

**NEW JERSEY STATE
INDUSTRIAL UNION COUNCIL, AFL-CIO**

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March 15, 1993

Mr. Scott Weiner, Commissioner
New Jersey Department of Environmental Protection & Energy
401 East State Street CN 402
Trenton, New Jersey 08625

Dear Mr. Weiner:

It is our understanding that the DEPE is about to issue proposed regulations under the Worker and Community Right to Know Act that would eliminate most chemicals listed on the U.S. Department of Transportation hazardous material table from the Community Right to Know Survey. We also understand that you are planning to establish very high thresholds for the reporting of hazardous chemicals.

The IUC, as part of the Right to Know and Act Coalition, has been most willing to support **reasonable** regulatory adjustments to relieve employer burdens that at the same time do not endanger public health. Thus we have been willing to support a reporting threshold. This new proposal, however, goes too far. In this instance it appears that your Department has completely ignored the occupational chemical hazards that face workers on the job and well as the impact of chemicals on firefighters and other emergency responders during pre-fire planning, fires, spills, and explosions. By this action you will establish a dual standard whereby public sector workers (except firefighters) will have greater protection under the Department of Health survey than private sector workers will have under the DEPE survey.

We thus ask you not to issue this proposal.

In the event that you do issue this proposal tell us **specifically** what the impact of the proposed change will be on private sector worker and emergency responder health and safety -- two areas that we think you have completely ignored.

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We will support the position of the New Jersey Right to Know and Act Coalition that will be presented on this issue at the public hearing on March 26, 1993. The Coalition position will include the specific threshold quantity that we are willing to support.

We look forward to your written response.

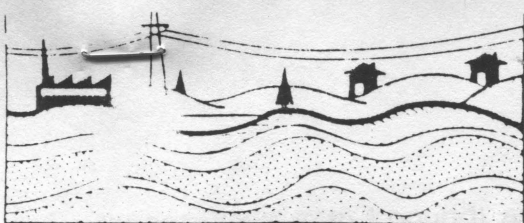
Sincerely,

Handwritten signatures of Archer Cole and Rick Engler. Archer Cole's signature is on the left, and Rick Engler's signature is on the right.

Archer Cole
President

Rick Engler
Vice-President

cc: Peter Smith, Chairman, Right-to-Know Advisory Council
Charles Steinel, President NJFMBA
Jane Nogaki, Co-Chair, NJ Right to Know & Act Coalition
Eric Scherzer, Co-Chair, NJ Right to Know & Act Coalition
Dan Dalton, Secretary of State
Bruce Siegel, Commissioner of Health
Kathleen O'Leary, Director, Occupational Health Service, DOH
Gerald Nicholls, DEPE



NJ RIGHT TO KNOW & ACT COALITION

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Oil Chemical & Atomic Workers, Local 8-149

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May 21, 1993

Testimony of Jane Nogaki, Co-Chair, Right to Know and Act Coalition regarding
Worker and Community Right to Know Regulations Proposed Amendments: N.J.A.C.
7:1G-1 through 5 and 7

DEPE Docket Number: 24-93-03 Proposal Number: PRN:993-230

Commissioner Weiner, thank you for the opportunity to testify on the proposed NJDEPE regulations amendments proposed in the April 19, 1993 NJ Register. The Right to Know and Act Coalition represents 150 labor, environmental and citizen groups who helped win the strongest right to know law in the nation, and we continue to fight to maintain its principles. The right to know program has been under attack by industry as being unworkable, overly burdensome, and not useful. Attempts have been made to gut the law by legislation (A 1232). We support **regulatory** changes that would improve the working of the program without jeopardizing workers, emergency responders, and the community. We think the program is basically sound and vitally important to community safety, and that it can be made **more manageable** and effective by some regulatory changes. Thanks to this law, workers and emergency responders are able to perform their jobs with **greater knowledge** for coping with and managing hazardous substances.

I'm certain that many accidents have been prevented through the information provided by this law, and yet the need for it has not gone away: every day in New Jersey, there are approximately 100 emergency response incidents involving hazardous materials. (According to State Police statistics, there were 12,776 reported hazmat releases in NJ in 1991). Because of the high risk involved when hazardous materials are spilled, ignited, released, or exploded, we cannot support any regulatory amendments which would significantly reduce the **amount and kinds of** information that emergency responders and the community get on the Community Right to Know Survey.

Therefore, while we do support a reporting threshold of 60 pounds for hazardous chemicals (unless a lower threshold exists under the SARA 302 list), we cannot support the DEPE proposed 500 pounds threshold.

With all due respect to the Department, it is an travesty to the public to purport that this measure will "increase the amount of meaningful information collected and available to the public about hazards posed by chemical substances and by eliminating the reporting of small quantities of these substances which pose no significant threat to health, safety or the environment." We strongly object to this part of the proposal because it means that:

*At a 100 pound threshold, 70% of the total entries now collected would be eliminated. Currently 693,000 data entries were reported at zero threshold, 204,481 data entries for substances present at quantities over 100 pounds, and 90,068 entries at over 1000 pounds. (figures supplied by Shirley Schiffman, correspondence dated April 14, 1993) If industry and NJDEPE feel that too much information is being collected on small quantities, setting the threshold at 60 pounds would eliminate inventory

Hazard Elimination through Local Participation HELP-NJ

ranges 9 (less than 1 pound) and 10 (10 pounds) thus eliminating 311,048 data entries., or about half of the currently reported data entries. **If NJDEPE is looking for a paper reduction, it would seem that a 50% reduction would be significant, without seriously impacting the safety of the community. (substances stored under ten pounds would not be reported, unless required by the Sara law)** These figures are for the currently reported EHS list which is comprised of more than 2000 substances. Eliminating the DOT list, as DEPE proposes, would reduce the data possibly by half again, something the NJDEPE hasn't calculated. It is irresponsible for NJDEPE to consider removing 1000 chemicals from being reported when it cannot calculate what the impact might be, on top of enacting a 500 pound reporting threshold.

***At a 100 pound threshold, 5037 facilities would drop out of the universe of facilities** required to report chemical inventory information in NJ. . (Currently, 21,908 facilities report at zero threshold) **What is the effect of this statistical detoxification? What kind of facilities are these? Are they facilities that have never had, and will never have, a fire, chemical accident, or release?** I request that before any threshold is adopted, that a list of specific facilities that would be eliminated from inventorying its hazardous substances be generated and evaluated by community members and emergency responders to determine if they truly pose no hazard to the community or emergency responders.

***At a 100 pound threshold, these numbers of private(but nameless) facilities would no longer report** in the following counties: (partial county listings)

Bergen:769

Burlington:201

Camden:284

Essex:479

Hudson:287

The public needs to know which particular facilities would no longer report inventory quantities of hazardous substances in order to evaluate the proposal.

*** Reporting at a 10 pound threshold, (eliminating range codes 9 and 10) would reduce the number of facilities reporting from 21908 to 19939. We might consider this an acceptable loss of reporting from two thousand facilities if we could have knowledge of what specific facilities we are talking about. Without knowing exactly which specific facilities with how many chemicals in each in what quantities would be eliminated, it is difficult to determine what long term effect a 500 pound threshold proposal would have, but the right to know much less (70% less) about fewer (25% fewer) facilities hardly seems in keeping with the intent of the law, that is, disclosure of the type, location, and amount of hazardous substances in the community. How is the amount of meaningful information increased, when the reporting of over 1,000 DOT hazardous substances will be virtually eliminated, and when the remaining 900 or so chemicals will not get reported until the 500 pound threshold is reached?**

We do support the DEPE's proposal for the inclusion of the SARA 302 and 313 lists into the EHS list to make the NJ reporting and Federal reporting one step instead of two. But we strongly disagree with the removal of all but categories 1 AND 7 OF the DOT list of hazardous substances from the EHS list. This would eliminate the reporting on the Community Right to Know Survey of over a thousand different hazardous substances that are flammable, reactive, corrosive, and/or represent a health hazard to emergency responders and the community. **When the NJ DOH ran a comparison of its RTK Hazardous Substance list of approximately 2300 substances to the proposed NJDEPE list, it found that 635 SPECIAL HEALTH HAZARDS would not be included on the DEPE list, substances that are included on the DOH list and which will be reported by public facilities for which DOH collects survey information.** For example, the following DOH SPECIAL HEALTH HAZARD substances will **not be collected by DEPE** for private facilities:

ACETIC ACID - CORROSIVE
ACETIC ANHYDRIDE - CORROSIVE
ACETYL BROMIDE - CORROSIVE
ACETYL CHLORIDE -FLAMMABLE CLASS 3, REACTIVE CLASS 2, CORROSIVE
ACETYLENE -FLAMMABLE CLASS 4, REACTIVE CLASS 3
ACETYL IODIDE- CORROSIVE
ACETYL PEROXYDE - REACTIVE CLASS 4
ACETYL SALICYLIC ACID - TERATAGEN

(just a few examples - the list is 15 pages long of Class 3 and 4 flammables, corrosives, reactivities(3 and 4), Carcinogens, mutagens, and teratogens which are on the DOT list, on the DOH list, but are eliminated from the DEPE list)

AN EXAMPLE OF A COMMONLY RECOGNIZED FLAMMABLE WHICH WOULD NOT GET REPORTED, UNDER DEPE'S PROPOSAL, UNLESS IT EXCEEDS 10,000 POUNDS, IS PROPANE. IN 1991, ACCORDING TO STATE POLICE STATISTICS, 26 RELEASES OF PROPANE, 201 OF ANTIFREEZE, AND BETWEEN TEN AND TWENTY RELEASES OF SODIUM HYDROXIDE AND SULFURIC ACID, OCCURRED. (the latter 4 substances would only get reported at the over 10,000 pound threshold under the DEPE proposal) Clearly, reporting of these types of substances is important to pre-fire planning and accident prevention planning, since they prominently figure in hazmat response type accidents.

How does DEPE rationally make a claim that by eliminating reporting of nearly 1000 class 3 and 4 flammables, carcinogens and mutagens, that it is "assuring that only substances presenting demonstrated hazards to public health and safety and the environment are subject to reporting requirements". I can only guess that NJDEPE has been given a magic wand which can confer detoxification powers when it is waved over the DOT list of hazardous substances, declaring them non-hazardous, and can grant a blanket of safety to over 5,000 facilities in NJ when it is waved over them. Would that this were true, but until that magic wand materializes, inventory reporting disclosing the kinds and quantities of hazardous substances coupled with labeling of containers forms the basis of hazard prevention and protection for now.

Not reporting these substances will not make the hazards go away, it will make matters worse by placing emergency responders and the community in the dark about what is going on around them. Community planning and the encouragement of toxics use reduction will be seriously impaired without this survey information disclosed to the public and to emergency responders.

Clearly there is justification for the inclusion of the DOT list, or better yet, the Health Department's Right to Know Hazardous Substance List by virtue of the provision in the NJ RTK law that says that DEPE can adopt onto its list of Environmental Hazardous Substance Lists chemicals that are carcinogenic, mutagenic, reproductive hazards or pose a threat to the public health and safety. Certainly, chemicals that are flammable, corrosive, reactive or pose special health hazards have the potential to impact the community and emergency responders, as well as workers. To make a distinction between hazards to workers vs. hazards to emergency responders and the community is unsupportable. As we all know, chemical hazards do not respect the boundary line between the workplace and the community.

IF NJDEPE finds that there are substances on the DOT list that should be eliminated because they are non-hazardous, these particular substances can be purged from the list, rather than eliminating the list altogether. There is a process for doing this in the law. The Health Dept. has done this, whittling down the DOT list of Hazardous Materials from the 2600 substances listed in the Code of Federal Regulations to 2300 substances, eliminating things like aircraft engines, hay, ammunition. As we have suggested before making the DEPE's EHS list inclusive of the DOH Right to Know Hazardous Substance list, so that the two lists are synchronous, would be a logical approach. Similar information should be collected for private and public workplaces. That sort of harmonization makes sense, especially when the DOH's RTK list has a reference code for every substance, supporting its inclusion on the list.

THE RTK coalition fully supports the other provisions of the regulations regarding pollution prevention reporting, fines and penalties, dates for reporting, developing a single survey in order to dovetail federal and state reporting requirements, and updating some definitions. These changes bring the regulations into a more workable system of reporting. However we must stress that if the NJDEPE adopts by regulation the threshold described in the new section NJAC.7:1G-3.2 of 500 pounds, and the repeal of subchapter 4(removing the USDOT Hazardous Materials Tables from the EHS list), we will be very vocal about the Department's role in gutting the Right to Know program. I submit to you that the Federal Right to Know More legislation will be seriously undermined if NJ withdraws the DOT list of hazardous materials from its reportable substance list. Please continue efforts to make this law work better, and we will support you in that, but desist from efforts to streamline the law by reducing the information garnered through it to "tip of the iceberg" type of information. RTK info was meant to be a snapshot, not a fleeting glimpse of hazardous substances stored, used, or released at a facility. We believe that making the program more efficient and usable are worthy goals, and they can be achieved without sacrificing valuable information.

The Right to Know and Act Coalition will continue to work with the DEPE to improve the Right to Know program in whatever way we can. Thank you for the opportunity to comment on this regulation proposal.

Jane Nogaki, co-chair
Right to Know and Act Coalition
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609-767-1110