

# New Jersey Right to Know & Act Coalition

223 Park Avenue, Atco, New Jersey 08004 (609) 767-1110; (609) 8669405

February 24 1995

Governor Christine Todd Whitman  
The Statehouse  
Trenton, New Jersey 08065

Dear Governor Whitman:

We are writing to express our grave concern about your Administration's apparent policy to dismantle the New Jersey Worker and Community Right to Know Act through policy changes and budget cuts which we believe are a threat to public health. We also request a meeting with you to discuss this.

The Worker and Community Right to Know Act was signed into law by Governor Kean in 1983. The law requires labeling of chemicals, production of Hazardous Substance Fact Sheets, employer reporting of chemical use, and public employee training. The law benefits workers, consumers, physicians and public health professionals, firefighters and other emergency responders. The law also helps protect public school students -- our children -- and school personnel who face potential chemical exposure in laboratories, photography dark rooms, metal and wood shops, and other learning environments.

Your own Administration's Labor Department workers' compensation award data indicates a great increase in reported occupational cancer, chemical poisonings, lung and nervous system disease. Clearly this is the time to *strengthen* the Right to Know Program, not to gut it.

Our concern about your Administration's policy on Right to Know focuses on the following areas:

1) **Elimination of universal labeling.** The universal labeling provision of the Act (34:5A-14b.) requires that the real chemical names of chemicals be on container labels. Without this requirement, employers, including public employers, can use codes or trade names to hide the true identity of chemical substances. Eliminating universal labeling allows employers, by mistake or intent, to not tell their employees or emergency responders about the chemicals they may be exposed to.

At your direction, the Departments of Health and Environmental Protection are developing a Memorandum of Understanding to transfer responsibilities for labeling in the private sector from DOH to DEP. We have been told by senior DEP staff that the DEP "has no worker protection programs or authority" and that universal labeling, after the transfer to DEP, would be replaced by some alternative labeling system covering only large quantities of chemicals. We also have reviewed your remarks to the Business and Industry Association Public Policy Forum on December 6th, 1994. You told the BIA that you were planning to "streamline" DOH and DEP joint management of the Right to Know Act. We interpret that to mean that you propose the ending of universal labeling through this transfer.

We have expressed our adamant opposition to both the transfer of labeling responsibility to DEP and the elimination of universal labeling to Health Commissioner Fishman and DEP Commissioner Shinn. However, while Commissioner Fishman has agreed to meet with us again "...when the proposed memorandum of understanding...is more fully developed" he has failed to affirm the importance of universal labeling to public health. We fear that such a meeting will occur only *after* final policy decisions are reached.

**2) Elimination of many Hazardous Substance Fact Sheets.** The Hazardous Substance Fact Sheet provision of the Act requires the Health Department to prepare and update fact sheets for hazardous chemicals. These fact sheets provide vital information on acute and chronic health effects, ways to prevent exposure, and emergency response measures. These fact sheets provide accurate and readable information in a consistent format. In contrast, Material Safety Data Sheets have been found by objective scientific researchers to be difficult to understand, incomplete, and incorrect, particularly in regard to health effects information. If you eliminate DOH production of Hazardous Substance Fact Sheets you force the public to rely on the Material Safety Data Sheets issued by the companies that produced the chemicals. There are many examples of past chemical hazard cover-ups by chemical producers; asbestos is the most well known. As with the elimination of universal labeling, your policy would allow the chemical industry to hide chemical hazards from workers, firefighters, public school personnel, and others.

**3) Cutting the Right to Know Budget dismantles the overall Right to Know Program.** The Right to Know Program is funded by the fee system established by the Act in 1983. This fee system requires each covered employer that uses chemicals on the DEP's Hazardous Substance list to pay an annual fee of \$2 per employee. Funds are divided between the Departments of Health, Environmental Protection, and Labor.

***Your Administration has already made decisions that severely cut funding for the Right to Know Program.*** On July 18, 1994 the DEP re-adopted the Community Right to Know regulations and eliminated over 2,000 substances that formerly had to be reported to the DEP on the Annual Right to Know Survey. The number of hazardous substances was drastically reduced to the point that *at least* 25% of covered facilities will no longer have to report; nor will these facilities have to pay any fee. As of December 15, 1994, the DEP estimated that fee system revenues for FY '96 could be as low as \$2 million, compared to about \$2.9 million annually for the past several years.

In addition, the Right to Know Trust Fund that included past surplus revenues is depleted and cannot contribute to the Right to Know operating budget. According to the DEP, "With the depletion of those reserves, the Right to Know programs in both Departments will be unable to sustain the current program level." Proposed FY '96 funding for Right to Know has been cut by 40% (\$1.8 million) in three state departments and 21 counties. Program staffs will be cut. Fact Sheets will not be produced. Educational and consultative efforts for employees and employers will suffer. Inspections and enforcement will be minimal. This will result in unsafe facilities and increased health and safety risks for New Jersey citizens.

We have asked Commissioner Fishman to provide us with a plan to insure adequate revenue for the Right to Know Program. To-date, he has not done so. (We also note that DEP's removal of 2,000 substances from the Hazardous Substances list was done without any scientific or public health justification).

We recognize that you want to stop the loss of jobs in New Jersey. We share that goal. However, weakening the Right to Know Program will not further that end. There is not a shred of credible evidence that job loss has resulted from the Right to Know Act. The chemical industry could create jobs in New Jersey if they wanted to. They are very profitable. According to the *Chemical Manufacturers Association News* for January 1995, "If trends continue, chemical industry profits for 1994 could exceed \$29 billion, topping the 1989 peak of \$24.5 billion."

The destruction of New Jersey's Right to Know Program will prove a significant threat to the health and safety of workers, consumers, firefighters and emergency responders, and public school students and personnel.

We request a meeting with you as soon as possible to discuss an alternative approach based on hazard prevention. This requires saving and strengthening the Right to Know program. Please contact Jane Nogaki at (609) 767-1110 to coordinate such a meeting. Thank you for your consideration.

Sincerely,

/s/

Jane Nogaki, Co-Chair, New Jersey Right to Know & Act Coalition  
Eric Scherzer, Co-Chair, New Jersey Right to Know & Act Coalition  
Bill Kane, President, New Jersey Industrial Union Council, AFL-CIO  
Dottie Wirth, Chair, New Jersey Environmental Federation  
Charles Steinell, President, New Jersey Firemen's Mutual Benevolent Association  
John Loos, Legislative and Political Coordinator, Communications Workers of America, District 1  
Mark Dudzic, President, Oil, Chemical, and Atomic Workers District 8 Council  
Marie Curtis, Director, N.J. Environmental Lobby  
Myles O'Malley, Director, White Lung Association of New Jersey  
Curtis Fisher, Environmental Advocate, N.J. Public Interest Research Group  
Wynne Falkowski, Coalition Against Toxics  
Amy Bahruth, Labor Representative, N.J. Right to Know Advisory Council  
Frank DeMaria, President, New Jersey State Council of Machinists  
Sandra Mohr, M.D., Assistant Professor, UMDNJ, Robert Wood Johnson Medical School  
Michael Gochfeld, Professor, UMDNJ, Robert Wood Johnson Medical School

cc: DOH Commissioner Fishman  
DEP Commissioner Shinn  
DOL Commissioner Calderone  
DOP Commissioner Anselmini  
Peter Verniero, Chief of Staff  
Jane Kenny, Chief of Policy & Planning  
Michael Torpey, Acting Chief Counsel  
Judy Jengo, Environmental Advisor  
John Kohler, Chief of Staff, DOH  
Mark Smith, Chief of Staff, DEP

## WORKER MEMORIAL DAY - APRIL 28, 1995

Dear Governor Whitman:

We are working people and New Jersey citizens. Some of us are also employees of NAPP Technologies in Lodi which exploded and killed four workers one week ago. We are requesting a meeting with *you* concerning the fate of our Worker & Community Right to Know Law and of NAPP employees. We think it is clear that a meeting with you to discuss the fate of the Right to Know Law is appropriate. And we also want to discuss what will happen to the NAPP workers and their families and how State government can insure that they will not suffer further as a result of this tragedy.

Name (Please print)	Address	City, State, ZIP	Area Code/Telephone	Union/Group

Please contact Bill Kane, President of the IUC, John Hudson, Vice President of the Amalgamated Clothing & Textile Workers, or Jane Nogaki of the Right to Know Coalition to arrange a meeting.



# Newark Star Ledger Editorial

## *Sunday, March 5, 1995*

### VIEWPOINT

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#### *A right to know*

New Jersey has, over the years, enacted some of the strongest environmental laws in the nation. These are imperiled by policy changes proposed by Gov. Christie Whitman.

The matter has come to a head in a dispute in which some environmentalists, union members and firefighters claim a move by the Governor will result in further endangering the lives and health of workers.

At issue are policy changes proposed by the Whitman administration which detractors say amount to a dismantling of a law requiring manufacturers to tell workers and the public about toxics used in the workplace. The administration's posture, they charge, is that less information is better.

The administration is accused of quietly gutting New Jersey's 12-year-old right-to-know law through policy changes and budget and staff cuts. If carried through, the actions could result in less protection for workers and more risks for the communities where the hazardous chemicals are used, maintains the coalition.

The Governor claims the coalition's concerns are much ado about nothing. But people have a tendency to be suspicious when laws aimed at protecting the health of workers are suddenly revised or policy is shifted for budgetary reasons. When changes are made, it should be clearly articulated what benefits will accrue from the adjustments. That has not been the case, so far.

The coalition is fearful that the changes will not bode well for the workers. "The government should be strengthening safety and health protections, not weakening them. Future tragedies should be prevented," said Kevin O'Brien, who contends his father died as a result of being exposed to harmful chemicals in his job at a Perth Amboy oil refinery.

In campaigning for the Statehouse, Whitman alluded to complicated, unnecessary and burdensome regulatory statutes that discouraged business investment in the Garden State. There is some validity to that argument in some areas. But when it comes to worker safety, it is always better to err on the side of caution.

Streamlining the state's right-to-know law is not a wise tradeoff to enticing business. The new policy would reduce the number of chemicals that must be reported and lower the threshold for reporting use of hazardous substances.

That's not the way to go. Public safety must take precedence over corporate profits. Let's leave the law alone and find other ways to make New Jersey business-friendly.

# **New Jersey Right to Know & Act Coalition**

452 East Third Street Moorestown, N.J. 08057  
609 866-0920

December 16, 1996

**RE: Right to Know County Lead Agency Survey**

Dear Right to Know Coordinator:

The New Jersey Right to Know & Act Coalition is an alliance of over 100 environmental, labor, firefighter, and public health organizations working to use, protect, and strengthen New Jersey's Worker and Community chemical Right to Know Act. Our Coalition is currently developing a report on public use of our state law to show that it is important in helping to protect health and the environment.

We would be most appreciative if you could help us with our study by filling out the enclosed brief questionnaire concerning your involvement with the Right to Know law. We are particularly looking for "success stories" on how the law proved valuable in protecting worker and public health and the environment.

Everyone who returns a completed questionnaire will get a free copy of the report. Please return the survey by January 7, 1997. Thank you for your assistance.

Sincerely,



Rick Engler  
for the Right to Know & Act Coalition

cc: Richard Willinger, Program Manager, Right to Know Program, DHSS

P.S. If you have any questions or would prefer to talk briefly on the telephone rather than to complete the questionnaire, please call me at (609) 866-0920.

rtk973

## County Lead Agency Right to Know Questionnaire

(Please also use other side if desired).

1) Here is an example of how the Right to Know law contributed to worker safety, firefighter or other emergency responder safety, community protection, and/or public or environmental health in our county:

2) We have used RTK information to (example, alert neighbors, develop emergency response plans, express concerns with a plant manager, etc.):

3) I have the following suggestions on how the Right to Know Program might be improved (individuals/counties making any suggestions incorporated in the report will **not** be specifically identified in the report; please give us *your* personal opinion):

4) May we call you if we have further questions?    ☐ YES    ☐ NO  
If yes: DAYTIME PHONE \_\_\_\_\_

Name \_\_\_\_\_

County \_\_\_\_\_

**Thank you!**

# New Jersey Right to Know & Act Coalition

223 Park Avenue Atco, New Jersey 08004 (609) 866-0920 or (609) 767-1110

January 8, 1997

Governor Christine Todd Whitman  
The Statehouse  
Trenton, New Jersey 08065

Dear Governor Whitman:

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

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

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

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

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

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

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

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

Sincerely,

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

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

TNG10/CWA/AFL-CIO rtk97L





## New Jersey Right to Know & Act Coalition

January 8, 1997

To: Governor Whitman

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4. Disclose the Dangers: Restore Chemical Reporting

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

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

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

#### 5. Encourage Public Participation

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

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

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

3) The DHSS should develop, in consultation with teacher unions, administrators, and parent organizations, a RTK training program designed specifically for public school personnel and students. One part of this program should be developed for high school chemistry classes.

4) The DEP and DHSS should hold an annual workshop on RTK for New Jersey librarians. According to a Georgetown University study, public libraries are the first place citizens look when searching for information on hazardous materials in their community. Pennsylvania and Massachusetts have already developed successful librarian education programs on toxic hazards.

5) The DHSS should adopt a new policy allowing an employee representative the right to accompany DHSS inspectors on inspections of facilities to assist them in determining whether their employers are complying with labeling requirements. Employees are most familiar with their workplaces and could be of invaluable assistance in locating unlabeled or improperly labeled chemical containers. This accompaniment right has been implemented by the federal Occupational Safety and Health Administration since 1970 with few problems.

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

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

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

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

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

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



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

## **7. Adequately Fund the Right to Know Program**

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

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

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

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

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

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

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

## 9. Improve Right to Know Protection for Public Employees

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

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

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

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

## 10. Support Our Right to Know More

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

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

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

*For more information, contact:*

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

# RECOMMENDATIONS TO GOVERNOR WHITMAN ON RIGHT TO KNOW

Presented in January 8, 1997 Letter

## PRIORITIES

1. Produce *Hazardous Substance Fact Sheets* As Required By Law/Spanish language Fact Sheets
2. Support Chemical Hazard Placarding Legislation - Assembly Bill 2118

3. Restore Chemical Reporting; Require Employers to Report Using Department of Transportation List with 100 lb. Thresholds

on this remember we don't want  
one overall list because it could have  
10 chemicals on it

## 4. Enforcement Issues

Issue Fines for Labeling Violations (DHSS) — take a hard look / prioritizing  
pursuing discussions

DAVID  
cheek  
act ← Collect Right to Know Fines Due (DEP) — AOL problem - tied up in appeals

Issue Fines for Violations of the Pollution Prevention Act (DEP) needs to talk to  
Bob Shinn

Publicize the Names of Right to Know Violators (DHSS & DEP)

— just started issuing enforcement press  
releases — prioritization

## OTHER ISSUES PRESENTED IN JANUARY 8 LETTER

### Public Outreach/Participation

- ye? Distribute Public Service Ads in English and Spanish
- Sponsor Annual Workshop for Workers, Firefighters & Public
- Develop RTK Workshop for Public School Students and Personnel
- Develop RTK Workshop for Librarians

*collaborate with host organ.*

*legal opinion* Allow Employee Reps. to Accompany DHSS Labeling Inspections - *Legal*

### Fact Sheet Related

- Update Fact Sheets with Information About New Hazards
- Send Fact Sheets to Public Employers on New Chemicals
- Improve Access for Private Sector Workers to Fact Sheets

### Funding

Support Adequate Right to Know Funding

*will look at that*

### Other Issues

- Appoint Right to Know Advisory Council - *letter asking for recommendations*
- Coverage for *Work First New Jersey* Participants - *admin support*
- Improve Right to Know for Public Employees - *followup on technical*
- Support Federal "Right to Know More" Legislation and Funding for the *Chemical Safety & Accident Investigation Board*

*} will talk to Wash DC office  
will give us letter*



March 15

Eileen McGinness Chief of Policy  
Liz Murray Deputy Chief of Policy  
Bob Friant (sp.)

- dredging
- w/ Fair
- very complicated

need to talk to Counsel & Chief of Staff

① → no more than 3 weeks written response

→ Will respond to every issue in writing

① \$2,300 - \$3,000 per sheet HSFS

\$500,000 - \$1 million - will do everything to identify funds

- plan will address Spanish language versions

② Bob Friant - 72 hour provision  
how many comm. ordinances NEPA now  
who bears cost? → Can't give definitive answer  
particulars

Califormia uses NEPA

SAID DOT is best system

hotline  
guidebooks  
not reinventing wheel

To: Steve  
Andrassen  
From: R Engler



State of New Jersey  
DEPARTMENT OF HEALTH AND SENIOR SERVICES  
CN 360  
TRENTON, N.J. 08625-0360

CHRISTINE TODD WHITMAN  
Governor

March 14, 1997

LEN FISHMAN  
Commissioner

Phyllis Salowe-Kaye, Executive Director  
New Jersey Citizen Action  
400 Main Street  
Hackensack, NJ 07601

Dear Ms. Salowe-Kaye:

As you may know, the Right to Know Advisory Council was established in the Department of Health (now Department of Health and Senior Services), pursuant to P.L. 1983, c. 315. The Council consists of 11 members appointed by the Governor, with the advice and consent of the Senate. The Council memberships, duties and powers of the Council are outlined in sections 18, 19 and 20 of the statute, respectively (copy enclosed).

At the present time, there are a number of vacancies on the Council, as well as certain seated members in holdover status. In order to ensure appropriate membership on the Council, I would like to solicit your recommendations for Council membership.

Using the categories for membership outlined in section 18 of P.L. 1983, c. 315 as a guide, I am interested in receiving the names and resumes of individuals whose participation and expertise your organization believes qualify for Council membership. If applicable, please feel free to provide recommendations for more than one category and to submit at least two candidates for each category. Please forward a list of names and resumes by April 4, 1997 to:

Elsa Sieracki  
Office of the Commissioner  
Department of Health and Senior Services  
CN 360  
Trenton, NJ 08625-0360

Once categorized, I will forward all recommendations to the Director of Appointments, Office of the Governor for review and consideration. Should you have any questions, please feel free to call me. Ms. Sieracki can also be reached at 609-292-7837.

Thank you for your consideration.

Sincerely,

*Len Fishman*  
Len Fishman  
Commissioner



# NEW JERSEY STATE INDUSTRIAL UNION COUNCIL, AFL-CIO

**PRESIDENT**  
BILL KANE, UAW

**SECRETARY-TREASURER**  
LOIS CUCCINELLO, OPEIU

**FIRST VICE PRESIDENTS**  
MICHAEL KINSORA, UFCW  
ROBERT PURSELL, CWA  
C. ROZ SAMUELS, AFT

**VICE PRESIDENTS**  
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Dominick Critelli, IFPTE  
Frank Darcy, ESSEX/W. HUDSON CLC  
Joseph Del Grosso, AFT  
Donald Dileo, MERCER CLC  
Peter Fiorini, UCA  
Guy Fleming, OCAW  
Victor Garcia, I199J  
Carol Gay, CWA  
Sai Giardina, UNITE  
Dolores Gorczyca, WAAC  
Sherryl Gordon, AFSCME  
Rosalie Griffiths, CWA  
Charles Hall, Sr., RWDSU  
Nathaniel Holmes, IAM  
Kevin Hussey, BMW  
Ernesto Jofre, UNITE  
John Johnson, SEIU  
Gene J. Kaniecki, UNITE  
Wells Keddie, AAUP  
Kathy King, CWA  
Emanuel Leventhal, UNITE  
Pat LoPresti, ALA  
Philip J. McLewin, BERGEN AFL-CIO  
Robert Meade, ICWU  
Donald Norcross, SO. N.J. CLC  
Robert Rao, PSSDC  
Michael Roccia, RWDSU  
John Ronches, CIR  
Jay Sackman, I115 DC  
Eric Scherzer, OCAW  
Donald Silberman, AFT  
John Shinn, ABG  
Fran Smith, UAW  
William J. Solarski, USWA  
William E. Tanis, IAM  
Bill Terrell, UAW  
Kenneth Test, UPIU  
Patrick Tully, OPEIU  
Ann Twomey, HPAE  
Harvey Whille, UFCW  
Fred Wright, ATU

**ASST. TO PRESIDENT**  
Frank DeMaria

**PROGRAM DIRECTOR**  
Rick Engler

**NATIONAL ADVISORY PANEL**  
Morton Bahr, CWA  
William Bywater, IUE  
Elmer Chatak, IUD  
Thomas Fricano, UAW  
Michael Goodwin, OPEIU  
George J. Kourpias, IAM  
Lenore Miller, RWDSU  
Jay Mazur, UNITE  
Jan Pierce, CWA  
Robert E. Wages, OCAW

**MAIN OFFICE** 14 Commerce Drive, 3rd Floor • Cranford, N.J. 07016-3579 • (908) 272-4200 • Fax (908) 272-9071  
**SOUTH JERSEY** 9 East Main Street, 3rd Floor • Moorestown, N.J. 08057-3309 • (609) 866-9405 • Fax: (609) 866-9708

April 10, 1997

Elsa Sieracki  
Office of the Commissioner  
Department of Health and Senior Services  
CN 360  
Trenton, NJ 08625

Dear Ms. Sieracki:

In response to Governor Whitman's request for recommendations, the New Jersey State Industrial Union Council, AFL-CIO suggests the following people as qualified to be members of the Right to Know Advisory Council. We are suggesting that these individuals be considered for the category specified in the Right to Know Act "...of persons having training and experience in industrial hygiene recommended by recognized labor unions...". The individuals are:

Amy Baruth  
84 Culver Road  
Monmouth Junction, NJ 08882

Richard Lynch  
Environmental Safety Management Corporation  
4 Tina Lane  
Burlington, NJ 08016

Alice Freund  
18 Stanford Place  
Montclair, NJ 07042

All of the above individuals have extensive industrial hygiene experience.

Sincerely,

Bill Kane  
President

BK/dk  
opeiu494



# NEW JERSEY WORK ENVIRONMENT COUNCIL

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

April 15, 1997

To: Right to Know Coalition Participants  
Interested Parties

From: Rick Engler

Thanks to those who called in with their suggestions about how to follow-up the letter we received from Governor Whitman. Every suggestion has been incorporated and the final reply was approved by Coalition leadership. Enclosed find a copy of our response that was faxed yesterday.

Because of the Administration's written commitment to produce *Hazardous Substance Fact Sheets*, our law suit will not be filed at this time. However, we will closely track the Administration's performance on this and retain the option to take legal action in the future. Thanks to the many labor and environmental organizations that signed-on to the potential law suit.

# **New Jersey Right to Know & Act Coalition**

223 Park Avenue Atco, New Jersey 08004 (609) 866-0920 or (609) 767-1110

April 14, 1997

Governor Christine Todd Whitman  
The Statehouse  
Trenton, New Jersey 08065

Dear Governor Whitman:

Thank you for your letter of March 31, 1997 responding to our recommendations concerning how the state can insure that its citizens have a more effective right-to-know about chemicals in the workplace and community.

Attached please find the Coalition's detailed reply to each response in your letter. In some cases we are pleased with your decisions; in others we await more information. Please respond to the questions that we have raised throughout our letter. In some cases, you did not respond at all to specific suggestions. Please respond to these as well.

In many cases, funding will be needed to implement these initiatives. We would particularly appreciate learning what source and amount of funds will be utilized.

Coalition representatives would also like to again meet with your staff and staff from the DEP and DHSS to discuss implementation. Thank you for continuing this process.

Sincerely,

Jane Nogaki, Co Chair  
Eric Scherzer, Co Chair

cc: Coalition Participants  
Eileen McGuinness  
Elizabeth Murray  
Robert Friant  
Commissioner Fishman  
Commissioner Shinn



# Comparison and Analysis of Governor Whitman's March 31, 1997 Letter (with Our Follow-up Questions) Responding to RTK Coalition's January 8, 1997 Recommendation Letter

April 14, 1997

The background section of the Coalition's January 8, 1997 letter has been deleted. ***Bold italics*** indicate quotations from Governor Whitman's response letter.

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

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

**March 31 Response** *...I will direct the department to develop fact sheets in English and Spanish for the substances identified in the department's Hazardous Substance list. An accounting of currently available fact sheets will begin shortly.*

**Our Response** This commitment indicates that the Administration plans to comply with the law. The Coalition, while appreciating this commitment, would like it to be made binding through a Consent Order in the Superior Court.

The "accounting..." already exists and is unnecessary.

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

**March 31 Response** *Updating of existing fact sheets and production of new ones will initially focus on ensuring that up-to-date fact sheets are available for all those substances currently being used in New Jersey.*

*I have been informed that the development and updating process will last approximately one to four years.*

**Our Questions** What is the annual production schedule for fact sheets? What staffing increases are required to accomplish this? How much funding is committed? From what source(s) will these funds

come? What additional health and safety criteria (i.e. endocrine disruption) will be addressed when new or updated fact sheets are developed? Please provide a copy of your directive to DHSS.

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

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

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

**March 31 Response** *In the meantime, the department will also develop a plan for distributing fact sheets in the most timely manner possible.*

**Our Questions** Items 3 and 4 have not been addressed. Will the “plan” mentioned above address them? When will this plan be completed by? Will we be provided a copy? What funds will be provided to accomplish large mailings of fact sheets?

The Coalition reiterates our request that the Departments should require private sector employers to post a notice that HSFS are available from the DHSS and how employees can obtain them.

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

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

**March 31 Response** The Governor has solicited various organizations, including the RTK Coalition, for suggestions as indicated in her letter.

**Our Response** The RTK Coalition has encouraged various organizations to submit suggestions for individuals to serve as Council members. We appreciate that efforts are being made to make these appointments.

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

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

**March 31 Response** *...I support hazardous chemical placarding in concept and look forward to approving a suitable legislative remedy establishing such placarding as standard practice. My staff will begin discussing a legislative strategy and the substance of a proposal with the legislative leadership this month.*

**Our Questions** We believe that A2118 is an appropriate legislative remedy but could be modified. Will Firefighter organizations, specifically the Professional Firefighters Association of New Jersey and the Firemen's Mutual Benevolent Association, and the RTK Coalition be involved in this process? What schedule will there be for bill drafting or for revisions to A2118?

## **4. Disclose the Dangers: Restore Chemical Reporting**

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

**March 31 Response** *Acknowledging that a balance must be struck between reporting requirements and "information overload," I would ask that members of your Coalition coordinate with the Chemical Industries Council, the Business and Industry Association, and the Department of Environmental Protection to review the DOT list and to develop a consensus about which substances should be*

*restored to the list. My policy staff will be responsible for convening the first meeting of this group.*

**Our Response** The Right to Know & Act Coalition agrees to participate in a review of the USDOT list to discuss the substances which should be restored to the list. Our position is that the USDOT list should be restored as part of the EHS list, with a 100 pound threshold unless a smaller threshold exists under Federal law. We believe this relieves the burden of reporting de minimis amounts of hazardous substances. However, as firefighter organizations have pointed out, there may be substances on the USDOT list where a 100 lb. threshold is too high.

The Coalition also notes that although a *proposal* was made in the New Jersey Register to eliminate the USDOT Hazardous Materials Table with a 500 lb. reporting threshold in April, 1993, that proposal did not get adopted until July 18, 1994, during the first year of the Whitman Administration.

## **5. Encourage Public Participation**

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

**March 31 Response** I am pleased to confirm that DEP and DHSS will produce public service announcements in both English and Spanish

**Our Questions** The Coalition is appreciate that the Administration is willing to produce these PSAs. What is the PSA production and distribution schedule? Can the RTK Coalition have the opportunity to participate in the review of draft PSA's?

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

**March 31 Response** RTK workshops and educational videos are available, and department staff routinely offer training opportunities. Additionally, most counties use state funds to provide some level of training outreach.

Additionally, department staff will reach out to firefighter associations to work with them in identifying grant money to further expand educational efforts. Department staff will also offer educational opportunities to librarians, teachers associations, school boards, and other groups.

**Our Questions/Response** We request that the department develop a more specific plan for outreach that includes how staff and budget will be allocated. The offering of “educational opportunities” is unclear.

3) The DHSS should develop, in consultation with teacher unions, administrators, and parent organizations, a RTK training program designed specifically for public school personnel and students. One part of this program should be developed for high school chemistry classes.

**March 31 Response** *Will offer educational opportunities (see above).*

**Our Questions/Response** See above.

4) The DEP and DHSS should hold an annual workshop on RTK for New Jersey librarians. According to a Georgetown University study, public libraries are the first place citizens look when searching for information on hazardous materials in their community. Pennsylvania and Massachusetts have already developed successful librarian education programs on toxic hazards.

**March 31 Response** *Will offer educational opportunities (see above).*

**Our Questions/Response** See above.

5) The DHSS should adopt a new policy allowing an employee representative the right to accompany DHSS inspectors on inspections of facilities to assist them in determining whether their employers are complying with labeling requirements. Employees are most familiar with their workplaces and could be of invaluable assistance in locating unlabeled or improperly labeled chemical containers. This accompaniment right has been implemented by the federal Occupational Safety and Health Administration since 1970 with few problems.

**March 31 Response** No response.

**Our Response** Please address this request.

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

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

**March 31 Response** *...I will direct DHSS to issue suitable fines for habitual labeling violators..*

**Our Questions/Response** How will “habitual” be defined? Please

provide a copy of your directive to DHSS.

The Coalition points out that the Right to Know statute authorizes the DEP and DHSS to impose a penalty up to \$2,500 plus up to \$1,000 per day for each day the violation continues after an employer gets an order to comply. If a firm fails to pay the administrative penalty – which apparently is often the case -- the departments can get a court to order an additional penalty of up to \$2,500 per day for each day the violation continues. Penalties could be imposed for survey, labeling, or other violations of the Act.

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

**March 31 Response** *...DEP will continue to pursue aggressively the collection of outstanding fines through the administrative court process.*

**Our Questions** Please provide more information about the status of uncollected penalties, the status of court action by specific employer, and the number of legal staff devoted to this work.

3) The DEP should fine companies if they violate the Pollution Prevention Act by failing to submit public reports.

**March 31 Response** *...I will direct ...DEP to fine those who fail to submit public reports under the Pollution Prevention Act.*

**Our Questions** Please provide a copy of your directive to DEP.

4) Both DHSS and DEP should issue press releases naming firms that refuse to let workers and the public know about the chemicals they may be exposed to.

**March 31 Response** *...the departments will make public the identity of egregious RTK violators...*

**Our Questions/Response** This response is not clear. Will both departments issue press releases or simply continue the existing policy on access to information. If your intention is that egregious RTK violators will be publicized, please provide a copy of the directive concerning this (including a definition of “egregious”) and please indicate the effective date of this policy.

5) The two Department of Environmental Protection RTK inspectors should be trained and

should have authority to do inspections for labeling violations since they are already auditing private sector workplaces for Community Right to Know Survey compliance.

**March 31 Response** No response.

## **7. Adequately Fund the Right to Know Program**

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

**March 31 Response** *Because employer fees are statutorily set, an increase from \$2 to \$3 in the per employee fee and from \$50 to \$75 in the minimum fee would require legislative action.*

**Our Questions/Response** Do you intend to work with the legislative leadership to address this issue as you have committed to do on chemical placarding? Also, our attorneys believe that the Administration *may* have legal authority to implement a cost of living increase to the fee without legislative authority. We ask that you request an Attorney General's legal opinion on whether this is possible.

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

**March 31 Response** *The program was intended to be fee driven, so its budget was reduced in order to bring annual expenses in line with annual fee revenues.*

**Our Questions/Response** See above.

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

**March 31 Response** No response.

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

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

**March 31 Response** Governor Whitman signed legislation allowing Work First participants to be considered employees under the RTK, PEOSHA, and certain other laws.

**Our Response** We thank the Governor for supporting such amendments.

## **9. Improve Right to Know Protection for Public Employees**

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

**March 31 Response** *At OSHA's request, the DHSS is preparing a review and comparison of these two provisions. Federal funding for our occupational safety and health standards and inspection program for public employees is dependent on the results of this comparison.*

**Our Questions** Please provide a copy of this comparison when completed.

## **10. Support Our Right to Know More**

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

**March 31 Response** *...I have asked my Washington office to closely monitor the progress of HR 4234 as it moves through the legislative process.*

*I have also asked that office to inquire about the funding for the federal Chemical Safety and Accident Investigation Board.*

***For more information, contact:***

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



## **JANUARY 1997 RECOMMENDATIONS TO GOVERNOR WHITMAN ON RIGHT TO KNOW**

- ✓ 1. Produce Required Hazardous Substance Fact Sheets
- ✓ 2. Produce Fact Sheets in Spanish
- 3 (3) Update Fact Sheets with Information About New Hazards
- had (4) Send Fact Sheets to Public Employers on New Chemicals
- (5) Improve Access for Private Sector Workers to Fact Sheets
- ✓ 6. Help Fire Fighters; Support Chemical Hazard Placarding Legislation
- ✓ 7. Restore Chemical Reporting; Require Employers to Report Using Department of Transportation List with 100 lb. Thresholds
- ✓ 8. Distribute Public Service Ads in English and Spanish
- 9. Sponsor Annual Workshop for Workers, Firefighters & Public

10. Develop RTK Workshop for Public School Students and Personnel

11. Develop RTK Workshop for Librarians

✓ 12. Allow Employee Reps. to Accompany DHSS Labeling Inspections

✓ 13. Issue Fines for Labeling Violations

✓ 14. Collect Right to Know Fines Due

✓ 15. Issue Fines for Violations of the Pollution Prevention Act

✓ 16. Publicize the Names of Right to Know Violators

17. Support Adequate Right to Know Funding

*status* ✓ 18. Coverage for *Work First New Jersey* Participants

? 19. Improve Right to Know for Public Employees

✓ 20. Appoint Right to Know Advisory Council

21. Support Federal "Right to Know More" Legislation and

✓ Funding for the *Chemical Safety & Accident Investigation Board*

# New Jersey Work Environment Council

July 28, 1997

To: Interested Parties

From: Rick Engler, Director

RE: **National Implications of Progress on New Jersey  
Right to Know Law Implementation**

**I am pleased to report that the New Jersey Work Environment Council, working with labor, environmental and public health organizations, has won a significant victory.** As a result of our work, Governor Whitman and the legislature have just allocated \$1.4 million in New Jersey's FY 1998 budget to produce 2,500 *Hazardous Substance Fact Sheets* in English *and* Spanish. Also, the Governor has agreed to include information in these fact sheets on the health impacts of endocrine disrupting chemicals.

These fact sheets, to be produced for the 2,500 hazardous substances on New Jersey's Health Department Hazardous Substance list, are a vital source of information to public health professionals, workers, firefighters, and the public. They are an essential alternative to industry explanations of potential health risks. They are widely used in New Jersey, across the nation, and in at least thirty nations. They will be put on the Health Department's web site.

Currently only about 1,000 fact sheets have been issued and many are now out of date. One year ago the Department of Health and Senior Services, which is required to produce and update 2,500 fact sheets, was planning to keep current only 500 of them. They even said they were seeking "volunteers" to translate them into Spanish! Their refusal to issue the fact sheets was in the context of an aggressive attack on citizen right to know rights and other environmental regulations by the Whitman Administration.

In January, 1997 the Work Environment Council sent a legal notice to Governor Whitman that we would file a lawsuit against the state if they didn't not produce all 2,500 fact sheets.\* Thirty four organizations also made

\*Also signing the legal notice were the N.J. Right to Know & Act Coalition, N.J. Environmental Federation, Grassroots Environmental Organization, Communications Workers Local 1034, Coalition Against Toxics, N.J. Citizen Action, and N.J. Industrial Union Council, AFL-CIO.

twenty-one right to know policy recommendations to Whitman. We released these recommendations at a press conference and received excellent media coverage. Since then, our negotiations with the Governor's office have led to her commitment reflected in the budget. Health Department officials have provided us with a detailed written plan on how they will produce all 2,500 fact sheets in English and Spanish over four years.

**Now our challenge is to insure that the state lives up to its commitment.**

These fact sheets can be widely used across the country. Thus this project has compelling national importance. Further, because fact sheets will be translated into Spanish, they could be useful in Latin America.

We would be most appreciative if you could help us with these three questions:

- WEC may organize an independent scientific advisory panel to review how the New Jersey Department of Health presents fact sheet information on endocrine disrupting chemicals. *Do you have suggestions for toxicologists or other experts who might be asked to participate on this panel?*
- WEC seeks suggestions on how best to publicize the availability of *Hazardous Substance Fact Sheets*, nationally and internationally.
- WEC needs to raise roughly \$ 75,000 - \$100,000 for a project to guarantee both follow-through by the state and national awareness of *Hazardous Substance Fact Sheets*. We believe that it is essential to have one full time staff person monitoring right to know progress and keeping pressure on the Whitman Administration, especially after the November elections.

*Can you suggest any specific foundations or other sources of funds that might prove interested in supporting this project?* Since January, the Beldon Fund and the Environmental Endowment for New Jersey have provided grants totaling \$22,500. Additional resources are needed to effectively continue this work.

WEC has won important commitments from Governor Whitman. Now we Are obligated to insure that this information is produced, publicized, and effectively distributed in New Jersey and beyond our borders.

# New Jersey's Hazardous Substance Fact Sheets

The 1983 *New Jersey Worker and Community Right to Know Act* requires the New Jersey Department of Health and Senior Services (DHSS) to produce distinct *Hazardous Substance Fact Sheets* for each of about 2,500 chemicals on the department's Hazardous Substance list.

A *Hazardous Substance Fact Sheet* includes information on the substance's chemical name, Chemical Abstract Service number, and hazards. These hazards, as specified in the law and implementing regulations, include, but are not limited to: toxicity, carcinogenicity, mutagenicity, teratogenicity, flammability, explosiveness, corrosivity, and reactivity. Fact sheets must include, in non-technical language, acute and chronic health effects of exposure. They must also include proper precautions for safe handling and emergency and first aid procedures for spills, fires, explosions, and accidental emissions.

Unlike *Material Safety Data Sheets* (MSDS), which are issued mostly by chemical producing companies about their own products, the New Jersey fact sheets are widely recognized as well researched, comprehensive and comprehensible. Unlike MSDS sheets, the New Jersey fact sheets have a standard format.

The Act's regulations require that fact sheets "...be updated when, in the opinion of the Department, significant new information becomes known."

The Act also requires fact sheets to be written in Spanish as well as English.

Government agencies, corporations, unions, public health professionals, and environmental activists across the nation have used the existing fact sheets. The DHSS has also sent fact sheets to individuals in at least thirty other countries. There is potential for these fact sheets to be much more widely circulated and used.

*Issued by the New Jersey Work Environment Council in cooperation with the New Jersey Right to Know and Act Coalition.*

# Hazardous Substance Fact Sheet Implementation Plan

The New Jersey Work Environment Council, in cooperation with the New Jersey Right to Know & Act Coalition, is working to hold our state government accountable for insuring our right to know. Our work on fact sheets includes:

1. **Reviewing and monitoring New Jersey Department of Health & Senior Service (DHSS) plans to produce 2,500 fact sheets over four years in English and Spanish.** This includes tracking deliverables, reviewing fact sheet specifications and drafts, and insuring that the state lives up to its commitments. WEC will organize an independent scientific advisory board to review protocols, hazard information, and readability of fact sheets.
2. **Working to insure that fact sheets include, for the first time, the health effects of endocrine disrupting chemicals.** Scientists are calling for accelerated research into the human health impacts of synthetic chemicals in the environment that disrupt the endocrine system. They warn that a variety of hormone-disrupting substances now in everyday use may contribute to an increased incidence of prostate and testicular cancers, immune system problems, and even behavioral problems like attention deficit disorder. Fact sheets should be updated to cover these potential dangers to health and future generations.
3. **Working with the DHSS to promote far more active distribution and public awareness of fact sheets, particularly among public health professionals, and private sector employees.** This includes pressing recommendations to the DHSS to:
  - Produce and distribute effective **public service announcements** concerning the public's right to obtain fact sheets and other information under this law.
  - Require private sector employers to **post a notice** that fact sheets are available from the DHSS and how employees can obtain them.
  - **Transmit fact sheets to health professionals and private sector employers with the greatest chemical hazards.** One cost-efficient way to accomplish this would be on CD-ROMs (compact disk-read only memory); personal computers have this capability and some fact sheets have already been put on CD-ROM.
  - Insure that all fact sheets go on the DHSS Web site.



State of New Jersey  
DEPARTMENT OF HEALTH AND SENIOR SERVICES  
CN 360  
TRENTON, N.J. 08625-0360

CHRISTINE TODD WHITMAN  
Governor

LEN FISHMAN  
Commissioner

September 5, 1997

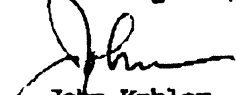
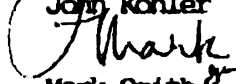
Mr. Rick Engler  
WEC  
198 West State Street - 3rd Floor  
Trenton, NJ 08608-1103

Dear Rick:

Here are responses by the Departments of Health and Senior Services and Environmental Protection regarding your memo of July 19, 1997. Attached also is the wording on the PSAs and the Workplan Timetable.

Looking forward to our meeting on September 9, 1997 at 11 a.m. in the 7th Floor Conference Room of the Department of Environmental Protection.

Best regards,

  
John Kohler  
  
Mark Smith

September 5, 1997

TO: Rick Engler

FROM: John Kohler  
Mark Smith

SUBJECT: Department of Health and Senior Services (DHSS) and  
Department of Environmental Protection (DEP)

Please allow us to address the questions raised in your memo of July 19, 1997.

I. DHSS Responses

Issue: Prompt issuance of fact sheets for the newly used/reported chemicals shown on the updates.

Response: The last mailing of fact sheets to public employers in response to their survey was completed in the summer of 1996. The next mailing based on the 1995 survey will be completed this fiscal year.

Issue: Require private sector employers to post a notice that the fact sheets are available from the DHSS and how employees can obtain them.

Response: There are two different but related issues relevant to this request. Regarding the DHSS "requiring" private sector employers to post a notice, the RIK Program will request a legal opinion on this matter from the Office of Legal and Regulatory Affairs. The second issue is the Program's ability to provide copies of fact sheets in response to requests from employees in 32,000 private facilities. The most time and cost effective method to accomplish this distribution would be through the Department's Internet Web Pages. The Program is in the process of posting the revised fact sheets (approximately 500 fact sheets) on the Department's Internet Web Pages.

Issue: Development of a plan for outreach and educational opportunities.



-2-

**Response:** The Program is developing an Education and Outreach Plan which will address the dissemination of information to groups such as teachers, administrators, librarians, etc. A draft of this Plan will be available for discussion with representatives of the Coalition in October 1997.

**Issue:** Issuance of suitable fines for habitual violators.

**Response:** The Program has drafted a proposed policy statement regarding habitual and egregious violations and related penalties. This is currently being reviewed within the DHSS and will be shared with the Coalition when this review is completed.

In the draft policy statement regarding violations and penalties, the Program raised an issue regarding the procedure that will be followed to make public the identity of egregious RIK violators. The Department will discuss this issue with DEP and formulate a procedure for the release of this information.

**Issue:** Strengthen and clarify public employee RIK protections.

**Response:** The DHSS is working with the Department of Labor to obtain approval and funding from federal OSHA for a State Plan for the New Jersey Public Employees Occupational Safety and Health Program. If the State receives approval for this State Plan, OSHA will require the State to reconcile the workplace provisions of the New Jersey Worker and Community Right to Know Act that pertains to public employers/employees with the provisions of the OSHA Hazard Communication Standard. It would be premature at this time to start this process until the State receives approval/funding for an OSHA State Plan. After the initial approval, the Departments will have three years to reconcile the provisions of these two requirements.

The Program is preparing a detailed comparison of the provisions of the New Jersey Worker and Community Right to Know Act, the Department's RIK regulations, and the OSHA Hazard Communication Standard. A copy of this document will be provided to the Coalition once it is completed.

#### Additional DHSS Information

1. The paperwork to establish the 15 new positions has been submitted to HRS and the jobs were posted on August 9, 1997. To date, 227 resumes have been received and interviewing will begin on September 4, 1997.
2. The Fact Sheet Development Workplan has been finalized after discussion with EOSHI, a copy of which is attached.
3. A request for legal opinion regarding the right of private employees to accompany our inspectors was submitted to the Office of Legal and Regulatory Affairs on July 29, 1997. An initial review has been done by legal focusing on necessary regulatory changes. Additionally, further guidance and input is being requested from one Attorney General.

-3-

4. Regarding a definition and policy dealing with "habitual and/or egregious violators", program staff have developed a draft policy that I am currently reviewing. Once I am comfortable with it, I will share with DEP for comment/reaction.

## II. DEP Responses

**Issue:** The DEP should issue a rule to restore the original list of covered chemicals, with a 100 pound threshold.

**Response:** Acknowledging that a balance must be struck between reporting requirements and information overload I would ask that members of your Coalition coordinate with the Chemical Industries Council, the Business and Industry Association, and the DEP to review the DOT list and to develop a consensus about which substances should be restored to the list. My policy staff will be responsible for convening the first meeting of this group. (March 31)

**Issue:** The Right to Know & Act Coalition agrees to participate in a review of the USDOT list to discuss the substances which should be restored to the list. Our position is that the USDOT list should be restored as part of the EHS list, with a 100 pound threshold unless a smaller threshold exists under Federal law. We believe this relieves the burden of reporting de minimus amounts of hazardous substances. However, as firefighter organizations have pointed out, there may be substances on the USDOT list where a 100 pound threshold is too high. The Coalition also notes that although a proposal was made in the New Jersey Register to eliminate the USDOT Hazardous Material Table with a 500 pound reporting threshold in April, 1993, that proposal did not get adopted until July 18, 1994, during the first year of the Whitman Administration.

**Response:** The group being convened to review the list of chemicals should also develop a consensus of the appropriateness of the thresholds.

**Issue:** Private corporations owe the DEP \$502,120 in uncollected penalties for just the 1995 fines. To collect these fines, the DEP clearly needs a more aggressive approach.

**Response:** DEP will continue to pursue aggressively the collection of outstanding fines through the administrative court process. (March 31)

**Issue:** Please provide more information about the status of uncollected penalties, the status of court action by specific employer, and the number of legal staff devoted to this work.

**Response:** For the period November 1990 through June 1997, approximately 1,105 companies owe \$ 995,942 in penalties. The DEP is presently investigating the feasibility of retaining a collection company to assist in the collection of outstanding penalties. Outstanding penalties would be those penalties contained in final decisions.

-4-

**Issue:** Both DHSS and DEP should issue press releases naming firms that refuse to let workers and the public know about the chemicals they may be exposed to.

**Response:** The departments will make public the identity of egregious RTK violators.

**Follow-up**

**Response:** DEP will issue press releases naming those companies who have been found guilty as a result of the administrative process or who have not responded to a formal enforcement action. Most of these would be the companies who have been issued an administrative order for failure to submit an annual survey and who did not request a hearing within 20 days. If a company does not request a hearing within 20 days, the administrative order becomes a final agency decision, for which there is no administrative appeal. The list would also include those companies who requested and received a hearing and were found guilty and who have exhausted the appeal process.

**Attachments**

**Manno**  
**September 3, 1997**

**PUBLIC SERVICE ANNOUNCEMENTS FOR RIGHT TO KNOW**

**RADIO: 15 sec.**

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

**RADIO: 15 sec.**

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

**TV: 30 sec.**

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

**Tag lines on bottom with numbers for DEP and DHSS**

**Workplan  
For  
Preparation of Right to Know Hazardous Substance Fact Sheets**

8/6/97

	New Fact Sheets To Be Written	First Revision to Existing FS	Second Revision to Existing FS	First Revision of Spanish FS	New Spanish Translated FS	Total
<b>Total</b>	<b>1,434</b>	<b>578</b>	<b>328*</b>	<b>237</b>	<b>2,253</b>	<b>4,830</b>
<b>Year 1 **</b>	<b>100</b>	<b>300</b>	<b>100</b>	<b>150</b>	<b>250</b>	<b>900</b>
<b>Year 2</b>	<b>312</b>	<b>278</b>	<b>50</b>	<b>87</b>	<b>603</b>	<b>1,330</b>
<b>Year 3</b>	<b>511</b>		<b>78</b>		<b>700</b>	<b>1,289</b>
<b>Year 4</b>	<b>511</b>		<b>100</b>		<b>700</b>	<b>1,311</b>
			* 150 additional FS will not need to be revised until Year 5.			

- \*\* UMDNJ will write 100 new Hazardous Substance Fact Sheets (Fact Sheets) (under Memorandum of Understanding).  
 DHSS-RTK Program will prepare first revisions for 100 Fact Sheets and UMDNJ will prepare first revisions for 200 Fact Sheets (under Memorandum of Understanding).  
 DHSS-RTK Program will prepare second revisions for 100 Fact Sheets.  
 PARA PLUS will prepare first revisions for 150 Spanish Fact Sheets and translate 250 new Fact Sheets into Spanish (under purchase order with state vendor).

List of Attendees for September 9, 1997 Meeting

Mark Smith - DEP  
Marlen Dooley - DEP  
Shirlee Schiffman - DEP  
Paul Wolcott - DEP

John Kohler - DHSS  
Jim Blumenstock - DHSS  
Elin Guraky - DHSS  
Rita Manno - DHSS  
Kathleen O'Leary - DHSS  
Elsa Sieracki - DHSS  
Anita Kartalopoulos - DHSS

update ?

## New Jersey Right to Know & Act Coalition

September 12, 1997

To: John Kohler, DOH  
Mark Smith, DEP  
Eileen McGinnis, Chief of Policy & Planning,  
Office of the Governor  
Robert Friant, Special Assistant to the Governor

From: Jane Nogaki & Rick Engler, N.J. Right to Know & Act Coalition

RE: Summary of Discussion and Agreements on September 9, 1997

Our next meeting will be either October ~~6~~ <sup>2 pm</sup> 7 at ~~11 AM~~ <sup>pre mtg - noon</sup> at the Department of Environmental Protection. John Kohler will contact us with final date. <sup>DEP cafeteria</sup>

Underlined sections below indicate outstanding requests for written memos or other information.

1. **DHSS: Receive, as promised on July 15, 1997, a written plan for production of *Hazardous Substance Fact Sheets* in English and Spanish over four years. Please provide the plan, in its current form, by September 16th.**

The Coalition received this plan with the September 5 update memo.

Jim Blumenstock also indicated that DHSS was finalizing, over the next two weeks, the list of the first 100 fact sheets that would be done by the DHSS and the list of 300 that would be done by EOSHI-UMDNJ, the contractor. JB and John Kohler discussed progress on hiring for the 15 new RTK DHSS positions, including that DHSS was able to seek candidates from outside the DHSS for the toxicology and public health positions.

The Coalition briefly raised a concern about whether adequate data management expertise would be available, based on our review of the job announcements, but there was no follow-up discussion.

- 2. DHSS: As discussed, this plan (see #1) should include the commitment to include potential health hazards of endocrine disrupting chemicals on appropriate fact sheets (consistent with current toxicological literature).**

Jim Blumenstock indicated that the Coalition would receive a written statement that endocrine disrupting health effects would be included in fact sheets based on available toxicological literature.

- 3. DHSS/DEP: Provide a written draft of public service announcements for radio by September 16<sup>th</sup>. Arrange production of PSAs so that taped copies are available for distribution by October 13. Develop and provide distribution plan by October 13.**

The proposed text of radio and TV PSAs was received with the September 5<sup>th</sup> update memo. The Coalition proposed only one change, the elimination of the word "public" in one of the 15 second radio PSAs. John Kohler accepted this change. All parties have thus agreed on the text.

John Kohler said that the first priority would be radio distribution and that the Coalition would receive a distribution plan. He suggested that a joint letter from the DEP and DHSS Commissioners could help promotion.

He also pointed out that these would be developed in Spanish. Milton Rosado of the Coalition agreed to review the Spanish version of PSAs.

- 4. DHSS: Provide a written draft of revised DHSS procedures concerning the right of employee representatives to accompany DHSS inspectors on inspections for compliance with labeling in the private and public sectors by September 16<sup>th</sup>. The effective date of this policy should be October 1.**

The September 5 update memo from DHSS indicated that a legal opinion was sought on this issue on July 29. In the interim, Jim Blumenstock indicated that DHSS RTK labeling inspectors would invite employee representatives to accompany them on inspections but noted that if employers objected to this process that the DHSS had no legal basis to force employers to comply. This interim approach will be effective October 1, 1997. The DHSS will develop a "script" for inspectors to use to appropriately explain this.

The Coalition looks forward to receiving any legal opinions on this issue developed by the Office of Legal and Regulatory Affairs and from the AG.



5. DHSS: Provide a draft copy of revised penalty and enforcement policies regarding labeling based on Governor's commitment that DHSS "...issue suitable fines for habitual labeling violators." Please provide this by September 16<sup>th</sup>. The effective date of this policy should be October 1.

Kathleen O'Leary indicated that the DHSS is developing a revised matrix classification of labeling and other violations in the private and public sectors as egregious, habitual, and non-compliant. She also indicated that she does not believe that this requires a rule making process and that this matrix would also apply to DHSS training and survey issues. A draft of this matrix and new policies will be provided by October 1.

6. DHSS/DEP: Prepare a one page brief description and large type notice of the availability of *Hazardous Substance Fact Sheets* for employers, employees, and the public from the DHSS in the 1997 *Community Right to Know Survey* booklet that goes to the printer about October 1. We would like to review this notice prior to that time. This notice should advise employers to post it in an area where employees will see it. (We also ask that the notice be printed on the back of the survey cover using the heavier stock paper).

Mark Smith indicated that the DEP would do this, although the precise wording and location of the notice in the 1997 survey is still to be decided. (The Coalition still believes that the back cover would be best). The Coalition will receive a draft of this notice for comment and the DEP and DHSS will consult with each other about its preparation.

7. DEP: Provide, as requested by our letter dated April 15<sup>th</sup>, "...information about the status of uncollected penalties, the status of court action by specific employer, and the number of legal staff devoted to this work." Please provide by September 16. Note: please provide a computer print out of this information by specific employer, indicating the employer location, amount of penalty owed, and litigation status.

The September 9 update from DHSS/DEP said that "For the period November 1990 through June 1997, approximately 1,105 companies owe \$ 995,942 in penalties. The DEP is presently investigating the feasibility of retaining a collection company to assist in the collection of outstanding penalties." There was extensive discussion of this issue. (This data refers only to private firm failure to return the Community RTK Survey booklet to the DEP).

The following agreements were reached:

-DEP will issue a press release (or press releases) naming those companies that have received Administrative Orders. This will be done on an annual basis. This will be done in December, 1997 or January, 1998 for the 1996 reporting year.

-DEP will develop and provide the Coalition by October 1 a summary of enforcement procedures. (The Coalition also requests that this summary compare the current *amount* of penalties issued with what is allowed by regulation and statute.)

-DEP will develop and provide the Coalition by October 1 a draft options memo on how to remedy the uncollected penalty problem which will include potential penalty collection mechanisms (The Coalition asked the DEP to consider means by which non-profit organizations might be involved in this process; one possibility raised by the DEP would allow county health agencies to participate and to keep a percentage of remitted penalties to fund this work).

-The DEP and the Coalition will have a meeting focusing on this issue to be scheduled after the above memos are provided.

**8. DEP: Provide, as requested by our letter dated April 15<sup>th</sup>, a copy of the Governor's directive to DEP concerning how DEP will fine those firms which fail to submit public reports under the Pollution Prevention Act.**

According to Mark Smith, the following will take place concerning those firms which fail to submit the *Pollution Prevention Plan Summary* as required by the Act:

-Firms required to report in 1994 will receive a notice of violation indicating that they must submit their Pollution Prevention Report within 30 days. If they do not comply, DEP will issue an Administrative Order and penalty.

-The other firms required to report in 1996 will receive a letter telling them to send in their PPP Summary. If they do not submit this information, the above procedure will be followed.

Penalties are discretionary and are between \$1,000 and \$5,000.

Does DEP intend to issue a press release?

The Coalition requests, on an expedited basis, a computer print out indicating the name of the firm and location for each of these two groups of companies.

- 9. DEP: According to our letter of January 8, 1997, "The two Department of Environmental Protection RTK inspectors should be trained and should have authority to do inspections for labeling violations since they are already auditing private sector workplaces for Community Right to Know Survey compliance." This training should be completed by October 1.**

Shirley Schiffman said that the two DEP RTK inspectors already contact DOH RTK staff when they see no labeling and so that it was unlikely that a formal referral policy was required. She said that she would discuss this issue further with her staff to see if any changes were required.

Chuck Deweese said that he believed that the RTK statute specifically determined the enforcement authority of the DEP and DHSS and that, therefore, the DEP was precluded from doing labeling inspections.

(Since the September 9 meeting, the Coalition has reviewed the RTK Act again and agrees with the viewpoint expressed by Chuck Deweese. Since the Coalition does not support statutory changes to the Act at this time, we withdraw our suggestion that the DEP have the authority to inspect for labeling violations. We do reiterate our request for a formal referral policy from the DEP to the DHSS for potential labeling violations).

- 10. DHSS: Provide a draft training and outreach plan addressing the issues in our letter of January 8<sup>th</sup>. Please provide this by October 1. We will be pleased to discuss such plans further after we receive this memo.**

The Coalition looks forward to reviewing this draft and then meeting with the DHSS RTK program staff before the end of October.

- 11. DEP: So that the scheduled September 25<sup>th</sup> meeting of the Chemical Inventory Working Group can be most productive, provide DEP's written proposal for what hazardous substances should be added to the DEP Hazardous Substances list prior to September 25<sup>th</sup> to all invitees.**

**Mark Smith agreed that an options memo would be distributed to all**

parties.

**Except for #11 above, the Coalition will provide our comments on all written drafts requested above to DEP and/or DHSS *within three business days* of our receipt. All drafts should be faxed to (609) 695-4200.**

#### Additional Right to Know Notes

- On September 9<sup>th</sup>, Rick Engler spoke to Bob Friant concerning the issue of representation at the September 25<sup>th</sup> Chemical Inventory Working Group meeting; this issue was resolved. Friant will communicate to the DEP and DHSS that DEP and DHSS toxicological experts – if necessary from outside the RTK programs – will be present to answer any technical questions that may come up about the potential hazards of chemicals.
- Governor Whitman has written Congressman Rodney Frelinghuysen, a key House Appropriations Committee member, expressing her support for establishment and funding of the Chemical Safety & Hazard Investigation Board. Congressman Frelinghuysen has written us that he supports this position.

C: Department of Health and Senior Services  
Elin Gursky, Senior Assistant Commissioner  
Jim Blumenstock, Assistant Commissioner  
Rita Manno, Director, Communications  
Kathleen O'Leary, Director, Occupational Disease & Injury Service  
Richard Willinger, Manager, Right to Know Program  
Elsa Sieracki, Executive Assistant to Chief of Staff

Department of Environmental Protection  
Marlen Dooley, Assistant Commissioner  
Shirley Schiffman, Bureau Chief, Bureau of Chemical Release  
Information & Prevention  
Allan Edwards, Assistant Director, Division of Waste Compliance &  
Enforcement & Release Prevention  
Paul Wolcott, Director, Communications  
Chuck DeWeese, Director of Solid & Hazardous Waste Compliance &  
Enforcement

Coalition Executive Board/Meeting Participants

# Summary of Outstanding Requests for Information

September 10, 1997

## Department of Health & Senior Services

Brief statement committing DHSS to consider endocrine disruption in HSFS development process

Draft of revised procedures and draft "script" concerning employee representation on labeling inspections; any legal opinions

Draft of revised matrix and policy on enforcement and penalties re labeling

Training and outreach plan

Legal opinion on ability of DHSS to require private sector employers to post notice on availability of fact sheets from DHSS (from 9/5 DHSS/DEP memo).

## Department of Environmental Protection

Draft of Hazardous Substance Fact Sheet notice for RTK survey booklet

Computer print out of all firms (and amount of fines) that have not sent back Community RTK Survey.

Summary of current enforcement procedures regarding RTK survey

Options memo on penalty collection issue

***On an expedited basis***, a computer print out indicating the name of the firm and location for both sets of companies violating Pollution Prevention Act Summary submission requirements

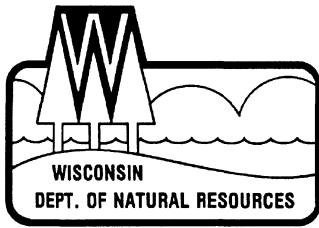
Options memo concerning chemical inventory

## Both Departments

Distribution plans for PSAs

**All information should be mailed or faxed to:**

Rick Engler, N.J. Right to Know & Act Coalition, c/o New Jersey Work Environment Council, 198 West State Street, Trenton, N. J. 08608 FAX (609) 695-4200.



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

September 17, 1997

Rich Engler  
New Jersey Right-to-Know Coalition  
198 West State Street 3rd Floor  
Trenton, NJ 08608

SUBJECT: Information Requested at the TRI Data Use Conference

Dear Mr. Engler:

Thank you for your interest in the Wisconsin Department of Natural Resources' Right-to-Know programs. Please let us know if you find the enclosed material useful, have any suggestions, or would like additional material. Available material includes:

- ◆ SARA 313 Toxic Release Inventory Summary Reports 1991-1995; 1996 expected in early 1998
- ◆ Toxic Release Inventory County Map Book; 1995 version at press, 1996 out in early 1998
- ◆ "On the Trail of Toxics" -- Article appearing in Wisconsin Natural Resources Magazine
- ◆ Take a Look at Toxics in Wisconsin: A curriculum for high school students
- ◆ Research Study: Association Between Asthma Symptoms and Air Pollutant Exposure
- ◆ Summary of our Environmental Justice Pilot Survey
- ◆ Fact Sheet for our Integrated Toxics Reporting System
- ◆ Any customized reports from our Integrated Toxics Reporting System

We always like to hear how our publications are or are not used. Such information helps us in providing the most useful information possible in the most accessible formats and securing funding to ensure future publications. You can provide feedback by phone, fax, or e-mail; the information is provided on my card.

Finally, we are continuously looking for new projects using TRI data. If you have suggestions or have worked on TRI applications, we would welcome the chance to discuss them with you.

Sincerely,

Jennifer Feyerherm  
Toxics Information Specialist

## **Some Facts About Hazardous Chemical Listings**

### ***Preliminary Draft***

- Since 1979, over **72,000** chemicals have been used in commerce in the United States, excluding foods, drugs, cosmetics, and pesticides.
- Number of chemicals listed in Toxic Substances Control Act Chemical Inventory as of October 1, 1994 – **71,460** (these are chemicals that are manufactured or imported in quantities of more than 10,000 pounds).
- Number of chemicals that private sector employers must list as part of Written Hazard Communication Plan (Section e(1) of the federal Occupational Safety and Health Act Hazard Communication Standard: **all chemicals that have a physical or health hazard.**
- The latest national survey of worker exposure to commercial chemicals was in 1983, when the National Institute of Occupational Safety and Health estimated that within some 600 industries, approximately 19.5 million workers may have been exposed to any of more than **8,000** hazardous substances.
- Approximate number of listings on DEP 1993 Community Right to Know Survey Table A – **2,900 – 3,000 rough estimate**
- Approximate number of listings on DEP 1995 Community Right to Know Survey Table A – **1,000** rough estimate
- Approximate number of listings on DHSS Right to Know Survey currently sent to public sector facilities – **2,490** plus several hundred generic categories

Approximate estimated total number of listings on the proposed February 7, 1994 but never adopted rule by DHSS for its Right to Know Hazardous Substance List – **2,800 to 2,900** plus several hundred generic categories. This proposal was based on updated scientific sources.

## HEALTH

## (a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL  
AND OCCUPATIONAL HEALTH SERVICESWorker and Community Right to Know Act  
Right to Know Hazardous Substance List  
Special Health Hazard Substance ListProposed Repeal and New Rules: N.J.A.C. 8:59,  
Appendices A and B

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner,  
Department of Health.

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

Proposal Number: PRN 1994-88.

Submit written comments by March 9, 1994 to:

Richard Willinger, Program Manager  
Right to Know Program  
Occupational Health Service  
New Jersey Department of Health  
CN 368  
Trenton, NJ 08625-0368  
(609) 984-2202

The agency proposal follows:

## Summary

N.J.A.C. 8:59, Appendix A, was originally adopted on June 18, 1984 and Appendix B 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. Appendix A was amended on October 1, 1984, and both Appendices were readopted on September 29, 1989.

Appendix A contains a list of hazardous substances which pose a threat to the health or safety of public employees, emergency responders, and community residents. The list was originally called the Workplace Hazardous Substance List. However, since the list incorporates the Environmental Hazardous Substance List regulated by the Department of Environmental Protection and Energy in their implementation of Community Right to Know, and the chemicals overlap, the list is now called the Right to Know Hazardous Substance List.

Appendix B, a subgroup of Appendix A, indicated by the symbol "#" or "+" in front of the name of the substance, contains a list of hazardous substances "which, because of their known carcinogenicity, mutagenicity, teratogenicity, flammability, explosiveness, corrosivity, and reactivity pose a special hazard to health and safety" of public employees, emergency responders, and community residents. This list is called the Special Health Hazard Substance List.

The significance of a substance being listed on the Right to Know Hazardous Substance List for public employers is that it must be reported on the Right to Know Survey and public employees must receive training about the chemical.

The significance of a substance which meets the criteria of N.J.A.C. 8:59-10 being listed on the Special Health Hazard Substance List is that a covered employer cannot claim trade secrecy for that substance and must report it on the Right to Know Survey (for public employers) or Community Right to Know Survey (for private employers), and list its chemical name on container labels.

In addition, there is a new significance for Special Health Hazard Substances or products containing these substances. A new amendment to the Right to Know labeling rule, at N.J.A.C. 8:59-5.6(a)4 and 5.6(g), sets a threshold below which a container does not have to have a Right to Know label unless it contains a Special Health Hazard Substance (such as a carcinogen, mutagen or teratogen) or the product in the container meets the criteria of a Special Health Hazard Substance (for flammables, reactives and corrosives).

The Lists are necessary because of the need for public employees, emergency responders, and community residents to know what chemicals are hazardous and what their hazards are. Through use of the Lists for reporting hazardous chemicals and training, public employees, emergency responders, and citizens can find out where hazardous substances are kept in their community and workplace, what the hazards are and how to respond to 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 the hazardous substances.

It is now proposed to change the Appendices by adding and deleting substances to the Right to Know Hazardous Substance List and Special Health Hazard Substance List, adding and deleting special health hazard codes to the Special Health Hazard Substance List, and adding and deleting Substance Numbers, DOT numbers, Chemical Abstracts Service numbers, and Reference Source numbers to the Right to Know Hazardous Substance List. Chemicals listed from the Reference Sources are being updated along with the Source citations, and unnecessary listings are being deleted from the United States Department of Transportation List of Hazardous Materials (Source #3).

Due to the numerous changes being made to the Lists and the impracticality of showing all the changes, the Lists are being revised by repealing the existing rules (existing Lists in Appendices A and B) and promulgating new rules (new Lists in Appendices A and B).

The rule governing the two lists states that "Annual revisions to the Right to Know Hazardous Substance List proposed by the Department shall be submitted to the Advisory Council for review and shall be published in the New Jersey Register as a notice of pre-proposal for a rule pursuant to the requirements of N.J.A.C. 1:30-3.2." (N.J.A.C. 8:59-9.3(d)) The proposed revisions to the lists were submitted to the Right to Know Advisory Council in January 1993 for review and were published as a pre-proposal in the New Jersey Register on March 1, 1993 at 25 N.J.R. 792(b).

The rule further states that "Notice of proposed revisions to the Right to Know Hazardous Substance List shall be published ... in the New Jersey Register as a proposed amendment to these rules in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. At least 30 days shall be allowed for public comment. A public hearing shall be held, if, in the Department's determination, there is significant public interest in the proposal." (N.J.A.C. 8:59-9.3(f)) Since there were very few comments on the pre-proposed lists, a public hearing will not be held on the proposed Lists. Written comments may be submitted to the Department within the 30 day comment period.

In response to the March 1, 1993 pre-proposal, written comments were received from six organizations, one of which presented testimony at the March 26, 1993 public hearing regarding the pre-proposal. Comments were received from Passaic Color and Chemical Company, the Pesticide Safety and Right to Know Coalition, the Coalition Against Toxics, Atlantic Electric, Owens-Corning Fiberglass Corporation, and Union Carbide Corporation.

The following summarizes the comments received about the pre-proposed Right to Know Hazardous Substance List and Special Health Hazard Substance List both during the comment period and at the public hearing held on March 26, 1993, and provides the Department's responses to these comments. All comments are on file at the Department of Health, and can be reviewed by arrangement with Mr. Willinger, 609-984-2202, or by letter to Richard Willinger, Program Manager, Right to Know Program, Department of Health, CN 368, Trenton, N.J. 08625-0368.



1. COMMENT: Passaic Color and Chemical Company requests that the generic category of Azo Dyes, Substance number 3298, which is being proposed as an addition to the Right to Know Hazardous Substance List, be deleted from the List because, while some Azo Dyes have been found to cause allergies, there has not been sufficient testing to conclude that all Azo Dyes cause allergies. The specific Azo Dyes that are allergenic are already listed on the Right to Know Hazardous Substance List.

RESPONSE: The commenter has submitted well documented material and the Department had deleted generic Azo Dyes from the list, in this proposal.

2. COMMENT: The Pesticide Safety and Right to Know Coalition and the Coalition Against Toxics support the changes and additions to the Right to Know Hazardous Substance List.

RESPONSE: The Department appreciates the support, and notes that additional changes needed to be made to the pre-proposed Lists. These changes are reflected in the within proposal, for which comment will be received until March 9, 1994.

3. COMMENT: Union Carbide points out that some of the sources cited are not the most recent versions, such as ACGIH (most recent version is 1992-93), DOT (corrections were made in 1992), NTP (most recent version is 1991), CERCLA (amendments were made in 1992), RCRA (amendments were made in 1990 and 1991), and OSHA (the 1989 amendments were invalidated), and suggests that, since many of the amendments to the sources correct, add, and delete substances, the most recent versions be used.

RESPONSE: The Department agrees that the most recent version of sources should be used and has updated the information on the Right to Know Hazardous Substance List and Special Health Hazard Substance List, using the most recent version of sources.

4. COMMENT: Owens-Corning Fiberglass requests that "Fibrous Glass," Substance number 0933, be deleted from the Right to Know Hazardous Substance List because the term is overly broad and includes forms of glass fibers, such as continuous filament, for which there is no scientific evidence of any significant acute or chronic health effect. In the alternative, the listing should be changed to read "glass wool fibers, respirable size," due to positive implantation studies.

RESPONSE: The Department lists hazardous chemicals as they appear on the lists used to create the Right to Know Hazardous Substance List. Since ACGIH uses the term "Fibrous Glass," this wording will continue to be used. However, since ACGIH qualifies their listing with the word "dust," the qualifier "dust" has been added to the proposed Right to Know Hazardous Substance List.

5. COMMENT: Atlantic Electric advises that many chemicals are not considered hazardous unless they are found as air contaminants in a particular physical state such as dust, mist, fume, or vapor. They request that the listings for certain chemicals on the Right to Know Hazardous Substance List and Special Health Hazard Substance List be made more specific about the form or physical state the chemical must be in before it is considered hazardous. For example, OSHA says that Gypsum is hazardous as a dust; Mica is hazardous as a dust; Silica is hazardous as a dust; Titanium Dioxide is hazardous as a dust; and Cadmium is hazardous as a dust or fume. The DOT says that Lithium is hazardous in its metallic form, not as a compound. Gypsum in wallboard, Mica in a solid electrical insulator, Silica bound in a liquid product, and Titanium dioxide as a liquid paint pigment would not be considered hazardous.

RESPONSE: The qualifiers listed on the OSHA Hazardous Materials List will be added to the Right to Know Hazardous Substance List as follows: "Gypsum (Dust)," Mica (Dust)," "Dust" will be added to the different listings for Silica, and "Titanium Dioxide (Dust)." Lithium will not be changed because its CAS number identifies it as being in a metallic form. Cadmium will not be qualified because at least one of its sources does not limit its hazard to dust and fumes.

Other changes are being made upon the Department's own initiative to add, delete, and correct entries on the Right to Know Hazardous Substance List and Special Health Hazard Substance List which are contained in this proposal.

#### A. Appendix A—Right to Know Hazardous Substance List

The Department proposes to add hazardous substances to the Right to Know Hazardous Substance List. Most of these substances come from the U.S. Department of Transportation's Hazardous Materials Table, 29 CFR 172.101 (Source #3), and the U.S. Department of Transportation's Emergency Response Guidebook (Source #17). Others come from new sources being added to the List from the U.S. Environmental Protection

Agency—List of Acutely Toxic Chemicals (Source #16), Section 313 List of Toxic Chemicals from SARA—Title III (Source #18), Section 302 List of Extremely Hazardous Substances from SARA—Title III (Source #19), List of Hazardous Substances from CERCLA (Source #20), and the RCRA List of Hazardous Wastes (Source #21).

In addition, the Department proposes to add generic categories of hazardous substances and materials to the Right to Know Hazardous Substance List. These substances and materials are cited by the U.S. Department of Transportation's Hazardous Materials Table, 29 CFR 172.101 (Source #3) and the U.S. Department of Transportation's Emergency Response Guidebook (Source #17).

The Department also proposes to add synonyms to the Right to Know Hazardous Substance List in order to enable employers, public employees and the general public to find hazardous chemicals that are commonly known by more than one chemical name. A few of the synonyms have Chemical Abstracts Service numbers in order to reflect the fact that they are different isomers of chemicals that are known by the same chemical name. The addition of synonyms makes it easier to find hazardous substances on the list and to label, since these synonym names may already be in use on labels.

A list of substances, generic categories, and synonyms being added to the Right to Know Hazardous Substance List is available from the Right to Know Program, New Jersey Department of Health, CN 368, Trenton, New Jersey 08625-0368. Additional copies of the entire list are available in printed form at no charge, and on diskette in DBase IV or in ASCII, for \$25.00 (to cover costs).

A new column of information has been added to the Right to Know Hazardous Substance List to benefit emergency responders. This column provides the U.S. Department of Transportation Number, which is extensively used by emergency responders to locate important information about hazardous chemicals in the DOT Emergency Response Guidebook.

All of the reference source citations are being updated to reflect the most current editions of the cited publications, and the chemicals cited by the National Institute for Occupational Safety and Health (NIOSH) in Sources #4, 9, 10 and 11 are being combined into a new NIOSH Compendium document in Source #4. The new reference sources whose hazardous substances are being added to the Right to Know Hazardous Substance List include:

Source #16—List of Acutely Toxic Chemicals, Chemical Emergency Preparedness Program, U.S. Environmental Protection Agency, December 1985.

Source #17—1990 Emergency Response Guidebook, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, March 31, 1990.

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.

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.

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.

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.

Five of these new reference sources are from the U.S. Environmental Protection Agency and one is from the U.S. Department of Transportation. Some were prepared for purposes of hazardous chemical contamination of the environment, while some were meant to address both environmental contamination and workplace and emergency responder exposures. Most of the chemicals on these new reference sources are already on the Right to Know Hazardous Substance List, however, some are new additions to the List.

#### B. Appendix B—Special Health Hazard Substance List

The Department proposes to add special health hazard codes to certain substances, some of which are already on the Special Health Hazard Substance List (SHHSL) because of existing special health

# Reducing Carcinogens in Public Schools: A non-regulatory approach by a regulatory agency

Lisa M. Roché, M.P.H., Ph.D.

## Abstract

*The New Jersey Public Employees' Occupational Safety and Health Program identified 318 public school districts that reported any of 10 selected carcinogens on their 1990 New Jersey Right to Know Survey of hazardous substances. After obtaining more information about the school districts' use of these carcinogens from a 10% random sample phone survey, a letter recommending substitution of less hazardous substances was sent to the 318 school districts. Individualized to reflect information provided by the schools in the 1990 survey, a form requesting additional information on the status of containers holding the carcinogens was also sent. There were 1,303 reports of the 10 carcinogens from the 272 (86%) school districts that completed the form. Most were disposed of (668, 51%), used completely (65, 5%), or were slated for disposal (287, 22%). This is an example of a successful project by a regulatory agency to reduce potential exposure to carcinogens in public schools.*

## Introduction

The New Jersey Worker and Community Right to Know Act (N.J.S.A. 34:5A-1 et seq.), effective August 29, 1984, resulted from concern about the proliferation of hazardous substances in the workplace and the environment. Under the Act, the New Jersey Department of Health (NJDOH) is responsible for administration of the biennial or annual Right to Know (RTK) Survey, for enforcement of container labeling and worker training and for preparation of hazardous substance fact sheets (1). This paper reports on a pilot project by the NJDOH Public Employees' Occupational Safety and Health (PEOSH) Program (2) which used information from the 1990 RTK Survey to reduce public school staff's potential exposure to carcinogens, thereby reducing the risk of future disease.

## Methods

In November 1990, the 1990 RTK Survey, along with instructions for completion, was sent by the NJDOH RTK Program to 1,576 public employers in New Jersey, including state agencies, county and municipal governments, public school districts, and other public authorities. The Chemical Abstracts Service number, Department of Transportation number, type of container,

percent of the hazardous substance in the product (in ranges, e.g. 90-99%), amount of the product (in ranges, e.g. 11-100 gallons), and number of exposed or potentially exposed employees were requested for each individual container of a hazardous substance. The information on the returned surveys (100% participation rate) was computerized by November 1992.

A list of the public school districts that reported any of 10 known human carcinogens with the information on each container of these carcinogens was then generated from the database. These 10 most reported carcinogens were arsenic, arsenic trioxide, asbestos, benzene, benzidine, lead chromate, sodium arsenate, sodium arsenite, sodium dichromate, and vinyl chloride (3,4). The PEOSH Program phoned a 10% random sample of the school districts between February and May 1993 to obtain additional information about the reported carcinogens, i.e., in what product, what used for, who exposed, frequency of use, where stored, if still using.

The results of the phone survey were used in the preparation of a letter, containing specific recommendations about the 10 carcinogens, which was sent by the PEOSH Program in July 1993 to the superintendent of each school district on the list. A form, "Follow-Up on Carcinogens Reported in

the 1990 Right To Know Survey," to be completed and returned to the PEOSH Program, was enclosed with each letter. The form listed each individual container of any of the 10 carcinogens previously reported by the school district, for the purpose of requesting further information. The school districts that had not returned the form by mid-November 1993 were phoned. Information from the returned forms was computerized and analyzed.

## Results

### Random Sample Phone Survey

Of the 575 public school districts in New Jersey, 318 (55%) reported one or more of the 10 carcinogens on their 1990 RTK Survey. Of the 32 randomly selected school districts, 31 (97%) participated in the phone survey. The findings from the phone survey included use of arsenic, arsenic trioxide, asbestos, benzene, lead chromate, sodium arsenate, and sodium dichromate in pure form for science or chemistry experiments or demonstrations. Also reported were asbestos in roof patching or cement, benzene (pure form) for drying leather, benzene in gasoline/fuel or in cleaners, lead chromate in paint for maintenance and in glazes for an art class, and sodium dichromate in floorstripper. Science and chemistry teachers and maintenance staff were the types of employees potentially exposed; students were also reported as potentially exposed to carcinogens used in science and chemistry classes (Table 1).

More detailed examples of the reported uses of these carcinogens included:

- a can of roofing cement with an unknown percentage of asbestos used by a maintenance person for roof leaks;
- a can of graffiti removal with 1-9% benzene used inside buildings, especially bathrooms, by the custodian;
- a 90-99% solution of benzene used once or twice by two chemistry teachers in a high school chemistry class to test the reactivity of double bonds in benzene rings;

STATE OF NEW JERSEY  
DEPARTMENT OF HEALTH & SENIOR SERVICES  
CN 360, TRENTON, NJ 08625-0360

C O N F I D E N T I A L

FAX ROUTING SLIP

TO: RICK ENGLER  
ATTN:  
LOCATION: NJ RIGHT TO KNOW & ACT COALITION  
PHONE NO.: 609-695-7100  
FAX NO.: 609-695-4200  
FROM: ELSA J. SIERACKI, Assistant to Chief of Staff  
Office of the Commissioner  
PHONE NO.: 609-292-0090  
FAX NO.: 609-292-0053  
DATE: OCT. 3, 1997

DOCUMENT INFORMATION:

TOTAL NUMBER OF PAGES, INCLUDING TRANSMITTAL SHEET, 11

NOTE: IF YOU HAVE ANY DIFFICULTIES OR QUESTIONS REGARDING THIS TRANSMITTAL, PLEASE CALL ELSA SIERACKI AT 609/292-0090.

RICK: LETTER FROM JIM BLUMENSTOCK IS HIS SIGNATURE. HE SIGNED A COPY AND LEFT IT WITH HIS SECRETARY, SO THE ATTACHED IS A VALID SIGNATURE. AS NOTED, THE ACTUAL LISTS OF FACT SHEETS ARE AVAILABLE. RATHER THAN FAX THESE 12 PAGES, I'LL HAVE COPIES TO HAND OUT AT THE OCTOBER 7 MEETING. SHOULD YOU HAVE QUESTIONS, PLEASE CALL ME. HAVE A GOOD WEEKEND. EJS

**TO:** John Kohler, Rita Manno, Dr. Gursky,  
Jim Blumenstock, Kathleen O'Leary

**FROM:** Elsa J. Sieracki *EJS*

**DATE:** October 1, 1997

**SUBJECT:** September 9, 1997 Right to Know Meeting

As followup to the recent *Summary of Discussion and Agreements* memo from Jane Nogaki & Rick Engler, listed below are followup dates and points of agreement (**additions/corrections to the Coalition's memo are in bold**) that were discussed at the September 9 meeting at the Department of Environmental Protection (DEP).

**THE NEXT MEETING IS SET FOR TUESDAY, OCTOBER 7 AT 2 P.M. AT THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.**

1. In response to the Coalition's concern that "adequate data management expertise would be available, based on our review of the job announcements, but there was no follow-up discussion.", **John Kohler invited the Coalition to submit names/resumes for qualified individuals.**
2. "Jim Blumenstock indicated that the Coalition would receive a written statement that endocrine disrupting health effects would be **considered for inclusion** included in fact sheets based on available toxicological literature.

**Follow-up:** (SEE ATTACHED, statement included in the third paragraph of the letter to Rick Engler from Jim Blumenstock, dated October 1, 1997)

3. "The Coalition proposed only one change, the elimination of the word "public" in one of the 15 second radio PSAs. John Kohler accepted this change." **John Kohler said he would talk to Rita Manno and Legal and that "public" is out unless there is a problem with Rita or Legal.**

"John Kohler said that the first priority would be radio distribution and that the Coalition would receive a distribution plan. He suggested **Mark Smith and John Kohler agreed** that a joint letter from the DEP and DHSS Commissioners could help promotion."

**Followup:** (SEE ATTACHED memo from Ms. Manno to John Kohler).

John Kohler, Rita Manno, Dr. Gursky, Jim Blumenstock, Kathleen O'Leary

Page 2

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4. "....no legal basis to force employers to comply. This interim approach will be effective **on or about** October 1, 1997."

"The Coalition looks forward to receiving any legal opinions on this issue developed by the Office of Legal and Regulatory Affairs and from the AG."

**Followup: (SEE ATTACHED, attachment "FIELD INSPECTION PROCEDURE" to Jim Blumenstock's letter to Mr. Engler) Check with Anita Kartalopoulos concerning legal opinions as privileged documents, but could we provide a summary??**

5. "Kathleen O'Leary indicated that the DHSS is developing a revised **decision** matrix .... She also indicated that she does not believe that this requires a rule making process and that this matrix would also apply to DHSS training and survey issues. A draft of this matrix and new policies will be provided by a **tentative release date of October 1.**"

**Followup: Channel McDevitt will check on the rule making issue. There are some policy issues within DHSS that must be discussed before this document can be finalized.**

6. "The Coalition will receive a draft of this notice for comment and the DEP and DHSS will consult with each other about its preparation."

**Followup: Shirlee Schiffman, DEP, Rick Engler and DHSS have reviewed (SEE ATTACHED DRAFT)**

7. **Followup: DEP**

8. **Followup: DEP**

9. ".... We do reiterate our request for a formal referral policy from the DEP to the DHSS for potential labeling violations)."

**DEP and DHSS both appear hesitant concerning a formal MOU. Jim Blumenstock suggested that the two departments should meet and be sure that there is a "system" (a coordinated working system, rather than a written system) in place between the two departments.**

John Kohler, Rita Manno, Dr. Gursky, Jim Blumenstock, Kathleen O'Leary

Page 3

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10. "The Coalition looks forward to reviewing this draft and then meeting with the DHSS RTK program staff before the end of October."

**Followup: Kathleen O'Leary suggested subcommittees on outreach and training and 100/300 fact sheet issues.**

11. **Followup: DEP**

c: Eileen McGinnis  
Bob Friant  
Rick Engler  
Jane Nogaki  
Mark Smith  
Anita Kartalopoulos  
Channel McDevitt

10/03/1997 14:58 589-588-7431

NJ DEPT HEALTH OAC

PAGE 01



State of New Jersey  
DEPARTMENT OF HEALTH AND SENIOR SERVICES  
DIVISION OF ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES  
CN 300  
TRENTON, N.J. 08625-0300

CHRISTINE TODD WHITMAN  
Governor

LEN FISHMAN  
Commissioner

October 1, 1997

Mr. Rick Engler  
Director  
New Jersey Work Environment Council  
198 West State Street - 3rd Floor  
Trenton, NJ 08608-1103

Dear Mr. Engler:

As discussed during our meeting of September 9, 1997, the following is being provided to the New Jersey Right to Know and Act Coalition as enclosures to this letter:

- 1). The listing of Hazardous Substance Fact Sheets to be developed or revised in FY'98 in accordance with the Workplan dated August 6, 1997,
- 2). The "Statement of Revenue, Expenditures and Change in Fund Balance" for the Worker and Community Right to Know Fund for the fiscal year ending June 30, 1997, as provided by the Department of Labor and,
- 3). The Field Procedure established to address private sector employee accompaniment during labeling inspections.

*12 pages  
of fact  
sheets will  
be handed  
out at the  
10-7 mtg.*

Regarding endocrine disruptors, when developing a Hazardous Substance Fact Sheet, the Right to Know Program examines all available health hazard information on the subject chemical. The Program searches for credible data from peer reviewed and published literature to ascertain current health hazard information. Based on the body of evidence in the peer reviewed and published literature that particular industrial chemicals and pesticides interfere with the functioning of the endocrine system, this information will be reflected in the Fact Sheets through appropriate statements.

I trust that this information is helpful and I look forward to meeting with you and other Coalition members on October 7th to discuss these and other related issues of mutual interest.

Sincerely,

James S. Blumenstock  
Assistant Commissioner

Enclosures  
c: K. O'Leary  
J. Kohler

10-01-1997 4:26PM

FROM

P. 2

VV/VV/VV

10:38

VF608 633 7031

NJDEPE/BDP

... ENFORCEMENT

0002

DEP's draft with  
edits from R. Engle

**NOTICE**

HAZARDOUS  
SUBSTANCE  
FACT SHEETS

**Did You Know?**

the → this

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

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

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

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

PLEASE POST

PLEASE POST

CUT OUT  
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Scissors)

CUT OUT  
THIS  
OUT

Read





# NEW JERSEY WORK ENVIRONMENT COUNCIL

198 WEST STATE STREET, THIRD FLOOR • TRENTON, NJ 08608-1103 • (609) 695-7100 • FAX (609) 695-4200

10/30/97

To: Andy Opperman

From: Rick Engler

RE: **Information Request**

I would be most appreciative if you could tell me whether the following companies filed a DEQ 114/TRI report for 1994, 1995, or 1996:

Alfred Heller Heat Treating, Clifton  
Dye Specialties, Jersey City  
Electrum Recovery Works, Rahway  
Exact Anodizing, Elizabeth  
H. K. Metalcraft, Lodi  
Henkel, Hoboken  
Kirker Enterprises, Paterson  
Madison Industries, Old Bridge  
Old Bridge Metals & Chemicals, Old Bridge  
Peerless Tube Co., Bloomfield

If you have any indication that any of these firms went out of business, I would also appreciate knowing this information.

Thank you for your assistance.



## NEW JERSEY WORK ENVIRONMENT COUNCIL

100 WEST STATE STREET, THIRD FLOOR • TRENTON, NJ 08609-1103 • (609) 695-7100 • FAX (609) 695-4200

Post-It™ brand fax transmittal memo 7671

# of pages • 1

To	Chuck	From	R Engler
Co.	DeWeese	Co.	
Dept.		Phone #	
Fax #		Fax #	

10/08/97

To: Chuck DeWeese, Director of Solid & Hazardous Waste  
Compliance & Enforcement

From: Rick Engler, Director

RE: PPA Violators

Per our discussion, please send us a list of the violators of the New Jersey Pollution Prevention Act related to the current enforcement action. Please include the employer name, facility location, type of enforcement action, reason for enforcement action, and amount of penalty.

Release of this information is assured pursuant to common law and New Jersey statute.

→ when out of business?  
→ legit reason for not sending

Andy Opperman [ TRI - DEP 114 - what if fell below  
threshold that year - merger  
↳ what chemicals  
reported under TRI  
→ delisted

Tom J  
989-1610

Jeannine  
908

996-  
4243



# Stage II Demands — Report

## Checklist of Community Right-to-Know Ideas

Discussions among public interest advocates spawned this checklist of community right-to-know ideas at a meeting sponsored by the Working Group on Community Right-to-Know, September 7, 1997. The list is by no means comprehensive, and categories are not mutually exclusive. Nonetheless, it's a very extensive checklist of environmental information needs. In general, participants support an expanded right-to-know that is standardized, integrated, complete, and user friendly.

### 1. Make Information Accessible and Understandable

- ◆ Create one-stop access to EPA-held environmental information (through Internet, toll-free numbers, information ombudsmen, etc.).
- ◆ Use plain language.
- ◆ Provide understandable reports.
- ◆ Keep information relevant and timely.
- ◆ Explain data limits.
- ◆ Dedicate fees to community interpretation and technical support.
- ◆ Establish Internet tie-ins for continuous monitoring data (within national data systems).
- ◆ Limit trade secrecy through common-sense, up-front criteria.
- ◆ Involve data users in developing information dissemination tools.

### 2. Integrate Environmental Information Systems

- ◆ Establish a common national facility identification system.
- ◆ Require standardized reporting of Federally mandated data elements.
- ◆ Link information using key identifiers (facility identification, geographic location, industry, ownership, chemicals, regulatory status, ecological indicators, etc.).
- ◆ Make facility-specific, multi-media release, permit, and compliance information available from a single source.
- ◆ Consolidate reporting (one-stop, whole-facility reporting, etc.).
- ◆ Provide information both directly (through water bill inserts, warning signs, etc.) and through aggregated national occurrence databases.
- ◆ Provide links to health hazards information (for substances in all major databases).
- ◆ Establish location databases of industrial facilities, underground storage tanks, discharge pipes, permit holders, pollution and accident reports, chemical storage, warning signs, land use, contaminated sites, etc. (for GIS mapping and other uses).
- ◆ Develop ready links to social, demographic, health, and economic data held by other agencies (USGS, SEC, BLS, Census, OSHA, NOAA, DOT, ATSDR, etc.), including:
  - exposure data (workers, consumers, homeowners, children);
  - disease registries (cancer, birth defects, other health effects);
  - census (race, ethnicity, income, education, language spoken, age, etc.);
  - labor data (economics, epidemiology, wages, jobs, etc.);
  - weather data.



### 3. Provide Information on Hazards of Chemicals

- ◆ Establish simple means to convey known and suspected health and environmental hazards of chemicals (carcinogen, mutagen, teratogen, neurotoxin, acute or chronic toxin, environmental toxin, endocrine disruptor, bioaccumulator, ozone depletor, persistent toxin).
- ◆ Identify and convey gaps where chemical hazards are unknown.
- ◆ Use common names and Chemical Abstract Service (CAS) numbers.
- ◆ Develop relative rankings of toxicity.

### 4. Document Health and Environmental Problems

- ◆ Develop registries for cancer, birth defects, and other health impacts.
- ◆ Include mortality data, hospital admissions, and emergency room visits.
- ◆ Document actual and anticipated exposure of workers, consumers, communities, children.
- ◆ Link health effects surveillance and monitoring data (from poison control centers, health departments, EPA, ATSDR, OSHA, etc.).

### 5. Document Ecological Conditions

- ◆ Use ecological indicators to document and track ambient environmental status (water and air quality, etc.).
- ◆ Identify endangered and threatened plants and animals.
- ◆ Identify contaminants (endocrine disruptors, persistent toxins, etc.).
- ◆ Establish databases of contaminated fish and shellfish advisories, fish kills, bacteriological monitoring reports, beach closures, contaminated wells, pollution sources, etc.

### 6. Document Impacts on Workers

- ◆ Report worker exposures (routine and one-time).
- ◆ Enable follow-up tracking of worker health studies.
- ◆ Identify economic impacts (employment, wages, jobs, etc.) of closing or moving facilities, and of startups in other places or countries.
- ◆ Communicate workplace hazards (MSDS) (including under the School to Work Act of 1994 and other laws).
- ◆ Ensure "right-to-tell" (whistle blower protection and open communication).
- ◆ Ensure access to documents on matters that affect working conditions.

### 7. Document Conditions in Communities

- ◆ Empower communities to monitor environmental hazards.
- ◆ Link groups doing grassroots environmental monitoring.
- ◆ Document environmental and health problems that communities face (community "problems" network database).
- ◆ Notify affected people and communities proactively about environmental issues and exposures (clean-up actions, health studies, permit applications, start dates, pesticide use in schools, etc.).
- ◆ Record complaints (nuisances, property damage, illnesses, odors, etc.).
- ◆ Employ learning processes and deliberations that support sustainable communities.
- ◆ Develop saturation data – the whole human and ecological exposure picture.
- ◆ Support sufficient technical expertise, assistance, and resources to document conditions and link health hazards to effects.

## 8. Establish Solutions Databases

- ◆ Provide information on inherently safer alternatives.
- ◆ Require technology options analyses from polluting and hazardous facilities.
- ◆ Document pollution and accident prevention options.
- ◆ Include clean-up options at existing contamination sites.
- ◆ Index solutions databases by industrial sector, type of product, chemical, location, etc.

## 9. Provide More Complete Information

- ◆ Transportation (truck, rail, barge, ship, and pipeline)
  - Require placards on shipments.
  - Require standardized manifests with shipments.
  - Track shipments (including point of origin, destination, route, chemicals, frequency of shipments, average and maximum quantities, mode of transport, physical state).
  - Track sources and destinations for toxic waste shipments (to recyclers, fuel-blenders, cement kilns, disposal sites, etc.).
  - Disclose storage, release, and commodity flow information (including for pipeline pump stations, tanker ships, tank truck washing operations, rail yards, rail sidings, and loading and unloading operations, etc.).
  - Record transportation accidents.
  - Aggregate information into national databases.
- ◆ Government (local, regional, state, Tribal, and Federal)
  - Furnish politicians' voting records, campaign contributions, and bills sponsored.
  - Report agencies' enforcement performance (permits, investigations, notices, lawsuits, fines), and calculate a ratio of enforcement budget to enforcement actions.
  - Produce state report cards covering enforcement and quality of the environment.
  - Declassify information, and identify what is not disclosed.
  - Require full reporting by military bases and other Federal production facilities.
  - Support local authority to collect information (oppose preemption).
  - Enable citizen suits to supplement government enforcement and enforce reporting.
  - Shift further onus to industries to demonstrate that chemicals and activities are safe.
- ◆ Industry
  - Divulge chemical accident hazards – including potential worst-case scenarios, emergency plans, and process hazards analyses (which describe potential safety failures and make recommendations to reduce or eliminate the hazard).
  - Report accidental and emergency releases and near misses.
  - Provide use data – materials accounting for water, energy, and toxics.
  - Include chemical storage, wastes, releases, and transfers (to air, water, land).
  - Provide lifecycle and product chain information.
  - Report chemicals in wastes separately and as a percent of total waste streams.
  - Disclose releases and transfers of chemicals of unknown toxicity.
  - Delimit trade secrecy claims and identify information held confidential (right-to-know what we don't know).
  - Describe facilities and processes using common identifiers (facility ID, geographic location, industry, ownership, chemicals, regulatory status, etc.), and provide basic contact information (corporate, technical, labor union, etc.).

*Continued...*

- ◆ *Industry, continued*
  - Ensure enforceable requirements for correct information and require suitable monitoring to support reporting.
  - Report continuous monitoring data (through Internet and phone-in systems).
  - Post warning signs at abandoned sites and notify government agencies if the facility ceases regulated operations.
  - Post warning signs at discharge pipes (for NPDES permit holders) and establish aggregate databases of posted discharge pipes.
  - Provide sufficient documentation to support review by independent auditors and community technical advisors.
- ◆ *Polluted Sites*
  - Identify contaminants, including "low level" contaminants (e.g., dioxin).
  - Document quality and extent of clean-up.
  - Communicate restricted uses.
  - Disclose monitoring data.
  - Provide brownfields data.
  - Post local warning signs *and* establish national contaminant databases.
- ◆ *Homes and Consumer Products*
  - Disclose drinking water contaminants through water bills *and* a national occurrence database (as in the Safe Drinking Water Act).
  - Disclose lead hazards (per the Residential Lead-Based Paint Hazard Reduction Act).
  - Disclose carpet contents and emissions (manufacturer and batch number) and application glues.
  - Identify pesticide "inert" ingredients and potential health hazards on labels.
  - Divulge fertilizer ingredients and potential hazards (including for sewage sludge).
  - Add bitterant to anti-freeze ("toddlers' right-to-know").
  - Require comprehensive product labeling.
- ◆ *Farms/Agriculture*
  - Require pesticide use reporting (point of sale, point of use).
- ◆ *Recreation areas*
  - Identify polluted waterways and beaches (through warning signs and aggregate databases that record beach closings and pollutant levels).

10. Establish Corporate Sunshine Principles (for corporate accountability)

- ◆ Honor a general right to corporate information on matters affecting public health and safety (for both workers and the community).
- ◆ Provide safety audits, hazard assessments, insurance information, safer alternatives analyses, criteria for capital spending decisions, and social and environmental impacts data.
- ◆ Provide comparable information on multinationals' extraterritorial operations (in other countries and native nations).

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