



Hazard
Elimination through
Local
Participation

NJ Right to Know
& Act Coalition
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▷ Jane Nogaki
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Steering Committee
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Communications
Workers of America
▷ Ken Brown
NJ Environmental
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▷ Arnold Cohen
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White Lung Association
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▷ Trudi Thornton
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June 13, 1989

EXPRESS MAIL # RB125794042

Richard Willinger
Manager
Right-to-Know Program
Division of Occupational & Environmental Health
New Jersey Department of Health
CN 368
Trenton, New Jersey 08625

Dear Mr. Willinger:

Please find enclosed our comments on the proposed new rules
concerning the Worker and Community Right-to-Know law.

Sincerely,

Rick Engler
Steering Committee
Member

cc.: Molly Coye
Kathleen O'Leary
Coalition Officers & Affiliates

WRITTEN COMMENTS OF THE NEW JERSEY RIGHT TO KNOW & ACT COALITION
ON PROPOSED NEW RULES N.J.A.C. 8:59-11
(Proposal Number PRN 1989-249)
Division of Occupational and Environmental Health
New Jersey Department of Health

June 13, 1989

The New Jersey Right-to-Know and Act Coalition includes over 100 community, labor, emergency response, and environmental organizations and was the organization responsible for the passage of the New Jersey Right-to-Know law in 1983. The Coalition includes organizations representing employees, emergency responders, and community residents effected by the proposed rules.

The Coalition supports most of the proposed changes, including:

- *Automatic revisions to the Right-to-Know Hazardous Substances list.

- *Rules concerning material safety data sheets which will provide additional information to employees concerning mixtures.

- *Rules concerning subcontractors storage of substances on public employee worksites.

- *Codifying the requirement that the Right-to-Know brochure be distributed to all employees.

- *The March 31, 1990 deadline for private sector employers to do universal labeling.

The Coalition requests changes to the proposed rules in the sections concerning universal labeling.

- *We do not support 8:59-11.6(c). We disagree that the Department should allow that all containers less than one pound are exempt from labeling unless they contain special health hazard substances.

We disagree for the following reasons:

- 1) There is no authority in the statute for this exemption.
- 2) There is already an alternative labeling method for containers less than 56.7 grams (2 ounces) in Subchapter 5, 8:59-5.1(i.) and adding this exemption makes employer compliance more complex. Already thousands of public sector employers are complying with these universal labeling provisions.
- 3) Public sector and private sector labeling rules should be the same.

4) The same hazardous chemicals could be stored in multiple containers of under one pound each. Labeling is necessary in this situation for effective pre-fire planning, including as a check to insure that employer evaluation of chemical contents was accomplished.

This was a key argument for the universal labeling provisions in the law: without all containers being labeled, how would an employee, employer, emergency responder, or physician know that the contents of an unlabeled container were evaluated?

On January 21, 1985 (17 N.J.R. 197) the Department stated in reference to this issue that "The statute does not provide for alternative labeling based on the size of the container." And further, in justifying an alternative labeling provision, that "Such an administrative interpretation of a statute must be narrowly applied when it is necessary for feasible implementation of the law."

The Coalition urges the Department to uphold the language of the Right-to-Know law that clearly requires universal labeling. (At the same time we support the existing alternative labeling methods for containers under 2 ounces).

The Coalition also has concerns in the following areas:

*We find that the proposed language concerning when private and public employers must label containers confusing. 8:59-5.1 d and g need clarification.

We propose an explicit statement similar to that in the OSHA guidelines for enforcing its Hazard Communication Standard such as: "No employer may use the contents of a container unless the container is appropriately labeled."

In section (g), giving employers 30 days to label containers once the employer has received the information required is entirely too long a period of time. Labeling should be required within three days or less.

*Subchapter 7 8:59-7.5 (b) is a continuing source of confusion. How can an employee refuse to work with a "hazardous substance" if the substance is not labeled since the employee would be essentially guessing whether it was "hazardous" or not. A clarification in the regulations would be appropriate.

We would appreciate receiving a copy of your official response to all comments on these proposals.