

New Jersey Right to Know and Act Coalition  
10 Rutgers Place, Trenton, NJ 08618

GOOD MORNING. MY NAME IS JANE NOGAKI AND I AM CO-CHAIR OF THE NJ RIGHT TO KNOW AND ACT COALITION, COMPRISED OF 80 LABOR, CITIZEN AND ENVIRONMENTAL GROUPS, WHO PARTICIPATED IN THE LEGISLATIVE CAMPAIGN TO PASS THE RIGHT TO KNOW LAW AND WHO CARE VERY MUCH ABOUT ITS IMPLEMENTATION. THANK YOU FOR THIS ANNUAL OPPORTUNITY TO TESTIFY ABOUT THE PROGRESS OF THE LAW.

BECAUSE SEVERAL MAJOR ISSUES HAVE EMERGED THAT ARE IMPORTANT TO THE COALITION, OUR VIEWS WILL BE PUT FORTH BY VARIOUS PEOPLE WHO ARE TESTIFYING EITHER ON BEHALF OF THEIR GROUP OR THE COALITION. MY PART WILL BE TO OUTLINE THE VARIOUS ISSUES, WHICH WILL BE DEVELOPED AT GREATER LENGTH AS THE DAY GOES ON.

WYNNE FALKOWSKI, OF THE COALITION AGAINST TOXICS, WILL DESCRIBE HOW COMMUNITY GROUPS ARE USING THE RTK AND SARA III LAWS TO DO "NEIGHBORHOOD INSPECTIONS" WITH LOCAL FACILITIES IN ORDER TO NEGOTIATE HAZARD REDUCTION.

PETER MONTAGUE, OF THE NJEF, WILL DESCRIBE THE DEFICENCIES IN THE COLLECTION, ANALYSES, AND ACCESS TO DATA WHICH ARE CRIPPLING THE IMPLEMENTATION OF THE LAW AS IT WAS INTENDED.

HILARY HORN, COORDINATOR OF THE RTK/AND ACT COALITION, WILL DISCUSS ENFORCEMENT OF THE LAW BY DEP AND DOH , DATA ACCURACY, AND RENEWAL OF FUNDING FOR THE NJ LAW.

ROB STUART, OF NJPIRG, WILL MAKE TWO RECOMMENDATIONS THAT THE COALITION FEEL ARE CRITICAL TO THE SUCCESS OF THE LAW ;1. THAT THE THRESHOLDS FOR REPORTING SARAIII CHEMICALS BE LOWERED, SO THAT MORE FACILITIES ARE COVERED, AND 2, THAT THE NJ DEP LIST OF CHEMICALS BE EXPANDED TO REFLECT THEE SARA III LIST.

AMY BAYRUTH, REPRESENTING CWA AND THE COALITION WILL TALK ABOUT HOW THE LAW IS AFFECTING PUBLIC SECTOR WORKERS.

RICK SCHIAFFO WILL DISCUSS THE NEED FOR MORE PUBLIC OUTREACH AND EDUCATION ABOUT THE LAW, IN ORDER FOR IT TO SERVE THE PUBLIC IT WAS INTENDED TO PROTECT.

EILEEN NIC, OF THE CITIZENS COMMISSION ON BHOPAL, WILL DESCRIBE THE NEED FOR FUNDING AND ASSISTANCE TO LEPC'S, AND THE NEED FOR STANDARDS OF ADEQUACY FOR EMERGENCY RESPONSE PLANS .



IN GENERAL, LET ME SAY ABOUT THE RTK LAW BOTH STATE AND FEDERAL THAT OUR COALITION IS STRONGLY COMMITTED TO SEEING THESE LAWS DO THE JOB THEY WERE INTENDED TO DO, THAT IS, INFORM COMMUNITY RESIDENTS, WORKERS, AND EMERGENCY RESPONDERS ABOUT THE NAMES OF AND HAZARDS ASSOCIATED WITH CHEMICALS THEY ARE EXPOSED TO ON THE JOB OR IN THE COMMUNITY. FOR THIS REASON, WE OPPOSE OPENING UP THE STATE LAW TO CHANGES, AND SUGGEST THAT ANY CHANGES THAT NEED TO BE MADE SHOULD BE DONE THROUGH THE REGULATORY PROCESS. WE FULLY SUPPORT RENEWED FUNDING FOR THE LAW. THE LAW HAS SUCCESSFULLY WITHSTOOD COURT CHALLENGES, THE MOST RECENT VICTORY BEING THE THIRD CIRCUIT COURT OF APPEALS UPHOLDING OF THE LABELING OF WORKPLACE HAZARDS IN THE MANUFACTURING SECTOR. WE ARE VERY PLEASED WITH THAT DECISION.

FINALLY, I WANT TO SUBMIT FOR THE RECORD A LETTER WRITTEN TO COMMISSIONER DAGGETT ON JAN 28, 1989 FROM OUR COALITION REQUESTING DETAILED INFORMATION ABOUT THE CURRENT RTK PROGRAM, HOW IT EVOLVED, AND WHERE IT IS GOING. AS OF MONDAY, MARCH 13, WE HAVE RECEIVED ANSWERS TO ABOUT HALF THE QUESTIONS, WITH A PROMISE OF A TIME FRAME FOR THE ANSWERS TO THE REST OF THE QUESTIONS TO BE NEGOTIATED. THE RESPONSE RECEIVED MARCH 13 IS ALSO SUBMITTED FOR THE RECORD. WE APPRECIATE THE INTERIM RESPONSE AND LOOK FORWARD TO THE BALANCE OF THE RESPONSE.

WE ARE STILL VERY CONCERNED ABOUT POLICY DECISIONS MADE THAT GREATLY RESTRICTED THE NUMBER OF FACILITIES FOR WHICH THE PUBLIC COULD GET AN INDEPTH PICTURE OF TOTAL CHEMICAL INPUT/OUTPUT. OUR REQUESTS FOR INFORMATION ARE AN ATTEMPT TO LEARN HOW THAT DECISION WAS MADE, WHICH WE STILL DON'T KNOW, AND WHETHER OR NOT FULL IMPLEMENTATION OF THE LAW WILL EVER BECOME A REALITY. WHILE OUR INFORMATION REQUESTS HAVE BEEN EXTENSIVE, WE DO NOT FEEL THEY ARE UNREASONABLE.

THE PUBLIC HAS EVERY RIGHT TO AN ACCOUNTING BY A PUBLIC AGENCY ABOUT HOW, WHEN AND WHY DECISIONS ARE MADE. SO WE THANK THE DEPARTMENT FOR GETTING US THE ANSWERS TO SOME OF OUR QUESTIONS, AND WE LOOK FORWARD TO THE REST OF THE INFORMATION WHICH WILL BE CRITICAL IN EVALUATING THE FUTURE OF THE RTK PROGRAM. WE SHARE YOUR FRUSTRATIONS IN LAUNCHING THIS PROGRAM AND HAVING IT LIVE UP TO OUR HIGH EXPECTATIONS, BUT REST ASSURED WE WILL BE FULLY SUPPORTIVE OF YOUR EFFORTS TO FULLY IMPLEMENT THE LAW.

JANE NOGAKI , CO-CHAIR, NJRTK AND ACT COALITION  
609-767-1110

Testimony of the New Jersey Environmental Federation  
before the  
Right to Know Advisory Council  
March 15, 1989

My name is Peter Montague. I am here today representing the New Jersey Environmental Federation. The New Jersey Environmental Federation appreciates the opportunity to present testimony today. We are a coalition of about 40 New Jersey environmental groups. One of our major areas of concern over the past five years has been issues related to the use and disposal of toxic chemicals in New Jersey. Many of our member organizations actively urged passage of the original NJ Worker and Community Right to Know Act (NJWCRTKA) in the period 1981-1982. Our members urged passage of this law because they believe that chemical releases into the community is cause for legitimate citizen concern and for reasoned citizen decision-making and action. In our view, the New Jersey Worker and Community Right to Know Program is an exceedingly important program.

The law was signed by Governor Kean August 29, 1983. Thus we are now in a position to review the state's efforts at implementing this law over a five and a half year period.

Today we want to look at the original intention of the law, as stated in the law itself. From the viewpoint of citizens living in New Jersey communities, the law says that:

"...individuals have an inherent right to know the full range of risks they face so that they can make reasoned decisions and take informed action concerning their employment and their living conditions." (NJSA 34:5A-2)

"....The Legislature therefor determines that it is in the public interest to establish a comprehensive program for the disclosure of information about hazardous substances in the workplace and the community, and to provide a procedure whereby residents of this State may gain access to this information." (NJSA 34:5A-2; emphasis added)

Thus the law calls for citizen access to comprehensive information about hazardous substances in the community so that citizens can make reasoned decisions and can take informed action concerning their employment and living conditions.

In our testimony today, we will go back to first principles to look at what sorts of information people would need in order to carry out the intent of the law, and then we want to evaluate the progress that state government has made during the past five and a half years in providing citizens with access to that kind of information.

People need the following kind of information:

a) Information about the hazards associated with chemicals. This would involve principally the hazards of chronic exposure over long period of time.

b) Information about the release of chemicals into their environment. From actual spills and releases of chemicals in New Jersey during the past five years, we know that chemicals can be carried on the wind for more than 20 miles after they are released into the environment. For example, on January 4, 1985, American Cyanamid's plant in Linden released a chemical called DMPCT (dimethylphosphorochloridothionate)--a toxic component of a pesticide--and it was reported as a foul odor by residents of the Jersey shore 20 miles away. (Newark Star-Ledger Jan. 9, 1985, pg. 9) The same company had released 80% pure Malathion--another pesticide--into the air October 6, 1984, and, again, odors from the spill were reported by citizens living as far as 20 miles away. (Newark Star-Ledger October 10, 1984, pg. 39.)

Therefore, a person who wants to make reasoned decisions about the chemicals he or she is being exposed to will want to know what chemicals are being released into environment within a 20-to 30-mile radius of his or her home. How would a person go about gathering such information?

There are three possible ways:

- a) smell the chemicals being released;
- b) measure the chemicals with an instrument;
- c) consult a comprehensive database of chemical releases maintained by state government as mandated by the New Jersey Worker and Community Right to Know law (NJWCRTKA).

We'll now consider these three modes of detecting chemical releases:

Unfortunately, the human nose cannot be relied upon to detect all hazardous chemicals. Many chemicals can have adverse effects at levels that are below the odor threshold. This is especially true in the case of carcinogenic chemicals. We know that health officials--including officials within the New Jersey Department of Health--believe that for some chemicals (particularly those that cause cancer) there is no risk-free level of exposure above zero. It is therefore almost certain that people in New Jersey are being exposed to chemicals at levels that carry a non-zero risk, but which they cannot smell because the exposure levels are below the odor threshold.

Therefore, if a person wants to know what hazardous chemicals he or she is exposed to, he or she must take another route. One route they could take would be to ask the state government to monitor their air. However, if any of you have ever asked state government to monitor your air, you know that state government will not monitor your air if you are not suffering from some

acute problem. If you don't have a specific odor complaint, state government is not going to send out a monitoring team to help you out.

This seems understandable. State government has limited air monitoring resources, and they probably shouldn't be expected to monitor all the air in New Jersey for hundreds of chemicals all of the time.

Nevertheless, citizens do have a legitimate concern about exposure of their families to exotic toxic and carcinogenic chemicals. This is why the Legislature passed the community part of the New Jersey Worker and Community Right to Know law (NJWCRTKA), mandating that government to create a "comprehensive" program.

How could citizens use a comprehensive database of chemical releases?

There would be three ways to do it:

- 1) Look in a comprehensive database of chemical releases by town;
- 2) Look in a comprehensive database of chemical releases by zip code;
- 3) Look in a comprehensive database of chemical releases by geographic coordinates (latitude and longitude).

Obviously, tabletop computers would be needed to search efficiently for the kind of information mandated by the law. With 10 million home computers now in use, hundreds of thousands of New Jersey citizens now have the means at their disposal to search for the data that they need.

(Of course, the data to be searched must be made accessible by the agency that gathered it in the first place--the Department of Environmental Protection. More on this later.)

After one had the information on what chemicals were being released into the environment within 20 miles of one's home, one might then want to learn something about the chronic hazards associated with those chemicals.

After one had evaluated the chemical releases into one's environment, and after one had evaluated the chronic hazards of the particular chemicals involved, then one would be in a position to make reasoned decisions about one's living conditions.

At this point, one might take a wide variety of different steps. At the most drastic level, one might simply move; sell

your home or give up your apartment, pack your bags and get out. In some cases, that would certainly be a reasonable response.

Other, less drastic (but more widely beneficial) steps that one might take would include efforts to reduce the release of chemicals into the environment. There are many organized groups in New Jersey working toward that goal, and one could join those groups or work with them.

One could begin to write letters to the companies that are releasing chemicals into the environment, asking them to reduce their emissions.

One could ask to inspect certain facilities, to ask the managers of those facilities face-to-face why they need to release such large quantities of chemicals into the environment.

Or one could begin a legislative campaign to pass new laws restricting the release of hazardous chemicals into the environment.

Or one could begin a legislative campaign to place a tax on the release of hazardous chemicals into the environment.

These are merely examples of reasonable actions that citizens might take to try to reduce the hazards they face in their neighborhoods.

But all of these actions are premised on two kinds of information: (a) information about chemicals being released into the environment within a certain geographic region; and (b) information about the hazards of those chemicals.

Surely this kind of information is what the Legislature had in mind when they passed the New Jersey Worker and Community Right to Know law (NJWCRTKA).

Let's remind ourselves once again of the intent of the law, as stated in the law itself: From the viewpoint of citizens living in New Jersey communities, the law says that:

"...individuals have an inherent right to know the full range of risks they face so that they can make reasoned decisions and take informed action concerning their employment and their living conditions." (NJSA 34:5A-2)

"....The Legislature therefor determines that it is in the public interest to establish a comprehensive program for the disclosure of information about hazardous substances in the workplace and the community, and to provide a procedure whereby residents of this State may gain access to this information." (NJSA 34:5A-2; emphasis added)

Now let us look at the state's current programs, developed under the New Jersey Worker and Community Right to Know law (NJWCRTKA) to see how current programs measure up against the intent of the law.

According to the New Jersey Department of Environmental Protection (DEP), approximately 40,000 employers are covered by the New Jersey Law.

Of these 40,000 employers covered by the law, 869 have provided the state with chemical release information. This is 2.2 percent of employers covered by the law.

The DEP claims to be proud of this record of achievement. We believe they have no reason to be proud.

Now let's look at the second component of the mandated information program--the information on hazards of chemicals. This component of the program, run by the New Jersey Department of Health (NJDOH) has produced fact sheets on more than 1000 hazardous chemicals. These facts sheets are widely acclaimed throughout the United States and, indeed, internationally, for their high quality and their usefulness. The Canadian Center on Occupational Health and Safety is putting the entire set of facts sheets onto a CD-ROM disc (a silver platter), which can be purchased for approximately \$100. In addition, the NJ Department of Health has given the information to other organizations, urging them to make the information available to the public through innovative computer techniques. I am associated with one organization that is receiving all of the fact sheets, in electronic format, without charge from the New Jersey Department of Health, and we are actively engaged at this moment in developing a computer-access system that will make the information available to the citizens of New Jersey free of charge.

In short, we believe the New Jersey Department of Health has done an exemplary job of carrying out its responsibilities under the New Jersey Worker and Community Right to Know law.

The New Jersey Department of Environmental Protection, on the other hand, has fallen down badly and has not met its responsibilities. Furthermore, so far as we can tell from correspondence received from the DEP two days ago, the DEP has no plans and no intentions of ever gathering the chemical release information mandated by the law. They seem determined to circumvent the will of the Legislature, to prevent the citizens of New Jersey from gaining access to the information that citizens need in order to "make reasoned decisions and take informed action about their living conditions," to quote the law once again.

Even the meager information that the DEP has gathered is not being made available to people in computerized format--the format that allows people to search the data most readily. The DEP has collected a modicum of inventory information about chemicals (not the comprehensive chemical release information citizens need, but inventory information about what chemicals are held at various sites around the state), and they are will sell this information in computerized format to citizens for a total cost of \$3,000. In computer terms, the DEP is selling approximately 10 megabytes of data for \$3,000. In contrast, the NJDOH is giving away more than 20 megabytes of data free of charge. The NJDOH is working closely with outside organizations to give citizens greater access to the available data. The DEP, in contrast, is resisting efforts by outside organizations to make the data available to citizens. It seems clear that the current DEP program is designed and conducted to minimize citizen access to the meager data that has been collected.

It is time for fresh winds to blow through the halls of the DEP. We need new people with new ideas. We need new program personnel, including new program leadership. We need innovation, we need imagination, and we need simple competence. Most of all, we need commitment and dedication to the goals of the New Jersey Worker and Community Right to Know law as stated in the law. Our experience of the past five and a half years, watching the development of the DEP's program, convinces us that all these elements are missing from the DEP's community right to know program today.

That is why the New Jersey Environmental Federation Board of Directors has voted to name the New Jersey DEP's Office of Right to Know one of the "Terrible 15" sites in New Jersey. Our list of "Terrible" sites in New Jersey is a list we maintain of the worst contributors to environmental contamination in our state. In the past, we have named specific sources of pollution like Ciba-Geigy, Chemical Waste Management, Fisher Scientific, International Flavors and Fragrances (IFF), Vineland Chemical, and other individual polluters to our list of "Terrible" sites. Now we have added to our list the DEP's Right to Know Program. The DEP's Right to Know Program is making a substantial and continuing contribution to the destruction of our state's environment by refusing to gather comprehensive information on chemical releases, refusing to gather the information that the law specifically mandated them to gather, and by refusing to make available to citizens, at reasonable cost, the meager information that they have gathered. In its present form, the Office of Right to Know is an embarrassment to the Department of Environmental Protection and a detriment to the people of New Jersey.

Thank you for this opportunity to testify.



TESTIMONY OF HILLARY HORN, COORDINATOR  
NJ RIGHT TO KNOW & ACT COALITION  
ANNUAL RIGHT TO KNOW HEARING

About 6 months ago, a number of the groups involved in the effort to pass Right to Know legislation in New Jersey came together again to form the NJ Right to Know & Act Coalition. To date, 100 unions, community and environmental organizations have joined. The goals of the Coalition are to work for effective implementation of state and federal Right to Know laws and to encourage the use of these laws by the members of the Coalition and the general public. In addition, the Coalition is interested in using Right to Know data in new ways and to develop innovative approaches to hazard prevention in the workplace and community.

I am going to focus my comments on issues of enforcement of the NJ Right to Know law, the analysis of the data it generates, and outreach to the community. Testimony given today by Rich Schiafo of ANJEC and Rob Stuart of NJPIRG will go into greater detail on the latter two areas.

I am a resident of Middlesex County and, according to a report by NJPIRG, there are tens of millions of pounds of toxics being released into the air, water and soil in my area. PIRG will no doubt go into greater detail about this data in their testimony, but this shocking information raises two key concerns.

ENFORCEMENT

If this total was derived, in part, from the tabulation of Form R's, and only 869 companies out of tens of thousands in NJ have filed Form R's, then this is just the "tip of the iceberg." Many smaller firms are emitting significant amounts of toxics cumulatively but are individually are below the reporting threshold and therefore exempt from federal requirements.

However, under the New Jersey Community Right To Know law, this kind of additional data could in fact be gathered. We feel that while the DEP is using the federal Toxic Release Inventory Form R to satisfy provisions of the state law, it should be getting release information from **more** companies than the federal law requires. The DEP should at least be ensuring compliance on TRI. I understand that the US EPA has fined about 25 companies nation-wide for failure to submit Form R's and that four NJ firms were fined. Making an example of a few firms will not result in the level of compliance we need. This data is essential in order to determine the health and environmental effects of the tons of toxics being released annually.

In addition, the accuracy of the data should be checked more frequently. The information provided by the other surveys should also be meticulously collected to help determine the hazards present in a given community. The record of the DEP is weak in

this area. In 1988, \$60,800 in penalties was assessed and only \$26,700, less than half, was collected. These penalties were \$100 fines. The Department may levy fines of up to \$2500 per day for each unreported substance. We encourage the DEP and the DOH to vigorously fine firms which are not in compliance.

## ANALYSIS

A comprehensive analysis of the data that is available must be done to identify problem areas. The appropriate state agencies should then respond quickly to reduce the hazards to public health and the environment that these hazardous substances are causing.

We wonder how many permits have been denied and how many regulations or standards have been altered based on information derived from the Right to Know program. If changes have been minimal, then clearly the critical analytical work has not been done, the data has been wasted to an extent, and the intent of the legislation has not been realized.

At the very least, the agencies should publicize the existence of the data and make it readily available to concerned citizens so that they can analyze the risks in their communities.

## OUTREACH

One goal of the Coalition is to encourage the use of RTK laws so we are sponsoring workshops on how to use the law and how to use the data. It is a complicated program and we would like to see more agency efforts focused on outreach especially to high risk communities.

We would also like to see materials developed for citizens which would explain their rights as simply as possible. The materials currently available from the DEP are not adequate, in fact, there isn't even a brochure for the general public. To my knowledge, there is no list of resources either, such as phone numbers for various kinds of information or to order materials.

## CONCLUSION

We have concerns about the program because we know how important it is to the citizens of this state. We are pleased that much of the structure of the program is under control and functioning. We applaud the DEP for responding to requests for information within 30 days. We think the Fact Sheets are great.

We are also pleased with the recent court decision on Universal Labeling and hope that this provision will be swiftly implemented since the DOH has already been enforcing it in public sector workplaces.

The suggestions we've made today have been about the implementation of the current law. We don't want to see any changes in the law now, but we do want to see the funding renewed.

# **NJPIRG**

New Jersey Public Interest Research Group  
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## **TESTIMONY ON IMPLEMENTATION OF NEW JERSEY'S RIGHT TO KNOW LAW AND SARA TITLE III SECTION 313 SUBMITTED BY THE NEW JERSEY PUBLIC INTEREST RESEARCH GROUP (NJPIRG)**

*March 15, 1989*

Good afternoon, my name is Rob Stuart. I am the Legislative Program Director for the New Jersey Public Interest Research Group (NJPIRG). NJPIRG is a non-profit, non-partisan, statewide research and advocacy organization dedicated to environmental and consumer protection and maintaining corporate and government accountability. On behalf of our 70,000 members, I thank you for the opportunity to testify on the implementation of state and federal Right to Know Laws.

NJPIRG played a major role in passing both the New Jersey Right to Know Act of 1983 and the federal Superfund Amendments and Reauthorization Act (SARA) of 1986. In the period since the enactment of these pieces of legislation, NJPIRG and our national lobbying office, USPIRG, have been active in commenting on the relevant regulations promulgated by the New Jersey Department of Environmental Protection (NJDEP) and the United States Environmental Protection Agency (USEPA). In addition, NJPIRG and other state PIRGs have been among the first to use data collected under these laws to inform the public about toxic hazards in their communities.

NJPIRG contends that although there is a great deal of useful information available through the Right to Know program in New Jersey, it is necessary to expand the scope of information collected to more adequately assess threats posed to public health and the environment by toxic substances routinely used and emitted or discharged by industry.

Recent NJPIRG reports on the generation and release of toxic substances in Bergen and Middlesex counties detailed widespread emissions of vast quantities of hazardous substances into the environment (table 1).

**Table 1. Toxic Emissions in Bergen and Middlesex Counties for 1987.**

	(In pounds)	
	<u>Bergen</u>	<u>Middlesex</u>
Air	990,000	7,400,000
POTW	6,680,000	32,200,000
Land	9,000	8,000
Water	25,000	8,400,000
Off-site	<u>1,150,000</u>	<u>24,000,000</u>
Total	8,854,000	72,008,000

Source: NJPIRG

The availability of these rough data enables citizens of New Jersey to begin to see the quantities of toxics discharged by specific facilities into all environmental media. However, as alarming as these figures may be, they barely begin to draw a complete picture of toxic substance emissions into the environment for the following reasons:

1. Current federal thresholds are too high. The law is being enforced under thresholds in the federal Act (75,000 lbs. produced or imported or 10,000 lbs. otherwise used) in lieu of state requirements for submission of release information if any quantity of substances on the chemical list are present at a facility. Thus, a facility importing 74,000 pounds of methyl isocyanate and discharging 100% of this total into surface water or the air would not have to report under the federal law. A leak of 80,000 pounds of this substance resulted in 3,500 deaths and over 100,000 injuries in Bhopal, India in 1984.

NJPIRG recognizes that the federal threshold levels will fall over the next two years, however NJPIRG maintains that even the 10,000 pound threshold for use severely restricts information on chemical risks via release or storage. In order for local emergency planning committees to accurately assess these threats, even the minimum thresholds should be lowered significantly.

2. Too few substances are covered by both laws. The lists of substances contained in both federal and state laws are far too abbreviated. SARA requires



reporting of 326 substances. New Jersey's law requires reporting on approximately 155 substances. By contrast, over 70,000 hazardous substances are commonly used by industry in the U.S. at the present time. In addition, 500-1000 new substances are created each year (1).

In Bergen and Middlesex Counties, NJPIRG encountered a total of 32 facilities which were hazardous waste treatment storage or disposal facilities permitted under the federal Resource Conservation and Recovery Act (RCRA). Only 15 of these facilities, or under 50 percent, submitted federal Form Rs.

In addition, NJPIRG has documented that at least five of the more than thirty commercial hazardous waste disposal companies in the state have failed to submit Form Rs (table 2).

**Table 2. Commercial Hazardous Waste TSDs Failing to Submit Form Rs.**

<u>Facility</u>	<u>Municipality</u>	<u>County</u>
Lionetti Waste Oil	Old Bridge	Middlesex
Marisol Inc.	Middlesex Boro	Middlesex
Rollins Env. Services	Bridgeport	Gloucester
S & W Waste Inc.	South Kearny	Hudson
Solvent Rec. Services	Linden	Union

Source: SARA Form Rs

These companies are clearly among the largest users of toxic substances in the state. In part, the lack of submissions might be attributable to eligible companies voluntarily or involuntarily failing to comply (the enforcement problem is discussed below). Yet there is also a definite possibility that these companies are simply using substances below current thresholds or are using or producing significant quantities of the multitude of substances not covered by the laws.

The fact that such a large number of facilities which are handling considerable quantities of hazardous substances have not filed toxic release or throughput information clearly indicates the need for lower threshold quantities, expanded substance lists, and increased enforcement.

Two additional points of concern for the Right to Know program are the lack of release rate information and the lack of a proper enforcement mechanism to catch non-compliers. Release rate information is critical to assessing the immediate and long term risks posed to residents via concentrations of chemicals in the air. Without such these data it is impossible to determine if one year's releases occurred over 300 days or 3 hours. At least one company has exploited this situation to issue misleading analyses about their emission rates.

It is apparent that neither the NJDEP nor the USEPA have established anything but crude mechanisms for detecting non-compliers under the Right to Know laws. If either law is to be respected by companies there must be an assurance that those who fail to submit information or submit misleading information will be discovered and penalized.

Finally, NJPIRG reiterates the value of the data currently generated under the Right to Know program. For the first time, citizens have access to detailed information on toxic substance being stored and released in their communities across the state. By ensuring that the state and federal laws are stringently enforced and by expanding the scope of the program to include greater numbers of chemicals at lower threshold quantities and, in addition rate of release information, citizens of the state of New Jersey will begin to recognize the full force of their right to know.

This concludes the comments of NJPIRG. I would be happy to answer any questions.

#### Notes

1. Sandra Postel. Defusing the Toxics Threat: Controlling Pesticides and Industrial Waste. Wordwatch Paper 79. The Worldwatch Institute. 1985.

Comments to the Right to Know Advisory Council  
March 15, 1989

Good Afternoon. My name is Rich Schiafo and I employed by the Association of New Jersey Environmental Commissions, better known as ANJEC. ANJEC has a contract with the Bureau of Hazardous Substances Information, Division of Environmental Quality, of the New Jersey Department of Environmental Protection. Under this contract ANJEC is to assist local emergency planning committees fulfill their public outreach and Right to Know responsibilities as mandated by Title III of the Superfund Amendments and Reauthorization Act of 1986 or SARA. Thus far ANJEC has conducted three Community Right to Know workshops in different areas of the state which attracted approximately 120 participants including environmental commissioners, health officers and members of local emergency planning committees. ANJEC has also printed an article explaining the federal and state Right to Know reporting requirements. This article appeared in the Summer 1988 ANJEC Report and has been distributed to over 2,000 individuals. Another article on hazardous materials emergency planning will appear in the Spring 1989 ANJEC Report. In the near future ANJEC will be working with two local emergency planning committees to assist them in public outreach and with the use of right to know data in emergency planning. We are also preparing a public outreach handbook for local emergency planning committees.

This project is designed to provide assistance to local

planning committees,<sup>which</sup> are supposed to be representative of the community. ANJEC's project is essentially a form of indirect public outreach in which the local emergency planning committee is used as a vehicle to provide the public with information that they are entitled to. Now I think the local emergency planning committees are one of the proper channels of communication for disseminating right to know information or else I would not be working on the project however there still remains a tremendous need for public education and public outreach with regards to the state's community right to know program.

The intent of both federal and state right to know laws is to provide citizens with information about hazardous and toxic chemicals in their community so that they can make informed decisions about the hazards that they are exposed to. More emphasis must be put on outreach and educational programs to inform citizens of the information that is available to them on hazardous substances. Until the public fully understands its right to know the intent of both laws will not be met.

This Council and/or the DEP should serve as a catalyst to initiate dialogue with the public both at the state and local level. There is a critical need for the DEP to develop and implement a public outreach plan which should include significant staff time and effort helping the public understand this complex program. Perhaps a Public Outreach Subcommittee or Task Force is in order so that Community



Right to Know outreach materials such as brochures, posters and fact sheets could be developed and distributed. And I emphasize distributed. Other things like public education videos directed towards citizens emphasizing citizen involvement, understanding and use of Right to Know information could be developed and distributed. A Speakers Bureau could be set up to actively pursue speaking engagements with community groups, religious groups, civic associations, environmental and public health organizations, etc.. While a state government hiring freeze exists perhaps the DEP should use at least one existing staff person to design and work on public outreach full-time. I realize that the DEP can not go out and knock on the door of every resident of the state to tell them about their right to know and that the amount of public outreach that can come from the state government is limited however both the DEP and the State Police should work closely with local emergency planning committees to encourage and direct them to take an active role in public outreach and education. Since New Jersey has chosen to have so many local emergency planning committees, these committees are one of the most logical outlets for disseminating information about hazardous materials emergency planning and community right to know at the local level. After all these committees are responsible for making right to know information available to the public under SARA, Title III.

Not only is it important to publicize the availability

of Right to Know data, it is also necessary that this data be accessible and useable. There is also a great need to educate citizens about how Right to Know data can be used to protect public health and the environment. As part of the ANJEC contract I will be preparing an article on the uses of Right to Know data, however, again I want to point out that our audience is local emergency planning committees and other local officials. Citizens need to understand their Right to Know.

In addition there is a need for greater public participation in both the emergency planning and Right to Know process. The monthly Right to Know Advisory Council meetings could be a forum for public comment on issues of concern. This Advisory Council should allow a public comment period as part of its regular agenda at its monthly meetings.

And while local emergency planning committees are busy preparing their emergency plans, there has not been and there continues to be a lack of public participation in the emergency planning process as is required by SARA, Title III. SARA, Title III requires an LEPC to be representative of the community and calls for public participation. According to Section 301(c) of SARA, Title III the committees are to establish rules by which the committee shall function which (quote) "shall include provision for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments, and distribution of the emergency plan" (end quote). I

question the extent to which such rules have been established or implemented and my experience with local emergency planning committees indicates that they are usually run by one or a few local officials who hold meetings without public notification, during the day thereby prohibiting interested daytime working members of the public from attending the meetings and the plans are prepared by one or few individuals on the committee or township staff without valuable public input.

Hazardous materials emergency planning in New Jersey is product-oriented concerned with getting plans written and approved while ignoring the importance of the process by which these plans are prepared. Involving the public from the start can initiate a dialogue between residents and local officials that can provide for a sharing of information. Local officials can hear the concerns of the residents and local officials may be surprised at the important information that members of the public can provide. In addition this gives local officials the opportunity to share information with residents about emergency planning and response and about the right to know information that the committee has received from local facilities. Instead, one or a few local officials or volunteer emergency coordinators are writing the plans and waiting for the plans to be approved to have a public meeting, thereby violating the spirit and intent of SARA, Title III. Holding a public meeting after the plan has already been prepared is not adequate public

participation. By not involving the public and withholding information, local officials set themselves up for public criticism.

I realize that local emergency planning committees have little to no funding, limited resources and are often run by volunteers. Nevertheless this is all the more reason that community group and media representatives on these committees could be responsible for outreach and play a very important role on the committee; after all not everything has to be done by one emergency management coordinator.

The Hazardous materials emergency planning process and the Right to Know program have the potential to provide valuable information and protect public health and the environment however until the public understands and uses this information the intent of the community right to know laws will not be met.



# COALITION AGAINST TOXICS

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MARCH 15, 1989

TO: RTK ADVISORY COUNCIL AND DEP, DOH RTK PERSONNEL  
FROM: WYNNE FALKOWSKI, CHAIRMAN, COALITION AGAINST TOXICS

WYNNE FALKOWSKI  
CHAIRMAN  
DAVID C. COPELAND  
VICE-CHAIRMAN  
JANE NOGAKI  
SECRETARY-TREASURER

Thank you for accepting testimony regarding the NJ RTK law and the federal SARA III. I'm sorry I could not be there personally to testify today but I appreciate the chance to make some suggestions regarding the future of the rtk program.

First let me tell you how we are using the law. We have requested rtk information about five local industries with whom we would like to develop a hazard reduction plan. The goal of the information gathering is to assess what chemicals are used at a facility, determine whether less hazardous substitutes can be used, and decide how emissions can be reduced. A corollary goal is emergency planning for "worst case scenarios" at each facility. In our request to meet with and inspect local facilities, we have used the RTK NJ Laws and SARA III as our foot in the door, the opportunity to sit down and discuss the information with the plant manager or company executive.

Coalition Against Toxics members have completed an inspection and "neighborhood agreement" with Dynasil Corporation of America. The good news is that the president of the facility agreed to implement an emergency response plan, and to do some other preventative measures as well. The bad news is that Dynasil is not required by law to do so. Dynasil does not handle hazardous substances in excess of threshold planning quantities, and therefore is not required to participate in emergency planning with municipal emergency management officials.

The fact that the Dynasil president has agreed to do such a plan and share it with the local and state agencies is an example of how local community interest can spark improvements that go beyond the law, but in truth, every user/storer of hazardous chemicals should be required to have an emergency response plan worked out. The dangers that small facilities pose are just as real as large ones. For instance, it was calculated by the industrial hygienist who inspected Dynasil that if the largest storage tank of silicon tetrachloride located at Dynasil leaked its contents, and that silicon tetrachloride reacted with moisture to form hydrochloric acid gas, and the wind was travelling in its usual west-to-east pattern, then an evacuation of approximately 350 families who live within 1/2 mile of the plant would be necessitated to avoid exposure to the plume of hydrochloric gas. Something should be done to the Federal Law to reduce those planning thresholds, preferable to match the much lower ones in the New Jersey Law, so that smaller facilities will be required to do emergency planning.

Our second recommendation would be that emissions data be collected on smaller facilities as well as larger ones. Dynasil was never required to fill out a survey detailing its emissions, something we think should and could have happened under NJ law. Dynasil voluntarily filled out FORM R's for hydrochloric acid, which is its major air emission, and sodium hydroxide, a neutralizing compound. It was not required to report its other major emission, silicon dioxide, which is a respiratory irritant, under either the NJ law or the federal law. We believe that the Community Survey (DEQ94) should have required the reporting of emissions data, and not just inventory data, and it should do so for at least the 327 chemicals reported on the SARA III list.

Affiliated with the NJ COALITION FOR ALTERNATIVES TO PESTICIDES, NJ CLEAN WATER ACTION, NJ CITIZEN ACTION, and THE NATIONAL CAMPAIGN AGAINST TOXIC HAZARDS

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The fear of our group is that citizens will request right to know information for a local facility, and the information either won't be available, because the facility falls below the threshold, or because it didn't fill out any forms, or the citizen didn't know the proper name of the form to ask for, and therefore received only an inventory survey and not the more useful Form R, if one exists for that facility.

Included with my testimony is an article written about the community inspection idea. We urge local citizen groups or environmental commissions to "adopt a facility" and work out hazard reduction plans. THE RTK laws are invaluable tools if the commitment is there to enforce it in a more inclusive way.

Finally, a word about the usefulness of the DOH generated fact sheets. They have been invaluable in researching the health effects of various chemicals, even if the exposures are written for Occupational situations. The fact sheets have received recognition from other environmental groups throughout the nation, and are commonly requested by other state rtk programs. The DOH is to be commended for the fine job it has done in researching the fact sheets.

Thank you.

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