et seq., specifically 34:5A-30.

Proposal Number: PRN 1999-212.

Submit written comments by July 21, 1999 to:

Richard Willinger, Program Manager
Right to Know Program
NJ Department of Health and Senior Services
PO Box 368
Trenton, New Jersey 08625-0368
Phone: (609) 984-2202
Fax: (609) 292-5677

The agency proposal follows:

Summary

N.J.A.C. 8:59 was originally adopted on October 1, 1984 to implement the requirements of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. It was readopted on September 29, 1989 and September 28, 1994. Pursuant to Executive Order No. 66(1978), this chapter expires on September 28, 1999.

The chapter establishes a comprehensive system for the disclosure and dissemination of information about hazardous substances in the workplace and the environment to public employees, emergency responders, and community residents. The system includes an inventory of hazardous substances at public employer facilities on survey forms, the labeling of containers at covered private and public facilities, the education and training of public employees and emergency responders who are exposed or potentially exposed to the hazardous substances, and the availability of surveys and hazardous substance fact sheets to employees, emergency responders and community residents.

The Act was passed to reduce the significant incidence of illnesses and injuries to workers in the public and private sectors and to emergency responders, as well as known and potential illnesses and injuries to community residents from hazardous substances in the environment. The law was intended to provide information about hazardous chemicals to workers and community residents so that they can make reasoned decisions and take informed action about their employment and living conditions.

The Act's goals are to train public workers how to handle hazardous substances properly and respond to spills and other emergencies, to train emergency responders how to respond to spills and other emergencies, to inform public employees, emergency responders and community residents about the health hazards of hazardous substances to avoid illness and injury in the future and to address any current health effects they may be suffering from hazardous substances, and to inform community residents about the health hazards of substances that may be contaminating or potentially may contaminate their environment and adversely affect their health.

The Department conducted an internal review of the rules prior to this notice of proposed readoption. In its review of the rules, the Department determined that the rules adequately and reasonably provide the ability to execute the intent of the State statute. Additional review of the rules by the public will occur as a result of this readoption process.

The rules have been effective in implementing the goals of the Act since the last readoption in 1994. They have resulted in hazardous substance surveys (Right to Know Surveys) being provided to emergency responders, public employees and community residents for all the public facilities in New Jersey,

for emergency planning, education and training, and health and safety purposes. Hundreds of thousands of public employees have been trained and retrained about the hazardous substances they work with or in close proximity to, which has protected them from illness and injury from exposure to these hazards. In addition, hundreds of thousands of Hazardous Substance Fact Sheets have been disseminated to firefighters, hospitals, health departments, public employees, community residents, unions, and public and private employers which has increased their knowledge about the health and safety hazards of hazardous substances.

The rules are necessary and should be continued because of the ongoing need for public employees, emergency responders, and community residents to know where hazardous substances are located in their community and workplace, what their hazards are and how to deal with them, and whether they should seek medical attention, change work practices, or change their living conditions, as a result of exposure or potential exposure to these hazardous substances.

On November 13, 1995, the Act was amended by P.L. 1995, c.259, to change annual inventory reporting (the Right to Know Survey) to every five years, with annual updates, setting a due date of July 15 for return of the survey, and to change the requirement for update training about hazardous chemicals for public employees from annually to every two years.

It is now proposed to amend the rules that are being readopted to reflect the changes made by P.L. 1995, c.259, and to make other changes.

The following amendments are being proposed:

Since the rules were last published, the name of the Department has changed. Throughout the rules, the name of the Department is being updated from Department of Health to Department of Health and Senior Services.

The definition of "technically qualified person" is being amended in N.J.A.C. 8:59-1.3 to add Certified Safety Professionals as qualified trainers, because persons with this certification are professionals in the field of occupational health and safety who have demonstrated their knowledge of the field through exams and years of experience. Definitions for "Certified Safety Professional" and "Certified Industrial Hygienist" (who is also considered a technically qualified person to conduct Right to Know training) are being added.

A definition of "Right to Know Enforcement Officer" has been added. This phrase refers to Right to Know inspectors and is used in N.J.A.C. 8:59-8.

In N.J.A.C. 8:59-1.4(a), residential dwellings that are synonymous with a public facility are being exempted from having to complete a Right to Know Survey. Examples of such facilities include a sending school district (a small town which sends its students to schools in a neighboring school district) whose office is in someone's house, and a historic house operated by a State agency.

In N.J.A.C. 8:59-2.1, the changes made to the Act by P.L. 1995, c.259, regarding the Right to Know Survey are being reflected. They include changing the requirement for a complete inventory survey to be submitted from every year to every five years, with only new hazardous substances having to be reported in the intervening years, and setting a deadline of July 15 for completion of the survey. The last complete inventory survey covered calendar year 1993 and the next one will cover calendar year 1998.

The 1995 statutory changes also affect sections of the rules that make reference to an annual survey. In N.J.A.C. 8:59-2.2, the word "annual" is being deleted to indicate that an employer must always make a good faith effort to find out the unknown chemical components of a product whether they are completing the complete survey or an update.

In N.J.A.C. 8:59-3, the name of the Department of Environmental Protection and the name of the Bureau which considers Right to Know trade secret claims are both being updated.

N.J.A.C. 8:59-4.3(c) is being clarified to reflect the Department's obligation to send out hazardous substance fact sheets to employers who report new hazardous substances on their update Right to Know Surveys.

In N.J.A.C. 8:59-6.2, the change to the Act made by P.L. 1995, c.259, regarding update training is reflected. Existing, new and reassigned employees and volunteers who have received initial Right to Know training shall now receive update training every two years rather than every year.

In the training requirements on respirators and other personal protective equipment (PPE) in N.J.A.C. 8:59-6.3(b)3, there is some overlap between the Right to Know rule and standards adopted by the New Jersey Department of Labor pursuant to the Public Employees Occupational Safety and Health Act (PEOSHA). While the Right to Know rule requires training on respirators and other personal protective equipment, the PEOSHA Standards are more comprehensive in their requirements. Therefore, the rule is being amended to require that where a PEOSHA Standard exists regarding training about respirators, eye and face protection, head protection, foot protection, and hand

protection, it shall be complied with to meet the PPE training requirements of N.J.A.C. 8:59-6.3(b)3. This will reduce confusion among covered employers and promote efficiency in training.

Commensurate with the change in update training requirements from every year to every two years, the requirement to distribute Right to Know brochures to employees is being changed in N.J.A.C. 8:59-6.3(c) to every two years. Similarly, the wording is changed in N.J.A.C. 8:59-6.3(f) and (g) from annual to biennial (which means every two years). The word "bi-annual" may appear to be the appropriate word to use, but it actually means twice a year.

The requirement in the update training program (N.J.A.C. 8:59-6.3(g)3) for employees to walk through their facility to see where new hazardous substances are located is being eliminated, since the employees have already received a walkthrough during the initial training program. The Department has determined that this requirement is no longer necessary.

"Biennial" is being substituted for "annual" in N.J.A.C. 8:59-6.4, 6.5 and 6.6.

In N.J.A.C. 8:59-8.1 and 8.2, the citation to the statute is being corrected, and statutory citations are being added to N.J.A.C. 8:59-8.4, 8.6, 8.7 and 8.8.

The reference sources from which the hazardous chemicals on the Right to Know Hazardous Substance List are derived are being updated in N.J.A.C. 8:59-9.3. The last time this was done was in 1993 and it is important that the most up-to-date information be used by the Department in implementing the law.

The names of two sources are being added to the rule in N.J.A.C. 8:59-9.3. While the National Fire Protection Association's lists of the hazardous properties of hazardous chemicals has always been used by the Department in compiling the Right to Know Hazardous Substance List (Source #15), it was never included in the rules. It is now being added to the rules. The list of hazardous chemicals developed pursuant to Section 112(r) of the Federal Clean Air Act is being added as a source (Source #22) because it has been added by the New Jersey Department of Environmental Protection as a source for its Environmental Hazardous Substance List and every chemical on the Environmental Hazardous Substance List is automatically included on the Right to Know Hazardous Substance List. (See N.J.A.C. 8:59-9.2(a)2.)

Social Impact

The social impact of these rules has been positive, improving the health and welfare of New Jersey's public employees, emergency responders and community residents. Since promulgation of these rules, hundreds of thousands of public employees have been trained and retrained about the health and safety hazards of the hazardous substances with which they work and are exposed or potentially exposed to, how to handle these substances properly, and what actions to perform in the case of a spill or other emergency. Thousands of firefighters, police officers and other emergency responders have been trained how to handle spills and other emergencies involving hazardous substances.

As a result of these rules operating in concert with other State and Federal laws, there has been a substantial amount of education of public employees, emergency responders and community residents about the hazards of hazardous chemicals. Such education can only serve to improve the health and safety of public employees, emergency responders and members of the public. The rules enable firefighters, police, local government agencies and the public to evaluate risks to community safety and public health and plan for emergencies.

Education and information are critical to helping people protect themselves from being injured, from property being destroyed, and from contaminating the environment. It will prevent the deaths and illnesses caused by exposure to asbestos, benzene, silica, and other chemicals in the past, from occurring in the future. The Worker and Community Right to Know Act recognizes that society will always use hazardous substances in the workplace and transport them on the roads. Because of this, education and training about hazardous substances will always be needed for new employees and to convey new information to existing employees, emergency responders, and the public.

The worker protection provisions of the rules benefit approximately 1,600 public employers and 500,000 public employees, although not all public employees are directly affected, since some work at facilities where there are no hazardous substances and not all provisions of the Act apply to those facilities. Tens of thousands of emergency responders in fire and police departments throughout the State also benefit from the rules.

Economic Impact

The Right to Know law increased the cost of doing business for private companies having Standard Industrial Classification Codes (SICs) covered by the Law, and for public agencies. The costs include the annual fee assessment

of \$2.00 per employee (\$50.00 minimum) established in the Worker and Community Right to Know Act and the cost of labeling containers which are purchased and/or manufactured. The cost of compliance increases with the number of containers that need to be labeled and could range from under a dollar for an employer which purchases containers already properly labeled, to thousands of dollars for employers which need to label many containers of manufactured product or of purchased containers that need to be relabeled. Likewise, those employers hiring consultants to perform the job of labeling will find the cost of compliance to be proportional to the number of containers in the workplace.

For public employers, costs are incurred in allocating staff time to perform inventories and fill out surveys, allowing employees to attend training sessions, sending staff to training programs to become in-house trainers, and allocating staff time to label containers, or hiring consultants to perform the above activities.

These actions that have been taken by private and public employers have reduced illnesses and injuries among public employees including pain and suffering, have prevented and reduced damage to physical facilities and the environment, and have enabled emergency responders to respond more appropriately and quickly to reduce the extent of physical property and environmental damage from fires and spills of hazardous materials.

The 1995 amendments, which were implemented starting with the 1995 Right to Know Survey and 1995-96 training, have economically benefited public employers by significantly reducing the amount of work that has to be done to complete the Right to Know Survey in four out of every five years, and in reducing by half the cost of providing update hazardous substance training to exposed and potentially exposed employees.

The amendments to the proposed readopted rules will not cause any additional costs to be incurred by public or private employers.

Federal Standards Statement

The rules proposed for re Adoption with amendments do not impose standards on public employers in New Jersey that exceed those contained in analogous Federal occupational safety and health laws or regulations because the Federal Occupational Safety and Health Administration (OSHA) does not cover public employers. However, a different State law, the Public Employees Occupational Safety and Health Act (PEOSHA), has adopted a Federal OSHA Standard, 29 C.F.R. 1910.120, the "Hazardous Waste Operations and Emergency Response Standard," that regulates the training of emergency responders (primarily firefighters) and partially overlaps the requirements of the New Jersey Right to Know Act.

The New Jersey Right to Know Act is more stringent than 29 C.F.R. 1910.120 in that it is more specific in describing the minimum qualifications of the trainer who will be training the emergency responder, and requires the emergency responder to attend a training class for both initial and refresher training rather than being able to substitute "demonstrated competency" for attending class. The Department has adopted these more stringent provisions because of the importance of insuring that a trainer has proper qualifications, and because information about hazardous substances is so important that it should be presented in a classroom setting in addition to other venues. There is probably not an additional cost in regard to the trainer qualifications because most, if not all, hazardous materials trainers also meet the Right to Know requirements for a "technically qualified person." No studies have been done to ascertain how many emergency responders are meeting the requirements of 29 C.F.R. 1910.120 through "demonstrated competency"; therefore, it is not possible to estimate the actual additional cost involved in requiring them to attend a one to two-hour refresher training class. However, since most emergency response organizations conduct classroom training sessions for at least some of their employees and volunteers, it would not be a much greater expense to include those meeting the "demonstrated competency" standard. There would be no roadblock to meeting the more stricter Right to Know Act requirement under current technology.

The rules proposed for re Adoption with amendments do not impose standards on private employers in New Jersey that exceed those contained in analogous Federal community right to know laws or regulations because the Federal Emergency Planning and Community Right to Know Act (Title III of the Superfund Amendments and Reauthorization Act of 1986) does not regulate container labeling. A conflict in the 1980's between the New Jersey Right to Know Act and the Federal Occupational Safety and Health Act was resolved by the Federal court in the case of *New Jersey Chamber of Commerce v. Hughey*, 868 F.2d 621 (3rd Cir.), cert. den., 492 U.S. 920 (1989), in which it was decided that the labeling requirements of New Jersey's Right to Know Act were not preempted by Federal law because the New

Jersey requirement was based on protection of community residents (community right to know), and not the protection of workers.

Jobs Impact

The Department does not anticipate any jobs will be generated or lost as a result of the rules proposed for readoption with amendments. While the types of Right to Know trainers may change (those with Certified Safety Professional licenses may increase), the total number of professionals doing this training is not expected to increase or decrease.

Agriculture Industry Impact

The Worker and Community Right to Know Act regulates Right to Know labeling in a limited number of segments of the agriculture industry, as specified by Standard Industrial Classification Codes. They include: Lawn and Garden Services (0782), Manufacturers of Food and Kindred Products (2000) and Tobacco Products (2100), Wholesale Trade-Nondurable Goods dealers in Beer and Ale (5181), Wines and Distilled Alcoholic Beverages (5182), Farm Supplies (5191), Flowers, Nursery Stock, and Florists' Supplies (5193), and Tobacco and Tobacco Products (5194). There are many provisions in the existing rules which mitigate the burden of the rules on the agricultural industry, such as a complete exemption for containers which contain raw food materials, food additives, and finished food products intended for human or animal consumption which are regulated by Federal law, and an exemption for all other materials regulated by the Federal Food, Drug, and Cosmetic Act up to a 55 gallon drum or 450 pound container.

The amendments to the rules proposed for readoption will not cause any additional costs to be incurred by the agricultural industry.

Regulatory Flexibility Analysis

It is estimated that approximately 33,000 private employers are covered by the Worker and Community Right to Know Act. Of these, the majority are considered to be small businesses as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses are affected by the existing rules through the labeling requirements, which will continue to apply through the readoption with amendments. This impact was significantly reduced by the labeling amendments to the rules adopted on August 2, 1993. See 25 N.J.R. 864(a) and 3543(a).

In developing the proposed readoption of N.J.A.C. 8:59 with amendments, the Department balanced the need to protect public safety and the environment against the economic impact of the readoption with amendments and has determined that to further minimize the impact of the rules on small businesses would endanger the environment, public safety, and the health and safety of emergency responders, and, therefore, no further exemptions are provided based on business size. The amendments to the proposed readopted rules will not cause any additional costs to be incurred by small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:59.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

8:59-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

... "Certified Industrial Hygienist" means a person who has been certified by the American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, Ohio 45240-1634, (513) 742-2020.

"Certified Safety Professional" means a person who has been certified by the Board of Certified Safety Professionals (BCSP), 208 Burnwash Avenue, Savoy, Illinois 61874, (217) 359-9263.

... "Department" and "Department of Health and Senior Services" means the New Jersey State Department of Health and Senior Services unless the context clearly indicates otherwise.

... "Hazardous substance" means any substance, or substance contained in a mixture, included on the hazardous substance list developed by the Department of Health and Senior Services pursuant to N.J.S.A. 34:5A-5, introduced by an employer to be used, studied, produced, otherwise handled at a facility. Hazardous substance shall not include:

1.-2. (No change.)

3. Any hazardous substance which is a special health hazard substance constituting less than the threshold percentage established by the Department of Health and Senior Services for that special health hazard substance when present in a mixture. The threshold percentage for carcinogens, mutagens and teratogens shall be 0.1 percent;

4.-12. (No change.)

... "Right to Know Enforcement Officer" means an employee of the Department of Health and Senior Services who enforces the Worker and Community Right to Know Act.

... "Special health hazard substance list" means the list of special health hazard substances developed by the Department of Health and Senior Services pursuant to N.J.S.A. 34:5A-5 for which an employer may not make a trade secret claim.

... "Technically qualified person" means:

1. For training purposes, a person who is a registered nurse, a certified safety professional, or a certified industrial hygienist, or has a bachelor's degree or higher in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to hazardous substances;

2. (No change.)

3. For training purposes, a person who has successfully completed a Department of Health and Senior Services approved instructor training course.

4.-6. (No change.)

... "Trade secret registry number" means a code number temporarily or permanently assigned to the identity of a substance in a container by the Department of Health and Senior Services pursuant to N.J.S.A. 34:5A-15 and N.J.A.C. 8:59-3.6.

"Workplace Hazardous Substance List" means the list of hazardous substances developed by the Department of Health and Senior Services pursuant to N.J.S.A. 34:5A-5. The Workplace Hazardous Substance List is incorporated into the Right to Know Hazardous Substance List.

"Workplace survey" means a written document, prepared by the Department of Health and Senior Services and completed by a public employer pursuant to the Act, on which the employer shall report each hazardous substance present at his facility. The workplace survey is incorporated into the Right to Know Survey.

8:59-1.4 Covered employers exempt from provisions of the law

(a) Any public employer whose Right to Know survey transmitted to the Department of Health and Senior Services indicates that no hazardous substances are present at the facility shall be exempt from the provisions of the Act for that facility, except for the requirement to annually update the Right to Know survey pursuant to N.J.A.C. 8:59-2, and except for the provisions of N.J.S.A. 34:5A-33 and N.J.A.C. 8:59-8 providing for enforcement of violations of the Act. Any residential dwelling which meets this condition, including those located in State, county and local parks, shall be exempt from meeting the requirement of N.J.A.C. 8:59-2.

(b) Any public employer exempted from the provisions of the Act pursuant to this section who transmits to the Department of Health and Senior Services an update of the Right to Know Survey which indicates that a hazardous substance is present at the public employer's facility shall immediately be subject to all the provisions of the Act.

8:59-2.1 General provisions

(a) A Right to Know Survey shall be prepared by the Department of Health and Senior Services and mailed to every public employer covered under the New Jersey unemployment insurance law who is also covered by the Act.

(b) Every public employer shall report every five years each hazardous substance listed on the Right to Know Hazardous Substance List which is present at its facility, beginning with the 1993 Right to Know Survey.

(c) [Every public employer shall complete a Right to Know Survey every year.] In each of the four years between complete inventory surveys, every public employer shall report any new hazardous

substances listed on the Right to Know Hazardous Substance List which are present at its facility.

(d) Within 90 days of receipt of a Right to Know Survey, or by July 15, whichever is later, a public employer shall complete and transmit the survey to the Department of Health and Senior Services; the county health department, county clerk, or designated county lead agency, of the county in which the employer's facility is located; the local health department; the local emergency planning committee; the local fire department, and the local police department.

(e) (No change.)

8:59-2.2 Completion of Right to Know Survey

(a)-(d) (No change.)

(e) If a public employer does not know the chemical name and Chemical Abstracts Service number of the components of a substance, mixture, or intermediate, at the time of receipt of the [annual] Right to Know Survey, it shall make a good faith effort to obtain this information from the manufacturer or supplier. A good faith effort shall consist of two contacts by letter and/or documented phone call to the manufacturer or supplier. The public employer shall maintain this written documentation of its good faith effort.

(f)-(i) (No change.)

8:59-3.1 Authority

(a) (No change.)

(b) This subchapter is a jointly adopted rule of the Department of Health and Senior Services and the Department of Environmental Protection [and Energy] (See N.J.A.C. 7:1G-6).

8:59-3.3 Definitions

"Department" means, for purposes of this subchapter, both the New Jersey Department of Health and Senior Services and the New Jersey Department of Environmental Protection [and Energy], unless otherwise indicated.

8:59-3.4 General provisions

(a)-(d) (No change.)

(e) All documents containing the information claimed to be a trade secret and supporting information which are submitted, shall be submitted to the appropriate Department by certified mail return receipt requested, by personal delivery, or by other means which requires verification of receipt, the date of receipt, and the name of the person who receives the document at the Department. Such documents concerning the Right to Know Survey or labeling of containers shall be mailed or delivered to:

Manager, Right to Know Program
New Jersey Department of Health and Senior Services
[CN] PO Box 368
Trenton, NJ 08625-0368

Such documents concerning the environmental survey shall be mailed or delivered to:

Chief, Bureau of [Hazardous Substances Information]
Chemical Release Information and Prevention
New Jersey Department of Environmental Protection
[and Energy]
[CN] PO Box 405
Trenton, NJ 08625-0405

(f)-(i) (No change.)

8:59-3.5 Prohibited claims

(a) A trade secret claim may not be made to the Department of Health and Senior Services for the following information:

1.-3. (No change.)

8:59-3.6 Procedure for filing trade secret claims and maintaining trade secret information

(a) (No change.)

(b) Labeling shall be done as follows:

1. An employer who claims that labeling a container at his facility with the chemical name and Chemical Abstracts Service number of the hazardous or other substance in the container would reveal a trade secret, shall file a trade secret claim with the Department of Health and Senior Services by:

i.-ii. (No change.)

2.-8. (No change.)

(c)-(j) (No change.)

8:59-3.7 Confidentiality and security of trade secret information

(a)-(e) (No change.)

(f) Except as provided in N.J.A.C. 8:59-3.15 (7:1G-6.15), no person other than the Commissioner and his designated representatives and administrative law judges and their necessary staff conducting hearings on trade secret claims, shall have access to information regarding a trade secret claim. All designated representatives shall be employees of the State. Designations shall be made in writing. Designated persons other than administrative law judges shall sign an agreement to protect the confidentiality of the information before access is granted. Administrative law judges shall have access to trade secret information as necessary to preside over prehearing activities, conduct the hearing, render an initial decision, and return the record to either the Department of Environmental Protection [and Energy] or the Department of Health and Senior Services pursuant to N.J.A.C. 1:21.

(g)-(h) (No change.)

8:59-3.8 Decision-making agency on a trade secret claim

(a) The Department of Health and Senior Services is authorized to approve or deny a trade secret claim concerning:

1.-2. (No change.)

(b) The Department of Environmental Protection [and Energy] is authorized to approve or deny a trade secret claim concerning information reported on an environmental survey.

(c) Trade secret claims for labeling and reporting filed with both Departments shall be approved or denied jointly by the Department of Health and Senior Services and the Department of Environmental Protection [and Energy].

8:59-3.10 Request for trade secret information

(a)-(b) (No change.)

(c) The Department of Health and Senior Services shall render a decision on a request for the disclosure of trade secret information from a single employer within 120 days of receipt of the request and shall notify the requestor of its determination. The Department may extend this deadline for an additional 120 days if the request involves a large number of substances.

8:59-4.1 General provisions

(a) A hazardous substance fact sheet shall be developed by the Department of Health and Senior Services for each hazardous substance on the Right to Know Hazardous Substance List. This requirement does not include generic categories of substances.

(b)-(f) (No change.)

8:59-4.3 Transmittal to employer

(a) Upon receipt of a completed Right to Know Survey from a public employer, the Department of Health and Senior Services shall transmit to that employer a hazardous substance fact sheet for each hazardous substance reported by the employer on the Right to Know Survey.

(b) (No change.)

(c) Upon receipt of [the annual] a Right to Know Survey which reports new hazardous substances, the Department shall supply the public employer with any necessary additional hazardous substance fact sheets.

(d) (No change.)

8:59-5.3 Research and development laboratories

(a)-(b) (No change.)

(c) An employer that wishes to obtain a research and development laboratory exemption shall comply with the following procedure:

1. For public employers, the employer shall submit to the Department of Health and Senior Services a completed research and development laboratory exemption application on forms approved by the Department.

2. For private employers, the employer shall submit to the Department of Environmental Protection [and Energy] (DEP) a completed research and development laboratory exemption application on forms approved by [DEPE] DEP.

3. (No change.)

4. Upon receipt of a completed research and development laboratory exemption application, the Department of Health and Senior Services and Department of Environmental Protection [and Energy] shall jointly make a determination to grant or deny the application. A letter will be sent by the Department of Health and Senior Services (to public employers) or the [DEPE] DEP (to private employers) to the applicant advising them of the approval or denial of the application. The research and development laboratory exemption shall become effective upon receipt by the employer of a letter from the Department of Health and Senior Services or [DEPE] DEP approving the application.

5. (No change.)

8:59-5.6 Exclusions from the requirement to label

(a) Containers containing the following categories of hazardous or other substances shall be exempt from the requirements of labeling:

1.-2. (No change.)

3. Any hazardous or other substance which is a special health hazard substance constituting less than the threshold percentage established by the Department of Health and Senior Services for that special health hazard substance when present in a mixture. The threshold percentage for carcinogens, mutagens and teratogens shall be 0.1 percent;

4.-12. (No change.)

(b)-(h) (No change.)

8:59-6.2 Program for employees

(a) By December 31, 1985, a public employer shall have provided current employees with a complete education and training program[, and shall provide an education and training program for these employees annually thereafter]. Volunteers shall have received an education and training program by October 1, 1990. Employees and volunteers shall receive update training biennially (every two years) thereafter.

(b) A public employer shall provide new or reassigned employees with an education and training program within the first month of employment or reassignment with the exception of volunteers who shall receive an education and training program within six months of becoming a volunteer. Employees and volunteers shall receive update training biennially (every two years) thereafter. Volunteer firefighters should not respond to emergencies involving hazardous materials during this six month period until they have received the required education and training.

(c)-(d) (No change.)

(e) Prior to entering an employment agreement with a prospective employee, a public employer shall notify the prospective employee of the availability of Right to Know Surveys and appropriate hazardous substance fact sheets at the Department of Health and Senior Services; county health department, county clerk, or designated county lead agency; and employer's facility (including material safety data sheets at the facility) for the facility at which the prospective employee will be employed.

8:59-6.3 Contents of program

(a) (No change.)

(b) An education and training program for employees shall contain, at a minimum, the following:

1.-2. (No change.)

3. An explanation of the proper and safe procedures for handling, under all circumstances, the hazardous substances to which the employees are exposed or potentially exposed in the course of their employment, including the use and functioning of personal protective equipment, the policy and program for use of respirators, appropriate emergency treatment for exposure, procedures for cleanup of leaks and spills, and any special use conditions. This shall include an explanation about any operations in the work area which use hazardous substances. Employees who use personal protective equipment shall be given "hands-on" training in the proper use and functioning of personal protective equipment and [employees] the trainer shall disinfect the equipment before each reuse. Employees who use cleanup and firefighting equipment shall be given "hands-on" training in the use of cleanup and firefighting equipment. If a respirator is required to be worn by an employee, the employer shall comply with the requirements of the Public Employees Occupational Safety and Health Act's (PEOSH)

Respiratory Protection Standard, 29 CFR Part 1910.134, in lieu of the provisions above in the paragraph pertaining to respirators. If employees need to use other personal protective equipment, the employer shall comply with the appropriate PEOSH Standard for Eye and Face Protection (29 CFR 1910.133), Head Protection (29 CFR 1910.135), Foot Protection (29 CFR 1910.136), Hand protection (29 CFR 1910.138), and General requirements (29 CFR 1910.132), in lieu of the provisions above in this paragraph pertaining to personal protective equipment;

4. Information regarding the provisions of the Worker and Community Right to Know Act:

i.-iv. (No change.)

v. An explanation of the employee's right and relevant procedures to obtain a copy of the Right to Know Survey, hazardous substance fact sheets and material safety data sheets from the employer, from the county health department, county clerk, or designated county lead agency, or from the Department of Health and Senior Services; to obtain copies from the county health department, county clerk, or designated county lead agency, and Department of Health and Senior Services in confidence; and the employer's obligation to supply, without cost, copies of the Right to Know Survey and appropriate hazardous substance fact sheets to employees and, where appropriate and available, material safety data sheets, within five working days of a request;

vi. (No change.)

5.-7. (No change.)

(c) Every two years a public employer shall [annually] supply all employees with the Right to Know brochure and any other material designed and provided by the Department of Health and Senior Services, the Department of Environmental Protection, and the Department of Labor to inform employees of their rights under the Act at those facilities where hazardous substances are present. All new employees, regardless of potential exposure to a hazardous substance, shall receive the Right to Know brochure developed by the above-referenced departments, within the first month of employment.

(d)-(e) (No change.)

(f) If the only hazardous substance to which an employee is exposed is toner or developer for a copying machine when the employee periodically replenishes the toner or developer in the machine, or gasoline for a motorized vehicle when the employee periodically fills the vehicle or a small can with gasoline, the public employer is not required to provide the full education and training program (including a technically qualified trainer) or [annual] biennial training to the employee if the public employer:

1.-3. (No change.)

4. Provides the employee with the Right to Know brochure developed by the Departments of Health and Senior Services, Environmental Protection [and Energy], and Labor.

(g) An education and training program shall be given [annually] biennially (every two years) by a public employer to all employees who received the initial education and training set forth in (b) above, and who continue to be exposed or potentially exposed to products which contain hazardous chemical ingredients. The program shall be conducted by a technically qualified person. The contents of the program shall include, at a minimum:

1. Summary information about the Worker and Community Right to Know Act, including any changes in the rules. If a public employer chooses the option in N.J.A.C. 8:59-5.6(h) to label containers that are two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller, according to the labeling requirements of the OSHA Hazard Communication Standard, 29 CFR 1910.1200, the public employer shall explain to employees the Standard's requirements for labeling and other forms of warning; and

2. Chemical specific training for all new hazardous products and existing commonly used hazardous products. The Material Safety Data Sheets (MSDSs) and Hazardous Substance Fact Sheets (HSFSs) for these products shall be reviewed and the health effects, safety hazards, methods of controlling exposure, and appropriate work practices for the products, shall be explained. Any new information on the MSDSs and HSFSs for the commonly used hazardous products shall be reviewed. The program shall incorporate occupational health principles relevant to the employees

while discussing these products. Hands-on training in the use of appropriate personal protective equipment need not be given if it was given during the initial education and training program; and

3. A walkthrough of the facility to identify the location of any new hazardous products. The walkthrough can be conducted by a supervisor].

8:59-6.4 Documentation for program

(a) A public employer must maintain the following documentation of all initial and [annual] biennial Right to Know education and training programs:

1.-3. (No change.)

4. Whether the course is an initial or [annual] biennial program;

5.-9. (No change.)

(b) (No change.)

(c) Rosters of attendance at initial and [annual] biennial education and training programs, dates and locations of the programs, and whether it is an initial or [annual] biennial program, shall be maintained by a public employer for the duration of the employee's employment. The balance of the material required in (a) above shall be maintained until a Right to Know Enforcement Officer reviews and approves the training programs during an inspection, after which time this material may be disposed of for programs conducted prior to the year of inspection.

8:59-6.5 Subcontractors

(a) When a public or private subcontractor produces, uses or stores hazardous substances at a public employer's facility in such a way that the employees of the public employer are or may be exposed to the hazardous substances, the public employer shall find out the identity of the hazardous substances and provide health hazard and protective procedure information about the substances to exposed and potentially exposed employees during the [annual] biennial education and training program or upon request of an employee or employee representative, whichever occurs sooner.

(b) If not part of the [annual] biennial training program, such information may be provided to exposed and potentially exposed employees in writing. The public employer shall provide exposed and potentially exposed employees with appropriate hazardous substance fact sheets or material safety data sheets, if requested.

8:59-6.6 29 CFR 1910.120(q) Hazardous Waste Operations and Emergency Response Training

(a) (No change.)

(b) Firefighter training requirements are as follows:

1. (No change.)

2. [Annual] Biennial (every two years) Right to Know training can be combined with the annual refresher training required by 29 CFR 1910.120(q), however, "demonstrated competency" will not be allowed as a substitute for Right to Know [annual] biennial training. A Right to Know brochure must be distributed to all firefighters during the [annual] biennial training course.

3. Awareness and operational courses developed by other organizations may be used in place of the State Police program for Right to Know compliance upon submission to and approval by the Department of Health and Senior Services, Right to Know Program.

(c) (No change.)

8:59-7.1 Department of Health and Senior Services obligations

(a) The Department of Health and Senior Services shall maintain a file of all completed Right to Know Surveys received from public employers and hazardous substance fact sheets prepared by the Department or by public employers.

(b)-(h) (No change.)

8:59-7.2 Employer obligations

(a) (No change.)

(b) Every public employer shall post on bulletin boards in the facility readily accessible to employees, a notice of the availability of Right to Know Surveys, hazardous substance fact sheets, material safety data sheets, and the Right to Know Hazardous Substance List, from the employer, from the Department of Health and Senior Services, from the Department of Environmental Protection, and from the county health department, county clerk, or designated county lead agency. A poster

provided by the Department shall be used to meet the requirements of this subsection.

(c)-(j) (No change.)

8:59-7.3 County health department, county clerk, or designated county lead agency obligations

(a)-(b) (No change.)

(c) A county health department, county clerk, or designated county lead agency shall, upon request, provide to any person copies of the Right to Know Survey and hazardous substance fact sheet in a Spanish translation provided by the Department of Health and Senior Services, Department of Environmental Protection, or an employer.

(d) (No change.)

8:59-8.1 Violations

Whenever, on the basis of information available to him, the Commissioner of the Department of Health and Senior Services finds that an employer is in violation of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or any rule or regulation adopted pursuant thereto, the Commissioner of the Department of Health and Senior Services shall issue an order requiring the employee to comply, shall bring a civil action, shall levy a civil administrative penalty, or shall bring an action for a civil penalty, in accordance with N.J.S.A. [34:5A-33] 34:5A-31. The exercise of any of the remedies provided in this subchapter shall not preclude recourse to any other remedy so provided.

8:59-8.2 Civil administrative penalty

(a) The Commissioner of the [State] Department of Health and Senior Services is authorized pursuant to N.J.S.A. [34:5A-33] 34:5A-31(a)(3) and (d) to impose a civil administrative penalty of not more than \$2,500 for each violation and additional penalties of not more than \$1,000 for each day during which a violation continues after receipt of an order from the Commissioner to cease the violation.

(b)-(h) (No change.)

8:59-8.3 Standing to sue

(a) Any person may bring a civil action in law or equity on his or her own behalf against any employer for a violation of any provision of the Act or any rule and regulation promulgated pursuant thereto, or against the Department of Health and Senior Services for failure to enforce the provisions of the Act or any rule or regulation promulgated pursuant thereto.

(b) (No change.)

8:59-8.4 Right to enter employer's facility

(a) The Department of Health and Senior Services shall have the right to enter an employer's facility during the normal operating hours of the facility to determine the employer's compliance with the Act pursuant to N.J.S.A. 34:5A-29(a).

(b) Any local or county health department or regional health agency which has entered into an interagency agreement with the [department] Department, shall have the right to enter an employer's facility to determine the employer's compliance with the provisions of the Act and rules and regulations adopted pursuant thereto, within the territory under its jurisdiction. The local or county health department or regional health agency shall conduct this inspection during the normal operating hours of the facility and in accordance with guidelines established by the Department of Health and Senior Services for inspection of employer's facilities. Inspection reports and recommendations of the local health officials shall be transmitted to the Department of Health and Senior Services. All enforcement action shall be taken by the Department of Health and Senior Services.

8:59-8.6 Civil administrative order

(a) Whenever, on the basis of information available to him, the Commissioner of the Department of Health and Senior Services finds that an employer is in violation of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or any rule or regulations adopted pursuant thereto, the Commissioner of the Department of Health and Senior Services may, pursuant to N.J.S.A. 34:5A-31(a)(1) and (b), issue an order:

1.-4. (No change.)

(b)-(e) (No change.)

8:59-8.7 Civil action

The Commissioner of the Department of Health and Senior Services is authorized to commence a civil action in Superior Court for appropriate relief from a violation of the Act pursuant to N.J.S.A. 34:5A-31(a)(2) and (c). The relief may include an assessment against the violator for the costs of any investigation, inspection, or monitoring survey which led to the discovery and establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subchapter.

8:59-8.8 Civil penalty

(a) An employer who violates the Act, an order issued pursuant to N.J.A.C. 8:59-8.6, or a court order issued pursuant to N.J.A.C. 8:59-8.7, or who fails to pay in full a civil administrative penalty levied pursuant to N.J.A.C. 8:59-8.2, shall be subject, upon order of a court, to a civil penalty not to exceed \$2,500 for each day during which the violation continues, pursuant to N.J.S.A. 34:5A-31(a)(4) and (e).

(b) An employer who willfully or knowingly violates the Act, or who willfully or knowingly makes a false statement, representation, or certification in any document filed or required to be maintained under the Act, or who falsifies, tampers with or knowingly renders inaccurate, any monitoring device required to be maintained pursuant to the Act, is subject upon order of a court, to a civil penalty of not less than \$10,000 nor more than \$5,000 per day of violation, pursuant to N.J.S.A. 34:5A-31(a)(4) and (e).

(c) (No change.)

8:59-8.9 Inspection procedures

(a) Right to Know Enforcement Officers of the Department of Health and Senior Services are authorized to enter during normal operating hours any facility or other area where work is performed by a public or private employee of an employer; to inspect and investigate during normal operating hours within reasonable limits and in a reasonable manner, any such facility; and to review records required by the Act and rules and regulations promulgated pursuant thereto, and other records which are directly related to the purpose of the inspection.

(b)-(c) (No change.)

8:59-9.2 Contents of the Right to Know Hazardous Substance List

(a) The Right to Know Hazardous Substance List consists of the hazardous substances listed in Appendix A, which includes:

1.-2. (No change.)

3. Additional substances which the [department] Department has determined pose a threat to the health or safety of employees. The scientific evidence documenting the health or safety threat of the substances listed in Appendix A is contained in the [referenced] reference sources listed in Appendix A.

(b) (No change.)

8:59-9.3 Modification of the list

(a) (No change.)

(b) The Right to Know Hazardous Substance List shall be revised to reflect revisions to the following sources which are hereby incorporated by reference:

1. (Source #1) Occupational Safety and Health Administration, 29 CFR 1910—Occupational Safety and Health Standards, Subpart Z-Toxic and Hazardous Substances, [July 1, 1992, as amended by *AFL v. OSHA*, 965 F.2d 962 (11th Cir. 1992)] July 1, 1998.

2. (Source #2) "[1992-1993] 1998 Threshold Limit Values (TLVs) for Chemical Substances in the Work Environment," American Conference of Governmental Industrial Hygienists (ACGIH), [1992] 1998.

3. (Source #3) Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 49 CFR 172.101—Hazardous Materials Table, [October 1, 1992] October 1, 1998.

4. (No change.)

5. (Source #5) "[Sixth] Eighth Annual Report on Carcinogens, Summary [1991] 1998," National Toxicology Program, National Institute of Environmental Health Sciences, U.S. Department of Health and Human Services, [1991] 1998.

6. (Source #6) "Environmental Hazardous Substance List," New Jersey Department of Environmental Protection [and Energy], N.J.A.C.

7:1G-2, as amended [by P.L. 1991, c.235 on August 1, 1991] effective May 19, 1997 at 29 N.J.R. 2274(a).

7. (No change.)

8. (Source #8) Integrated Risk Information System (IRIS) Database, Human Health Assessment Group (HHAG), Office of Health and Environmental Assessment, U.S. Environmental Protection Agency (EPA), [January 31, 1993] January 21, 1999.

9. (Source #14):

i. "Prohibited and Restricted Use Pesticide List," New Jersey Department of Environmental Protection [and Energy], N.J.A.C. 7:30-2.3, [November 21, 1988] October 23, 1997.

ii. Pesticides classified for restricted use, United States Environmental Protection Agency, 40 CFR 152, [July 1, 1992] July 1, 1998.

10. (Source #15) "Fire Protection Guide to Hazardous Materials," contains NFPA 49 (Hazardous Chemicals Data), 325M (Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids), 491M (Manual of Hazardous Chemical Reactions) and 704 (Recommended System for the Identification of the Fire Hazards of Materials), National Fire Protection Association (NFPA), 1997.

[10.]11. (No change in text.)

[11.]12. (Source #17) [1990] 1996 North American Emergency Response Guidebook, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, [March 31, 1990] 1996.

[12.]13. (Source #18) List of Toxic Chemicals, Section 313, Title III—Emergency Planning and Community Right to Know, Superfund Amendments and Reauthorization Act of 1986 (SARA), Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 40 CFR 372.65, [July 1, 1992] July 1, 1998.

[13.]14. (Source #19) List of Extremely Hazardous Substances and Their Threshold Planning Quantities (TPQ), Section 302, Title III—Emergency Planning and Community Right to Know, Superfund Amendments and Reauthorization Act of 1986 (SARA), U.S. Environmental Protection Agency, 40 CFR 355—Emergency Planning and Notification, Appendix A, [July 1, 1992] July 1, 1998.

[14.]15. (Source #20) List of Hazardous Substances and Reportable Quantities (RQ), Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), U.S. Environmental Protection Agency, 40 CFR 302, Table 302.4, [July 1, 1992] July 1, 1998.

[15.]16. (Source #21) Hazardous Wastes from the P and U Lists, Resource Conservation and Recovery Act (RCRA), U.S. Environmental Protection Agency, 40 CFR 261.33, [July 1, 1992] July 1, 1998.

17. (Source #22) List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention (Table 1) and List of Regulated Flammable Substances and Threshold Quantities for Accidental Release Prevention (Table 3), Section 112(r), Federal Clean Air Act Amendments, U.S. Environmental Protection Agency, 40 CFR 68.130, Tables 1 and 3, July 1, 1998.

(c)-(g) (No change.)

8:59-12.1 General provisions

(a) Consultants who conduct and consulting agencies which provide the Right to Know education and training program to a public employer shall possess a current certification, in good standing, issued by the Department of Health and Senior Services.

(b)-(c) (No change.)

(d) The Department of Health and Senior Services shall determine if the 30 hours of hazardous substance training required by N.J.A.C. 8:59-1.3 for a technically qualified person are met. Documentation, such as course certificates and course outlines, shall be submitted to the Department with the application for certification in support of the 30 hours of training. Right to Know education and training programs shall cover all topics as specified in N.J.A.C. 8:59-6.

(e) (No change.)

(f) Update meetings will be scheduled by the Department of Health and Senior Services in order to ensure uniformity and accuracy in Right to Know education and training programs.

(g) All consultants and consulting agencies shall inform the Department of Health and Senior Services, every month, of upcoming

Right to Know education and training programs to be conducted, and shall permit representatives of the Department of Health and Senior Services to attend, evaluate and monitor the Right to Know education and training programs. This notification shall be submitted at least one week prior to the first training session in that month.

(h) Any advertisement by a consultant or consulting agency of their Right to Know certification by the Department of Health and Senior Services shall specify that the certification only applies to New Jersey Right to Know education and training of public employees and shall specify provisional or permanent status.

(i) All consultants and consulting agencies shall cooperate fully with the Department of Health and Senior Services in all matters which pertain to this rule.

8:59-12.11 Suspension or revocation of certification

(a) A consultant may have his or her certification suspended or revoked for:

1. (No change.)
2. Failure to adequately present either the topics set forth in N.J.A.C. 8:59-6, or any other materials required by the Department of Health and Senior Services pursuant to N.J.A.C. 8:59-6.3(c);

3.-5. (No change.)

(b) A consulting agency may have its certification suspended or revoked for:

1. Failure to adequately present either the topics set forth in N.J.A.C. 8:59-6, or to present any other materials required by the Department of Health and Senior Services pursuant to N.J.A.C. 8:59-6.3(c);

2.-4. (No change.)

(c) A consultant whose provisional certification or certification is suspended or revoked may not reapply for provisional certification until six months have elapsed after the date of suspension or revocation. When reapplying for provisional certification, the consultant shall present documentation of having taken appropriate courses to develop appropriate knowledge in the areas in which they were found to be deficient. The fee for initial certification application shall apply. If provisional certification is granted, it shall be considered probationary provisional certification and all training conducted by the consultant shall be done under the supervision of the Department of Health and Senior Services.

(d) A consulting agency whose provisional certification or certification is suspended or revoked may not reapply for provisional certification until six months have elapsed after the date of suspension or revocation. When reapplying for provisional certification, the consulting agency shall present documentation that its consultant trainers have taken appropriate courses to develop appropriate knowledge in the areas in which they were found to be deficient. The fee for initial certification application shall apply. If provisional certification is granted, it shall be considered probationary provisional certification and all training conducted by the consulting agency's trainers shall be done under the supervision of the Department of Health and Senior Services.

8:59-12.12 Hearings for consultants and consulting agencies when certification has been denied, revoked or suspended

(a) When the Commissioner of the Department of Health and Senior Services proposes to deny an application for certification, or revoke or suspend a certification, the consultant or consulting agency shall have the right to an informal hearing under (b) below or a formal hearing under (c) below or both.

(b) An informal hearing before the Commissioner of the Department of Health and Senior Services or his or her designee may be held provided a written request is submitted within 20 days after the notice has been received that the Commissioner [of Health] proposes to deny an application for certification, or to revoke or suspend a certification. When the hearing is held before the Commissioner [of Health] or his or her designee, the Commissioner or his or her designee shall state his or her findings and conclusions in writing and transmit a copy to the consultant or consulting agency.

(c) A formal hearing before the Office of Administrative Law may be held provided a written request is submitted by the applicant within 20 days after the notice has been received that the Commissioner of the Department of Health and Senior Services proposes to deny an

application for certification, or to revoke or suspend a certification, pursuant to N.J.S.A. 34:5A-31. The procedures governing all formal hearings shall be in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 34:5A-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1.



NEW JERSEY WORK ENVIRONMENT COUNCIL

1543 BRUNSWICK AVENUE, FIRST FLOOR • LAWRENCEVILLE, NJ 08648-4627
PHONE: (609) 695-7100 • FAX: (609) 695-4200 • EMAIL: NJWEC@AOL.COM

October 31, 1999

Commissioner Robert Shinn
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625

Dear Commissioner Shinn:

We have a number of questions and outstanding issues concerning the Community Right to Know program, most of which date from our intensive discussions with DEP staff in 1997:

- 1) In my letter of June 25, 1999, I wrote "In your letter of March 16, 1998, you indicated that "We plan to publish the names of employers who did not return the 1996 Community Right to Know surveys by July 1998." This statement was in the context of commitments to issue *press releases* naming firms that have not returned surveys. Please provide copies of all DEP press releases that have been issued since September 30, 1997 relating to the surveys and the names of employers who have not completed those surveys or who have otherwise not complied with the Act." **You appear to be violating this commitment, since, to our knowledge, no press releases have been issued to-date.**
- 2) Please provide the name and address of the contractor who is responsible for collecting penalties from employers for not returning the Community Right to Know Survey. Please provide copies of all reports this contractor has made to DEP. *This letter is a standing request for all such reports to be sent to WEC in the future.*
- 3) Please confirm how many full time public outreach staff the DEP has devoted to assisting unions, management, and communities retrieve, understand, and use data collected by the DEP under its administration of the Worker and Community Right to Know Act, Toxic Catastrophe Prevention Act, and Pollution Prevention Acts.
- 4) Please explain what your regulatory process will be for RTK regulations that sunset within the next year and provide a timeline, including hearing dates, if known.
- 5) We understand that the Right to Know Annual Report for 1995-1996 is still not completed. When will it be available? Do you anticipate returning to an annual publication schedule?

Sincerely,

Rick Engler
Director

October 31, 1999

Commissioner Robert Shinn
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625

Dear Commissioner Shinn:

It is our understanding that Community Right to Know inventory data for roughly 33,000 private sector facilities using hazardous chemicals that now is accessible on the Public Access System will no longer be available in the year 2000 due to Y2K problems. We also understand that the Department may wish to place this information on the Internet. We support this goal.

We have the following questions concerning this:

- 1) What is the target month and year for when Internet access to Community Right to Know surveys will be available to the public?
- 2) What other information does DEP plan to put on the Internet? Will you include data from the Pollution Prevention and TCPA programs?
- 3) Who will be designing the data base to accomplish this? Will it be done by the DEP Office of Information Management, the state Office of Information Technology, and/or outside consultants or vendors? If done by outside vendors, please indicate their name and address.
- 4) What operating system will be deployed, i.e. NT, Solaris, or other Unix systems?
- 5) What will be the back end data base, i.e. Oracle, DB2, Sequel Server 7.0?
- 6) What front-end development tools are you planning to use, i.e. Visual Basic, Power Builder, Java, (or some version of Java)?
- 7) What capabilities will the web site have? Can the public download files? Can the public search the database on-line? Can the public submit requests on the site? Will the site be able to receive e-mail? Will facilities be able to enter their inventory data directly on the site? Will you link this site to the DHSS site that contains *Hazardous Substance Fact Sheets*? What other links will be provided?

8) What provisions, if any, are you making for public input and outside technical evaluation of this project during the planning and implementation stages? What consultation will there be with the DHSS Right to Know Program (much of this project could benefit the DHSS, at a major cost saving, since public facility surveys should also be placed on the Internet)?

9) What plans do you have to notify current users of the Public Access System, specifically firefighters and other emergency responders, that the system is no longer functioning? What alternative methods to provide them inventory data will be used until Internet access is available?

Thank you for your assistance with this inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Engler", with a long, sweeping horizontal stroke extending to the right.

Rick Engler
Director

C: Jane Nogaki, Co-Chair, NJ Right to Know & Act Coalition
Tom Canzanella, President, Firefighters Association of N.J., IAFF, AFL-CIO
Bill Lavin, President, N.J. Firemen's Mutual Benevolent Association
Richard Willinger, Program Manager, Right to Know Program, DHSS