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JOINT PUBLIC HEARING

before

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

AND

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

SENATE BILL NO. 3079

AND

ASSEMBLY BILL NO. 4171

(Expands the scope of the "Pesticide Control Act of 1971")

January 23, 1991
Freeholders' Meeting Room
Administration Building
Elizabeth, New Jersey

MEMBER OF SENATE COMMITTEE PRESENT:

Senator Raymond J. Lesniak, Chairman

MEMBERS OF ASSEMBLY COMMITTEE PRESENT:

Assemblyman Robert G. Smith, Chairman
Assemblyman Neil M. Cohen, Vice Chairman

ALSO PRESENT:

Assemblyman George Hudak
District 20

Dale C. Davis, Jr.
Jaci S. Goldrosen
Office of Legislative Services
Aides, Senate Labor, Industry and Professions Committee

Spiros J. Caramalis
Office of Legislative Services
Aide, Assembly Energy and Environment Committee

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Hearing Recorded and Transcibed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

AYMOND LESNIAK
Chairman
HRISTOPHER J. JACKMAN
Vice-Chairman
OWARD T. O'CONNOR, JR.
ERALD CARDINALE
ONALD T. DiFRANCESCO

New Jersey State Legislature
SENATE LABOR, INDUSTRY
AND PROFESSIONS COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 984-0445

NOTICE OF JOINT PUBLIC HEARING

The Senate Labor, Industry and Professions Committee and Assembly Energy and Environment Committee will hold a joint public hearing on the following legislation:

S-3079 Lesniak	Expands the scope of the "Pesticide Control Act of 1971".
A-4171 Smith, R./Duch	Expands the scope of the "Pesticide Control Act of 1971".

The hearing will be held on **Wednesday, January 23, 1991 at 10:00 A.M. in the Freeholders' Meeting Room (6th floor) of the Union County Administration Building, Elizabethtown Plaza, Elizabeth, New Jersey.**

The public may address comments and questions to Dale Davis or Jaci S. Goldrosen, Committee Aides, and persons wishing to testify should contact Arlene H. Bezek, secretary, at (609) 984-0445.

Those persons presenting written testimony should provide 20 copies to the committees on the day of the hearing.

Issued 1/9/91

SENATE, No. 3079

STATE OF NEW JERSEY

INTRODUCED DECEMBER 3, 1990

By Senator LESNIAK

AN ACT concerning pesticides, and amending and supplementing P.L.1971, c.176.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 6 of P.L.1971, c.176 (C.13:1F-6) is amended to read as follows:

6. a. There is [hereby] created in the department a Pesticide Control Council which shall consist of [nine] 16 members, three of whom shall be the Secretary of Agriculture, the Commissioner of Health, the Dean of the College of Agriculture and Environmental Science of Rutgers, The State University, or their designees, who shall serve as ex officio, and [six] 13 citizens of the State representing the general public to be appointed by the Governor, to serve at his pleasure [, of whom one shall be a farmer, one a toxicologist and one an ecologist]. Of these members, one shall be appointed from persons with training and experience in toxicology, recommended by recognized research or academic organizations; one from persons with training or experience in ecology, recommended by recognized research or academic organizations; one from persons trained in occupational safety and health, recommended by the department of community medicine at the University of Medicine and Dentistry; one from persons with training or experience in groundwater hydrology, recommended by recognized academic or professional organizations; one from persons with training and experience in farming, recommended by recognized organizations of farmers; one from persons with training and experience in organic farming, recommended by recognized organizations of organic farmers; one from persons recommended by recognized organizations of farmworkers; one from persons recommended by recognized organizations of pesticide applicators; one from persons with expertise in fish, game, and wildlife issues recommended by recognized wildlife organizations; one from persons with training or experience in integrated pest management, recommended by recognized organizations of farmers; one from persons recommended by recognized public interest organizations; one from persons employed by a local or county health agency under agreement with the department in accordance with the "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et seq.); and one from persons employed in pesticide

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

manufacturing recommended by industrial or trade organizations. The Governor shall designate a chairman and a vice chairman of the council from the public members who shall serve at the [will] pleasure of the Governor.

In the event that no recommendations for a particular category of membership are made to the Governor three months prior to the effective date of P.L. c. (now before the Legislature as this bill) in the case of the initial appointments, or within 60 days of the date of the expiration of the term of office of any member or the occurrence of any vacancy in the case of subsequent appointments, the Governor shall appoint as a member for that category of membership a person whom he believes will be representative thereof.

b. Of the six members first to be appointed, two shall be appointed for terms of [2] two years, two for terms of [3] three years and two for terms of [4] four years. Of the seven members first to be appointed pursuant to P.L. , c. (now before the Legislature as this bill), three shall be appointed for terms of two years, two for terms of three years, and two for terms of four years. Thereafter all appointments shall be made for terms of [4] four years. [All appointed members shall serve after the expiration of their terms until their respective successors are appointed and shall qualify, and any vacancy occurring in the appointed membership of the council shall be filled in the same manner as the original appointment for the unexpired term only, notwithstanding that the previous incumbent may have held over and continued in office as aforesaid.]

c. Members of the council shall serve without compensation, but shall be entitled to reimbursement for expenses in attendance at meetings of the council and in performance of their duties as members thereof.

(cf: P.L.1971, c.176, s.6)

2. Section 7 of P.L.1971, c.176 (C.13:1F-7) is amended to read as follows:

7. The Pesticide Control Council shall be the advisory body [in] to the Department of Environmental Protection in matters relating to the control, regulation and use of pesticides and is empowered to:

a. Request from the commissioner such information concerning pesticides as it may deem necessary;

b. Study and consider any matter relating to the improvement of pesticide control programs and advise the commissioner thereon;

c. From time to time submit to the commissioner such recommendations and reports which it deems necessary for the proper conduct and improvement of pesticide control programs;

d. Study the use, application and disposal of pesticides and advise the commissioner thereon;

e. Study pesticide control programs and make reports and recommendations thereon to the commissioner as it may deem

necessary;

f. Study any regulations promulgated by the department or any other governmental entity in regard to the control of pesticides and make such recommendations thereon to the commissioner as it may deem appropriate;

g. Study and investigate the state of the art and the technical capabilities and limitations of regulations concerning use and control of pesticides and their relation to the environment and ecology and report its findings and recommendations thereon to the commissioner;

h. Study and investigate the need for programs for long range technical support of pesticide control programs and report its findings and recommendations thereon to the commissioner; [and]

i. Hold periodic public hearings concerning the use and application of pesticides and upon the state of the art and technical capabilities and limitations in pesticide control and report its recommendations thereon to the commissioner; and

j. Review the findings and recommendations of the Pesticide Technical Advisory Committee and make appropriate recommendations to the commissioner.

(cf: P.L.1971, c.176, s.7)

3. (New section) The council shall prepare and submit to the Governor, the commissioner, and the Legislature an annual report summarizing its activities and making any recommendations for legislative or administrative action it deems appropriate.

4. (New section) a. There is created in the department a Pesticide Technical Advisory Committee to advise the Pesticide Control Council and the department, comprising no more than nine members. Two members shall be appointed by the commissioner and represent the department, and two members shall be appointed by the Commissioner of Health and represent the Department of Health. The commissioner may appoint no more than five additional members as deemed necessary to carry out the duties of the committee. The members of the committee shall have expertise in scientific disciplines appropriate for pesticide evaluations.

b. The committee shall:

(1) Formulate criteria for triggering reviews of pesticides and develop a priority scheme for scientific evaluations.

(2) Provide recommendations regarding budget needs to fund pesticide technical reviews and studies.

(3) Oversee the progress of pesticide assessments and pesticide related research.

(4) Review the findings of the technical studies and reviews and make appropriate recommendations.

c. The committee shall meet at least quarterly, and shall prepare and submit to the Pesticide Control Council and the department a report of its activities at least annually. A per diem fee shall be provided to members for time allocated to committee responsibilities.

5. (New section) The department shall conduct a training program for persons working under the direct supervision of pesticide applicators registered with the department pursuant to the P.L.1971, c.176 (C.13:1F-1 et seq.).

6. (New section) The department may, by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), require the registration of persons who inspect structures for pest infestation and issue certificates to attest to their findings. The department shall base such registration on a competency standard that may include a written examination.

7. (New section) a. No person may aerially apply any broad-spectrum chemical pesticide on land not actively devoted to agriculture or horticultural use, except in the case of mosquito control where the department determines that no practical alternative is available, or other environmental, health or agricultural emergencies, as defined by regulation adopted by the department.

b. In the event of an environmental, or a health or agricultural emergency, the department, in consultation with the Department of Health or the Department of Agriculture, as appropriate, may grant an exemption from the provisions of subsection a. of this section. Upon granting the emergency exemption, the department shall make available a separate written report setting forth the emergency condition that required the immediate action. The department shall also make every attempt to notify the affected public and interested citizens prior to the aerial application. As used in this section, "broad-spectrum chemical pesticide" means any non-specific chemical pesticide toxic to a wide-range of target and non-target organisms.

8. (New section) Within one year of the effective date of this amendatory and supplementary act, the Department of Environmental Protection, in consultation with the Department of Agriculture and the Department of Health, shall adopt pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing notification requirements to afford all people who may be exposed to pesticides the opportunity to minimize their exposure. Such notification requirements may include requirements for posting of notices during pesticide applications, requirements for owners and responsible parties of public buildings to maintain pesticide notices for a specified period of time, and any other requirements deemed necessary by the department to minimize exposure.

To the greatest extent practicable, notification shall be made directly by mail, telephone or personal service to affected persons prior to a pesticide application. When direct notification is not feasible, other means shall be designed to maximize the number of people notified. Legal advertisements alone shall not constitute notice under this section. The department may direct

county or municipal governing bodies to assist in carrying out its responsibilities under this section.

9. (New section) The department shall establish and implement, according to rules and regulations adopted pursuant to the "Administrative Procedure Act," a permit program for municipal gypsy moth control not under the jurisdiction of the Department of Agriculture spray program.

10. (New section) The department shall prepare, and provide to all farm owners, record of application forms on which farm owners shall insert the following information: the crop, the pesticide applied to that crop, reentry time and date for safe reentry to treated fields, and the exact date and location of application. The headings on this form shall be printed in English and Spanish. In lieu of the form prepared by the department, a farm owner may develop a form, subject to the approval by the department.

11. (New section) The department, in consultation with the Department of Health, shall prepare pamphlets written at a fifth grade reading level in English and Spanish and provided to farm owners to make available to his farmworker employees on the first day of employment. The health topics in the pamphlets shall be developed cooperatively by the department and the Department of Health. The pamphlet shall include, but not be limited to the following:

a. General pesticide health and safety, preventive practices in the field and farmworker residential area, signs and symptoms of pesticide poisoning, first aid and medical care, and methods for seeking assistance from State and federal agencies if a pesticide problem occurs;

b. Names and addresses of health providers in the vicinity who are trained in pesticide evaluation and have bi-lingual staff; and

c. The rights of farmworkers to obtain the information and training provided pursuant to P.L. c. (now before the Legislature as this bill) as well as rights under other State and federal laws.

12. (New section) The department shall develop, according to rules and regulations adopted pursuant to the "Administrative Procedure Act," a training program for farmworker employees. The training shall be conducted by a person certified as a trainer by the department. The health aspects of the certification requirements shall be developed cooperatively by the department and the Department of Health. The training shall be compatible with United States Environmental Protection Agency and Occupational Safety and Health Administration regulations, shall be conducted in either English or Spanish depending on the primary language of the farmworker, and shall include, but not be limited to, the following topics:

a. Health hazards of pesticides;

b. Steps to employ to avoid exposure, such as workplace practices, personal protective clothing and equipment;

c. Steps to employ if exposed, such as recognizing signs and symptoms, first aid and emergency response, and seeking medical care;

d. Identification of the pesticides being applied by using the completed record of application forms, pesticide fact sheets, labels and the Material Safety Data Sheets;

e. General explanation of the content included on every fact sheet; and

f. Farmworker rights under the laws concerning:

(1) Hazard communication (written information and training), protection from exposure to pesticides, and field sanitation;

(2) Agencies responsible for enforcing the laws; and

(3) Procedures for filing complaints to, and obtaining information from, these agencies.

13. (New section) a. Every farmowner shall complete a record of application on the forms prepared pursuant to section 10 of P.L. c. (C.) (now before the Legislature as this bill).

b. Every farm owner shall post the completed record of application forms in a central location, or at various assembly points throughout the farm, or at any other location to ensure that farmworkers who work in the fields are able to read the record of application forms daily.

c. Every farm owner shall provide the pamphlets prepared by the department pursuant to section 11 of P.L. c. (C.) (now before the Legislature as this bill) to all farmworker employees who work in the fields, or who mix, load, apply, or store pesticides, or who work in a packing house on the farm premises.

d. The farm owner shall also maintain a Material Safety Data Sheet and a fact sheet on each pesticide product used on crops or stored, which shall be made available to the farmworker employees upon request. The fact sheet shall be written in English and Spanish at no more than a fifth grade reading level and shall include the following information: chemical name and common trade name, acute and chronic health hazards, symptoms of poisonings, personal protective equipment and practices, reentry time, and emergency first aid.

14. (New section) Every farm owner shall be responsible for training his farmworker employees who work in the fields, or who mix, load, apply, or store pesticides, or who work in a packing house on the farm premises.

15. (New section) a. The Commissioner of Health shall, by rule or regulation, establish a mechanism for the reporting by physicians and veterinarians of incidents of pesticide exposure to the Department of Health.

b. The Department of Health shall identify health providers who provide health services to farmworkers and train these providers in the recognition, evaluation and treatment of pesticide exposure.

c. The Department of Health shall develop and implement, in

cooperation with local health officers and State and local medical associations, a program of medical education to alert physicians and other health care professionals to the symptoms, diagnosis, treatment, and reporting of cases of acute pesticide poisoning and chronic pesticide-related health effects, and to the known or suspected acute and chronic health effects of pesticides on children and other persons known or suspected to be particularly susceptible to adverse effects of pesticide exposure.

16. (New section) The Department of Environmental Protection and the Department of Health shall jointly develop a mechanism by which pesticide incidents reported to one department shall be referred to the other.

17. (New section) An employee shall have the right to refuse to enter a field when instructed to enter before the minimum reentry time has elapsed or if the information to which he is entitled has not been provided.

18. (New section) a. No employer may discharge, cause to be discharged, or otherwise discipline, penalize, or discriminate against any employee because the employee or his employee representative has exercised any right established in this act.

b. Any employee who believes that he has been discharged, or otherwise disciplined, penalized, or discriminated against by an employer in violation of subsection a. of this section may, within 30 days of the violation, or within 30 days of obtaining knowledge that a violation occurred, file a complaint with the Commissioner of the Department of Labor alleging the violation. Within 30 days of the receipt of a complaint, the commissioner shall conduct an investigation of the complaint. If after the investigation the commissioner determines that there is probable cause that the complaint is valid, he may refer the complaint to the Office of Administrative Law, which, upon the referral, shall commence an adjudicatory proceeding on the complaint, to be conducted as a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and P.L.1978, c.67 (C.52:14F-1 et seq.). If the Commissioner of Labor or the employee introduces evidence that prior to the alleged violation the employee exercised any right provided in this act, the employer shall have the burden to show just cause for his action by clear and convincing evidence. Within 45 days of the receipt of the recommendations of the administrative law judge, the commissioner shall adopt, reject, or modify the recommendations. The final decision of the commissioner shall be considered the final agency action thereon for the purposes of the "Administrative Procedure Act" and shall be subject only to judicial review as provided in the Rules of Court.

19. (New section) Any person may bring a civil action in law or equity against the Department of Environmental Protection or the Department of Health for failure to enforce the provisions of this act or any rule or regulation promulgated pursuant thereto. The Superior Court shall have jurisdiction of these actions, and it

shall not be necessary to the maintenance of the action that the person bringing the action prove that he has suffered or will suffer personal loss or damage. The court may award, whenever it deems appropriate, costs of litigation, including reasonable attorney and expert witness fees.

20. (New section) Any person whose property or person is exposed to a pesticide resulting from a violation of this act may bring a civil action in law or equity on his behalf against any person for a violation of any provisions of this act or any rule and regulation promulgated pursuant thereto. The court, upon finding violations of this act based upon proof established by a preponderance of the evidence, shall award compensatory damages and may award punitive damages for violations which are wanton, reckless, or malicious. It shall also award such equitable relief as is necessary and appropriate to effectuate the purposes of this act.

21. Section 9 of P.L.1971, c.176 (C.13:1F-9) is amended to read as follows:

9. The department shall have power, in addition to those granted by any other law, to

a. Conduct and supervise research programs for the purpose of determining the effects and hazards of the use and application of pesticides on man and his environment; [and in furtherance of this research effort the commissioner shall consider the School of Agriculture of Rutgers, The State University, as a primary source of assistance;]

b. Conduct and supervise Statewide programs of pesticide control education including the preparation and distribution of information relating to pesticide control;

c. Enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected violation of law relating to pesticides and ascertaining compliance or noncompliance with any rules, regulations or orders of the department;

d. (1) Receive or initiate complaints of violations of applicable laws, rules, regulations and orders relating to pesticides; and

(2) [institute] Institute legal proceedings for the prevention of such violations, including issuing orders requiring chronic violators to have conducted independent assessments of their pesticide application and related business operations for the prevention of such violations, and for the recovery of penalties, in accordance with law;

e. With the approval of the Governor, cooperate with, and receive money from, the Federal Government, the State Government, or any county or municipal government or from private sources for the study and control of pesticides;

f. Declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

g. Determine whether pesticides are highly toxic to man;

h. Determine standards of coloring or discoloring for pesticides;

i. Subject pesticides to the requirements of Section 11 of P.L.1971, c.176 (C.13:1F-11);

j. Cooperate with, and enter into agreement with, any other agency of this State, or the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this act and securing uniformity of regulations, in order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of pesticides, and to avoid increased costs due to the necessity complying with such diverse requirements in the manufacture and sale of such pesticides;

k. Have the power, in accordance with a fee schedule adopted as a rule or regulation in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to establish and charge fees for any of the services it performs, which fees shall be annual or periodic as the department shall determine. The fees charged by the department pursuant to this section shall reflect the actual or projected expense incurred by the department in the performance of the service for which the fee is charged. All fees collected pursuant to this section shall be deposited in the Environmental Services Fund created pursuant to P.L.1975, c.232 and kept separate from other receipts deposited therein and appropriated for the operation of the Pesticide Control Program in the Department of Environmental Protection. The criteria for registration, certification, or permit fees shall reflect the actual or projected [expense] expenses incurred by the department in [the performance of the service for which the fee is charged] regulating and monitoring the distribution, use, application, handling, transportation and disposal of pesticides, less the amount of other program service fees collected hereunder by the department. Program costs may include the costs to the department of planning, developing rules and regulations, reviewing, issuing and administering registrations, certifications or permits, and monitoring compliance with this act and departmental rules and regulations, and educational programs adopted pursuant thereto. A separate fee schedule shall be adopted for each registration, certification, or permit program to reflect the program costs thereof. To the extent practicable and as may be equitable, the amount of the fee shall take into account the quantity and toxicity of the pesticides to be handled or utilized by the holder of the registration, certification, or permit. The fee schedule, as adopted by regulation by the department, shall also provide for costs incurred by the Department of Health to implement its responsibilities delineated in P.L. c. (C.) (now before the Legislature as this bill).

(cf: P.L.1981, c.538, s.1)

22. Section 10 of P.L.1971, c.176 (C.13:1F-10) is amended to read as follows:

10. a. If any person violates any of the provisions of this act or any rule, regulation or order promulgated pursuant to the provisions of this act, the department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation or violations and the said court may proceed in the action in a summary manner.

b. Any person who violates the provisions of this act or any rule, regulation or order promulgated pursuant to this act shall be liable to a penalty of not more than [$3,000.00] $25,000 for each offense, to be collected in a civil action by a summary proceeding [under the Penalty Enforcement Law] pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court [, County Court and county district court] shall have jurisdiction to enforce [said Penalty Enforcement Law] "the penalty enforcement law". If the violation is of a continuing nature, each day during which it continues subsequent to an order to cease the violation shall constitute an additional, separate and distinct offense.

No civil administrative penalty shall be levied except subsequent to the notification of the violator by certified mail or personal service. The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; a concise statement of the facts alleged to constitute the violation; a statement of the amount of the civil penalties to be imposed; and a statement of the violator's right to a hearing. The violator shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing and upon a finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order upon the expiration of the 20-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied. A person is liable for the acts of his employees acting in the scope of their employment.

c. The department is [hereby] authorized [and empowered] to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances including the posting of a performance bond by the violator.

d. Any person who violates this act or an administrative order issued pursuant to subsection b. of this section or a court order

issued pursuant to subsection a. of this section or who fails to pay a civil administrative penalty in full pursuant to subsection b. of this section is subject, upon order of the court, to a civil penalty not to exceed $25,000 per day of the violation, and each day's continuance of the violation constitutes a separate and distinct violation. Any penalty imposed under this subsection may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law". The Superior Court shall have jurisdiction to enforce "the penalty enforcement law." A person is liable for the acts of his employees acting in the scope of their employment.

e. All fines collected pursuant to this section shall be deposited in the Environmental Services Fund created pursuant to P.L.1975, c.232 and kept separate from other receipts deposited therein, and shall be appropriated for the support of the Pesticide Control Program in the Department of Environmental Protection.

(cf: P.L.1971, c.176, s.10)

23. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to strengthen the State's program for controlling the use of pesticides. The bill extends responsibilities and authority of the Department of Environmental Protection (DEP), assigns specific responsibilities to the Department of Health, and expands the scope of the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.) to promote the safe use of chemical pesticides and protect the public health and environment.

Specifically, the bill would establish a Pesticide Technical Advisory Committee with scientific expertise to provide recommendations concerning pesticide evaluations. The committee will report directly to the Pesticide Control Council, which would be expanded under the bill to provide for additional expertise.

The bill would also give the department authority to require the registration of persons who inspect structures for pest infestation.

The bill would restrict the aerial application of a broad-spectrum chemical pesticide on non-agricultural lands to certain emergencies. The bill would require DEP to design notification procedures to afford all persons who may be exposed to pesticides the opportunity to avoid exposure, and the procedures may include requirements for the maintenance of public notices. The department would also be directed to set up a permit program for municipal gypsy moth control not under the jurisdiction of the Department of Agriculture spray program.

The bill also addresses issues concerning the safety of farmworkers. DEP would develop forms, which farm owners

would complete with specific information and provide to farmworkers. The department, in consultation with the Department of Health, would develop pamphlets generally addressing the safe use of pesticides. Farm owners would be required to provide this information to farmworkers on the first day of employment. The bill would also require all farmworkers to be trained by certified individuals concerning the hazards of pesticides, techniques to minimize exposure, first aid, and laws established to protect farmworkers from pesticide exposure. The bill would also require the Department of Health to implement a system for the mandatory reporting of pesticide exposure incidents, and to train health providers in the recognition, evaluation and treatment of pesticide exposure.

Finally, the bill would increase the maximum fines that may be collected and dedicate all fines to support the operation of the pesticide control program. DEP would be authorized to utilize its existing fee structure to fund its new responsibilities under this bill. It is the intent of this bill to make available to the department additional moneys necessary to support new positions in the pesticide control program.

ENVIRONMENT

Expands the scope of the "Pesticide Control Act of 1971."

ASSEMBLY, No. 4171

STATE OF NEW JERSEY

INTRODUCED DECEMBER 3, 1990

By Assemblymen SMITH, DUCH and Schwartz

AN ACT concerning pesticides, and amending and supplementing P.L.1971, c.176.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 6 of P.L.1971, c.176 (C.13:1F-6) is amended to read as follows:

6. a. There is [hereby] created in the department a Pesticide Control Council which shall consist of [nine] 16 members, three of whom shall be the Secretary of Agriculture, the Commissioner of Health, the Dean of the College of Agriculture and Environmental Science of Rutgers, The State University, or their designees, who shall serve as ex officio, and [six] 13 citizens of the State representing the general public to be appointed by the Governor, to serve at his pleasure [, of whom one shall be a farmer, one a toxicologist and one an ecologist]. Of these members, one shall be appointed from persons with training and experience in toxicology, recommended by recognized research or academic organizations; one from persons with training or experience in ecology, recommended by recognized research or academic organizations; one from persons trained in occupational safety and health, recommended by the department of community medicine at the University of Medicine and Dentistry; one from persons with training or experience in groundwater hydrology, recommended by recognized academic or professional organizations; one from persons with training and experience in farming, recommended by recognized organizations of farmers; one from persons with training and experience in organic farming, recommended by recognized organizations of organic farmers; one from persons recommended by recognized organizations of farmworkers; one from persons recommended by recognized organizations of pesticide applicators; one from persons with expertise in fish, game, and wildlife issues recommended by recognized wildlife organizations; one from persons with training or experience in integrated pest management, recommended by recognized organizations of farmers; one from persons recommended by recognized public interest organizations; one from persons employed by a local or county health agency under agreement with the department in accordance with the "County

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Matter underlined thus is new matter.

Environmental Health Act," P.L.1977, c.443 (C.26:3A2-21 et seq.); and one from persons employed in pesticide manufacturing recommended by industrial or trade organizations. The Governor shall designate a chairman and a vice chairman of the council from the public members who shall serve at the [will] pleasure of the Governor.

In the event that no recommendations for a particular category of membership are made to the Governor three months prior to the effective date of P.L. c. (now before the Legislature as this bill) in the case of the initial appointments, or within 60 days of the date of the expiration of the term of office of any member or the occurrence of any vacancy in the case of subsequent appointments, the Governor shall appoint as a member for that category of membership a person whom he believes will be representative thereof.

b. Of the six members first to be appointed, two shall be appointed for terms of [2] two years, two for terms of [3] three years and two for terms of [4] four years. Of the seven members first to be appointed pursuant to P.L. , c. (now before the Legislature as this bill), three shall be appointed for terms of two years, two for terms of three years, and two for terms of four years. Thereafter all appointments shall be made for terms of [4] four years. [All appointed members shall serve after the expiration of their terms until their respective successors are appointed and shall qualify, and any vacancy occurring in the appointed membership of the council shall be filled in the same manner as the original appointment for the unexpired term only, notwithstanding that the previous incumbent may have held over and continued in office as aforesaid.]

c. Members of the council shall serve without compensation, but shall be entitled to reimbursement for expenses in attendance at meetings of the council and in performance of their duties as members thereof.

(cf: P.L.1971, c.176, s.6)

2. Section 7 of P.L.1971, c.176 (C.13:1F-7) is amended to read as follows:

7. The Pesticide Control Council shall be the advisory body [in] to the Department of Environmental Protection in matters relating to the control, regulation and use of pesticides and is empowered to:

a. Request from the commissioner such information concerning pesticides as it may deem necessary;

b. Study and consider any matter relating to the improvement of pesticide control programs and advise the commissioner thereon;

c. From time to time submit to the commissioner such recommendations and reports which it deems necessary for the proper conduct and improvement of pesticide control programs;

d. Study the use, application and disposal of pesticides and

advise the commissioner thereon;

e. Study pesticide control programs and make reports and recommendations thereon to the commissioner as it may deem necessary;

f. Study any regulations promulgated by the department or any other governmental entity in regard to the control of pesticides and make such recommendations thereon to the commissioner as it may deem appropriate;

g. Study and investigate the state of the art and the technical capabilities and limitations of regulations concerning use and control of pesticides and their relation to the environment and ecology and report its findings and recommendations thereon to the commissioner;

h. Study and investigate the need for programs for long range technical support of pesticide control programs and report its findings and recommendations thereon to the commissioner; [and]

i. Hold periodic public hearings concerning the use and application of pesticides and upon the state of the art and technical capabilities and limitations in pesticide control and report its recommendations thereon to the commissioner; and

j. Review the findings and recommendations of the Pesticide Technical Advisory Committee and make appropriate recommendations to the commissioner.

(cf: P.L.1971, c.176, s.7)

3. (New section) The council shall prepare and submit to the Governor, the commissioner, and the Legislature an annual report summarizing its activities and making any recommendations for legislative or administrative action it deems appropriate.

4. (New section) a. There is created in the department a Pesticide Technical Advisory Committee to advise the Pesticide Control Council and the department, comprising no more than nine members. Two members shall be appointed by the commissioner and represent the department, and two members shall be appointed by the Commissioner of Health and represent the Department of Health. The commissioner may appoint no more than five additional members as deemed necessary to carry out the duties of the committee. The members of the committee shall have expertise in scientific disciplines appropriate for pesticide evaluations.

b. The committee shall:

(1) Formulate criteria for triggering reviews of pesticides and develop a priority scheme for scientific evaluations.

(2) Provide recommendations regarding budget needs to fund pesticide technical reviews and studies.

(3) Oversee the progress of pesticide assessments and pesticide related research.

(4) Review the findings of the technical studies and reviews and make appropriate recommendations.

c. The committee shall meet at least quarterly, and shall

prepare and submit to the Pesticide Control Council and the department a report of its activities at least annually. A per diem fee shall be provided to members for time allocated to committee responsibilities.

5. (New section) The department shall conduct a training program for persons working under the direct supervision of pesticide applicators registered with the department pursuant to the P.L.1971, c.176 (C.13:1F-1 et seq.).

6. (New section) The department may, by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), require the registration of persons who inspect structures for pest infestation and issue certificates to attest to their findings. The department shall base such registration on a competency standard that may include a written examination.

7. (New section) a. No person may aerially apply any broad-spectrum chemical pesticide on land not actively devoted to agriculture or horticultural use, except in the case of mosquito control where the department determines that no practical alternative is available, or other environmental, health or agricultural emergencies, as defined by regulation adopted by the department.

b. In the event of an environmental, or a health or agricultural emergency, the department, in consultation with the Department of Health or the Department of Agriculture, as appropriate, may grant an exemption from the provisions of subsection a. of this section. Upon granting the emergency exemption, the department shall make available a separate written report setting forth the emergency condition that required the immediate action. The department shall also make every attempt to notify the affected public and interested citizens prior to the aerial application. As used in this section, "broad-spectrum chemical pesticide" means any non-specific chemical pesticide toxic to a wide-range of target and non-target organisms.

8. (New section) Within one year of the effective date of this amendatory and supplementary act, the Department of Environmental Protection, in consultation with the Department of Agriculture and the Department of Health, shall adopt pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing notification requirements to afford all people who may be exposed to pesticides the opportunity to minimize their exposure. Such notification requirements may include requirements for posting of notices during pesticide applications, requirements for owners and responsible parties of public buildings to maintain pesticide notices for a specified period of time, and any other requirements deemed necessary by the department to minimize exposure.

To the greatest extent practicable, notification shall be made

directly by mail, telephone or personal service to affected persons prior to a pesticide application. When direct notification is not feasible, other means shall be designed to maximize the number of people notified. Legal advertisements alone shall not constitute notice under this section. The department may direct county or municipal governing bodies to assist in carrying out its responsibilities under this section.

9. (New section) The department shall establish and implement, according to rules and regulations adopted pursuant to the "Administrative Procedure Act," a permit program for municipal gypsy moth control not under the jurisdiction of the Department of Agriculture spray program.

10. (New section) The department shall prepare, and provide to all farm owners, record of application forms on which farm owners shall insert the following information: the crop, the pesticide applied to that crop, reentry time and date for safe reentry to treated fields, and the exact date and location of application. The headings on this form shall be printed in English and Spanish. In lieu of the form prepared by the department, a farm owner may develop a form, subject to the approval by the department.

11. (New section) The department, in consultation with the Department of Health, shall prepare pamphlets written at a fifth grade reading level in English and Spanish and provided to farm owners to make available to his farmworker employees on the first day of employment. The health topics in the pamphlets shall be developed cooperatively by the department and the Department of Health. The pamphlet shall include, but not be limited to the following:

a. General pesticide health and safety, preventive practices in the field and farmworker residential area, signs and symptoms of pesticide poisoning, first aid and medical care, and methods for seeking assistance from State and federal agencies if a pesticide problem occurs;

b. Names and addresses of health providers in the vicinity who are trained in pesticide evaluation and have bi-lingual staff; and

c. The rights of farmworkers to obtain the information and training provided pursuant to P.L. c. (now before the Legislature as this bill) as well as rights under other State and federal laws.

12. (New section) The department shall develop, according to rules and regulations adopted pursuant to the "Administrative Procedure Act," a training program for farmworker employees. The training shall be conducted by a person certified as a trainer by the department. The health aspects of the certification requirements shall be developed cooperatively by the department and the Department of Health. The training shall be compatible with United States Environmental Protection Agency and Occupational Safety and Health Administration regulations,

shall be conducted in either English or Spanish depending on the primary language of the farmworker, and shall include, but not be limited to, the following topics:

a. Health hazards of pesticides;

b. Steps to employ to avoid exposure, such as workplace practices, personal protective clothing and equipment;

c. Steps to employ if exposed, such as recognizing signs and symptoms, first aid and emergency response, and seeking medical care;

d. Identification of the pesticides being applied by using the completed record of application forms, pesticide fact sheets, labels and the Material Safety Data Sheets;

e. General explanation of the content included on every fact sheet; and

f. Farmworker rights under the laws concerning:

(1) Hazard communication (written information and training), protection from exposure to pesticides, and field sanitation;

(2) Agencies responsible for enforcing the laws; and

(3) Procedures for filing complaints to, and obtaining information from, these agencies.

13. (New section) a. Every farmowner shall complete a record of application on the forms prepared pursuant to section 10 of P.L. c. (C.)(now before the Legislature as this bill).

b. Every farm owner shall post the completed record of application forms in a central location, or at various assembly points throughout the farm, or at any other location to ensure that farmworkers who work in the fields are able to read the record of application forms daily.

c. Every farm owner shall provide the pamphlets prepared by the department pursuant to section 11 of P.L. c. (C)(now before the Legislature as this bill) to all farmworker employees who work in the fields, or who mix, load, apply, or store pesticides, or who work in a packing house on the farm premises.

d. The farm owner shall also maintain a Material Safety Data Sheet and a fact sheet on each pesticide product used on crops or stored, which shall be made available to the farmworker employees upon request. The fact sheet shall be written in English and Spanish at no more than a fifth grade reading level and shall include the following information: chemical name and common trade name, acute and chronic health hazards, symptoms of poisonings, personal protective equipment and practices, reentry time, and emergency first aid.

14. (New section) Every farm owner shall be responsible for training his farmworker employees who work in the fields, or who mix, load, apply, or store pesticides, or who work in a packing house on the farm premises.

15. (New section) a. The Commissioner of Health shall, by rule or regulation, establish a mechanism for the reporting by physicians and veterinarians of incidents of pesticide exposure to

the Department of Health.

b. The Department of Health shall identify health providers who provide health services to farmworkers and train these providers in the recognition, evaluation and treatment of pesticide exposure.

c. The Department of Health shall develop and implement, in cooperation with local health officers and State and local medical associations, a program of medical education to alert physicians and other health care professionals to the symptoms, diagnosis, treatment, and reporting of cases of acute pesticide poisoning and chronic pesticide-related health effects, and to the known or suspected acute and chronic health effects of pesticides on children and other persons known or suspected to be particularly susceptible to adverse effects of pesticide exposure.

16. (New section) The Department of Environmental Protection and the Department of Health shall jointly develop a mechanism by which pesticide incidents reported to one department shall be referred to the other.

17. (New section) An employee shall have the right to refuse to enter a field when instructed to enter before the minimum reentry time has elapsed or if the information to which he is entitled has not been provided.

18. (New section) a. No employer may discharge, cause to be discharged, or otherwise discipline, penalize, or discriminate against any employee because the employee or his employee representative has exercised any right established in this act.

b. Any employee who believes that he has been discharged, or otherwise disciplined, penalized, or discriminated against by an employer in violation of subsection a. of this section may, within 30 days of the violation, or within 30 days of obtaining knowledge that a violation occurred, file a complaint with the Commissioner of the Department of Labor alleging the violation. Within 30 days of the receipt of a complaint, the commissioner shall conduct an investigation of the complaint. If after the investigation the commissioner determines that there is probable cause that the complaint is valid, he may refer the complaint to the Office of Administrative Law, which, upon the referral, shall commence an adjudicatory proceeding on the complaint, to be conducted as a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and P.L.1978, c.67 (C.52:14F-1 et seq.). If the Commissioner of Labor or the employee introduces evidence that prior to the alleged violation the employee exercised any right provided in this act, the employer shall have the burden to show just cause for his action by clear and convincing evidence. Within 45 days of the receipt of the recommendations of the administrative law judge, the commissioner shall adopt, reject, or modify the recommendations. The final decision of the commissioner shall be considered the final agency action thereon for the purposes of

the "Administrative Procedure Act" and shall be subject only to judicial review as provided in the Rules of Court.

19. (New section) Any person may bring a civil action in law or equity against the Department of Environmental Protection or the Department of Health for failure to enforce the provisions of this act or any rule or regulation promulgated pursuant thereto. The Superior Court shall have jurisdiction of these actions, and it shall not be necessary to the maintenance of the action that the person bringing the action prove that he has suffered or will suffer personal loss or damage. The court may award, whenever it deems appropriate, costs of litigation, including reasonable attorney and expert witness fees.

20. (New section) Any person whose property or person is exposed to a pesticide resulting from a violation of this act may bring a civil action in law or equity on his behalf against any person for a violation of any provisions of this act or any rule and regulation promulgated pursuant thereto. The court, upon finding violations of this act based upon proof established by a preponderance of the evidence, shall award compensatory damages and may award punitive damages for violations which are wanton, reckless, or malicious. It shall also award such equitable relief as is necessary and appropriate to effectuate the purposes of this act.

21. Section 9 of P.L.1971, c.176 (C.13:1F-9) is amended to read as follows:

9. The department shall have power, in addition to those granted by any other law, to

a. Conduct and supervise research programs for the purpose of determining the effects and hazards of the use and application of pesticides on man and his environment; [and in furtherance of this research effort the commissioner shall consider the School of Agriculture of Rutgers, The State University, as a primary source of assistance;]

b. Conduct and supervise Statewide programs of pesticide control education including the preparation and distribution of information relating to pesticide control;

c. Enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected violation of law relating to pesticides and ascertaining compliance or noncompliance with any rules, regulations or orders of the department;

d. (1) Receive or initiate complaints of violations of applicable laws, rules, regulations and orders relating to pesticides; and

(2) [institute] Institute legal proceedings for the prevention of such violations, including issuing orders requiring chronic violators to have conducted independent assessments of their pesticide application and related business operations for the prevention of such violations, and for the recovery of penalties.

in accordance with law;

e. With the approval of the Governor, cooperate with, and receive money from, the Federal Government, the State Government, or any county or municipal government or from private sources for the study and control of pesticides;

f. Declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

g. Determine whether pesticides are highly toxic to man;

h. Determine standards of coloring or discoloring for pesticides;

i. Subject pesticides to the requirements of Section 11 of P.L.1971, c.176 (C.13:1F-11);

j. Cooperate with, and enter into agreement with, any other agency of this State, or the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this act and securing uniformity of regulations, in order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of pesticides, and to avoid increased costs due to the necessity complying with such diverse requirements in the manufacture and sale of such pesticides;

k. Have the power, in accordance with a fee schedule adopted as a rule or regulation in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to establish and charge fees for any of the services it performs, which fees shall be annual or periodic as the department shall determine. The fees charged by the department pursuant to this section shall reflect the actual or projected expense incurred by the department in the performance of the service for which the fee is charged. All fees collected pursuant to this section shall be deposited in the Environmental Services Fund created pursuant to P.L.1975, c.232 and kept separate from other receipts deposited therein and appropriated for the operation of the Pesticide Control Program in the Department of Environmental Protection. The criteria for registration, certification, or permit fees shall reflect the actual or projected [expense] expenses incurred by the department in [the performance of the service for which the fee is charged] regulating and monitoring the distribution, use, application, handling, transportation and disposal of pesticides, less the amount of other program service fees collected hereunder by the department. Program costs may include the costs to the department of planning, developing rules and regulations, reviewing, issuing and administering registrations, certifications or permits, and monitoring compliance with this act and departmental rules and regulations, and educational programs adopted pursuant thereto. A separate fee schedule shall be adopted for each registration, certification, or permit program to reflect the program costs thereof. To the extent

practicable and as may be equitable, the amount of the fee shall take into account the quantity and toxicity of the pesticides to be handled or utilized by the holder of the registration, certification, or permit. The fee schedule, as adopted by regulation by the department, shall also provide for costs incurred by the Department of Health to implement its responsibilities delineated in P.L. c. (C.)(now before the Legislature as this bill).

(cf: P.L.1981, c.538, s.1)

22. Section 10 of P.L.1971, c.176 (C.13:1F-10) is amended to read as follows:

10. a. If any person violates any of the provisions of this act or any rule, regulation or order promulgated pursuant to the provisions of this act, the department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation or violations and the said court may proceed in the action in a summary manner.

b. Any person who violates the provisions of this act or any rule, regulation or order promulgated pursuant to this act shall be liable to a penalty of not more than [$3,000.00] $25,000 for each offense, to be collected in a civil action by a summary proceeding [under the Penalty Enforcement Law] pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court [, County Court and county district court] shall have jurisdiction to enforce [said Penalty Enforcement Law] "the penalty enforcement law". If the violation is of a continuing nature, each day during which it continues subsequent to an order to cease the violation shall constitute an additional, separate and distinct offense.

No civil administrative penalty shall be levied except subsequent to the notification of the violator by certified mail or personal service. The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; a concise statement of the facts alleged to constitute the violation; a statement of the amount of the civil penalties to be imposed; and a statement of the violator's right to a hearing. The violator shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing and upon a finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order upon the expiration of the 20-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in

connection with the violation for which the penalty is levied. A person is liable for the acts of his employees acting in the scope of their employment.

c. The department is [hereby] authorized [and empowered] to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances including the posting of a performance bond by the violator.

d. Any person who violates this act or an administrative order issued pursuant to subsection b. of this section or a court order issued pursuant to subsection a. of this section or who fails to pay a civil administrative penalty in full pursuant to subsection b. of this section is subject, upon order of the court, to a civil penalty not to exceed $25,000 per day of the violation, and each day's continuance of the violation constitutes a separate and distinct violation. Any penalty imposed under this subsection may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law". The Superior Court shall have jurisdiction to enforce "the penalty enforcement law." A person is liable for the acts of his employees acting in the scope of their employment.

e. All fines collected pursuant to this section shall be deposited in the Environmental Services Fund created pursuant to P.L.1975, c.232 and kept separate from other receipts deposited therein, and shall be appropriated for the support of the Pesticide Control Program in the Department of Environmental Protection.

(cf: P.L.1971, c.176, s.10)

23. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to strengthen the State's program for controlling the use of pesticides. The bill extends responsibilities and authority of the Department of Environmental Protection (DEP), assigns specific responsibilities to the Department of Health, and expands the scope of the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.) to promote the safe use of chemical pesticides and protect the public health and environment.

Specifically, the bill would establish a Pesticide Technical Advisory Committee with scientific expertise to provide recommendations concerning pesticide evaluations. The committee will report directly to the Pesticide Control Council, which would be expanded under the bill to provide for additional expertise.

The bill would also give the department authority to require the registration of persons who inspect structures for pest infestation.

The bill would restrict the aerial application of a broad-spectrum chemical pesticide on non-agricultural lands to certain emergencies. The bill would require DEP to design notification procedures to afford all persons who may be exposed to pesticides the opportunity to avoid exposure, and the procedures may include requirements for the maintenance of public notices. The department would also be directed to set up a permit program for municipal gypsy moth control not under the jurisdiction of the Department of Agriculture spray program.

The bill also addresses issues concerning the safety of farmworkers. DEP would develop forms, which farm owners would complete with specific information and provide to farmworkers. The department, in consultation with the Department of Health, would develop pamphlets generally addressing the safe use of pesticides. Farm owners would be required to provide this information to farmworkers on the first day of employment. The bill would also require all farmworkers to be trained by certified individuals concerning the hazards of pesticides, techniques to minimize exposure, first aid, and laws established to protect farmworkers from pesticide exposure. The bill would also require the Department of Health to implement a system for the mandatory reporting of pesticide exposure incidents, and to train health providers in the recognition, evaluation and treatment of pesticide exposure.

Finally, the bill would increase the maximum fines that may be collected and dedicate all fines to support the operation of the pesticide control program. DEP would be authorized to utilize its existing fee structure to fund its new responsibilities under this bill. It is the intent of this bill to make available to the department additional moneys necessary to support new positions in the pesticide control program.

ENVIRONMENT

Expands the scope of the "Pesticide Control Act of 1971."

TABLE OF CONTENTS

	Page
Ed M. Neafsey Special Assistant to the Commissioner New Jersey Department of Environmental Protection	3
Judith B. Louis, Ph.D. Manager Bureau of Environmental Exposure New Jersey Department of Environmental Protection	7
John P. Thurber, Esq. Assistant Deputy Advocate New Jersey Department of the Public Advocate	10
Jessica Herzstein, M.D., M.P.H. Assistant Professor of Medicine Division of Occupational and Environmental Health Medical College of Pennsylvania	15
Mark Lyons, M.P.H. Coordinator of Health and Safety CATA	16
Angel Dominguez Trustee CATA Board of Directors	23
Adalberto Alisea Farmworker	26
Rick Engler Assistant to the President New Jersey Industrial Union Council	29
Anthony N. Carracino Legislative Assistant New Jersey State AFL-CIO	31
Richard E. Sameth New Jersey Pest Control Association, Inc.	32

TABLE OF CONTENTS (continued)

	Page
Ilona Gray Executive Director Alliance for Environmental Concerns, Inc.	36
Jane Nogaki Chairperson New Jersey Environmental Federation	47
Lori C. Talbot, M.D. Migrant Farmworker Coordinator Bridgeton Area Health Services	47
David Robertson, Esq. Private Citizen	52
Henry R. Rupp Superintendent Somerset County Mosquito Extermination Commission	55
Susan R. Shaw Director New Jersey Coalition for Alternatives to Pesticides	59
Nancy Browne Coleman Owner Organic Lawns	62
Armand H. LeSage Golf Course Superintendent White Beeches Golf and Country Club Government Relations Chairman New Jersey Turfgrass Association	66
Robert Cryan President Delsea Sanitation Services, Inc.	70
Raymond V. S. Miller Manager Lab Department Delsea Sanitation Services, Inc	71
Martin Chomsky President New Jersey Mosquito Association, Inc. Chairman Monmouth County Water Resources Superintendent Monmouth County Mosquito Extermination Commission	77

TABLE OF CONTENTS (continued)

	Page
Judy A. Hansen Superintendent Cape May County Mosquito Commission	77
Ralph W. Evans Commissioner New Jersey State Mosquito Control Commission	82
Joan Difenbach Director of IMPACT New Jersey Council of Churches	98
Harry P. Banker President Trees, Inc.	100
John Buechner Director Technical Services Lawn Doctor, Inc.	101
Clark Benton Director New Jersey Tree Growners Association	102
Marie A. Curtis Legislative Representative New Jersey Environmental Lobby	104
Amy J. Bahruth Staff Representative and Health Coordinator Communications Workers of America Local No. 1031	107
Richard F. Fletcher Regional Technical Services Manager Chemlawn Services Corporation	109
Peter J. Furey Secretary/Administrator New Jersey Farm Bureau	115
Joseph C. Shoemaker Owner Oaklyn Farms Crop Service	126
Wynne Falkowski, R.N. Chairman Coalition Against Toxics	138

TABLE OF CONTENTS (continued)

	Page
Paul Twerdowsky Board Member New Jersey Environmental Federation National Clean Water Action	144
APPENDIX:	
Letter addressed to the Honorable Raymond J. Lesniak from John S. Keith, P.E. Assistant Commissioner New Jersey Department of Environmental Protection, plus attachments, submitted by Edward M. Neafsey	1x
Statement submitted by John P. Thuber	25x
Statement submitted by Jessica Herzstein, M.D., M.P.H.	32x
Statement submitted by Angel Dominguez	39x
Statement submitted by Adalberto Alisea	41x
Statement submitted by Ilona Gray	43x
Article from "The Philadelphia Inquirer Magazine" submitted by David Robertson, Esq.	49x
Statement submitted by Susan R. Shaw	54x
Materials submitted by Armand H. LeSage	58x
Statement submitted by Robert Cryan	68x
Statements submitted by Raymond V. S. Miller	69x
Statement submitted by Judy A. Hansen	71x

TABLE OF CONTENTS (continued)

APPENDIX (continued):

	Page
Statement submitted by Ralph E. Evans	76x
Statement, plus attachment, submitted by Martin Chomsky	81x
Statement submitted by Joan Diefenbach	93x
Statement submitted by John Buechner	96x
Statement submitted by Marie A. Curtis	98x
Statement, plus attachments, submitted by Amy J. Bahruth	100x
Statement submitted by Richard F. Fletcher	111x
Statement submitted by Peter J. Furey	115x
Statement submitted by Mark Lyons, M.P.H.	120x
Statement, plus attachments, submitted by Jane Nogaki	124x
Statement, plus attachments, submitted by Wynne Falkowski, R.N.	137x
Statement submitted by Michael D. Blum Executive Director Nationalities Service Center of Philadelphia	150x
Memorandum to Senator Ray Lesniak from Bradley S. Brewster Partner Princeton Public Affairs Group, Inc.	152x

TABLE OF CONTENTS (continued)

APPENDIX (continued):

	Page
Statement addressed to the Honorable Raymond Lesniak submitted by Keith G. Talbot Senior Attorney Farmworker Division Camden Regional Legal Services, Inc.	155x
Statement submitted by Augustus Nasmith Consolidated Railroad Corporation	157x
Statement submitted by Erik H. Haupt Vice President Environmental & Regulatory Affairs Bartlett Tree Experts	160x
Letter addressed to Senate Labor and Industry Protection Committee from Jeffrey L. Case Manager Regional State Government Relations CIBA-GEIGY Corporation	162x
Letter addressed to The Honorable Raymond Lesniak, Chairman from Arthur Hart Director State Legislative Affairs National Agricultural Chemicals Association	165x
Letter addressed to Chairmen Lesniak, Smith, and Committee Members from John M. Canright Natural Organic Farmers Association of New Jersey	169x
Office of Legislation Liaison Executive Department Legislative Comment Sheet Bill Nos. S3079/A4171	170x

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tca: 1-69
bgs: 70-146

SENATOR RAYMOND J. LESNIAK (Chairman): Can I please have your attention? We're going to call this public hearing to order. Can everyone please take a seat? Well, actually sit down in a seat, and leave them where they are. Mark? That includes you. Please everyone take a seat including Senate staff. We're going to try to get everything rolling here.

First of all, I want to thank you all for coming. On behalf of myself -- I'm Senator Lesniak, Chairman of the Senate Labor, Industry and Professions Committee, and to my left, the Chairman of the Assembly Environment Committee, Bob Smith, who will be speaking immediately after me.

I want to thank cable TV in Elizabeth for taping today's proceedings, and showing it. It's a very important subject. I want to thank the Union County Board of Freeholders, and our County Manager, Ann Baran, for making these facilities here available.

Pesticides and pesticide control is something that has been a subject that I've been dealing with for over a decade. Bob? When I was sitting in your position, as Chairman of the Assembly Environment Committee I sponsored the first Pesticide Reform Act, back in 1981. Many things have transpired since that time as we've gained additional information about the dangers of unnecessary, and unsafe use of pesticides. Pesticide contaminant--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Can't hear you-- We can't hear you.

SENATOR LESNIAK: (adjusts microphone) There we go, yes?

UNIDENTIFIED SPEAKER FROM AUDIENCE: No.

SENATOR LESNIAK: Better? No?

MR. DAVIS (Committee Aide): It may not be turned on.

UNIDENTIFIED SPEAKER FROM AUDIENCE: It isn't turned on.

SENATOR LESNIAK: Well, we have a cutback in our budget, (laughter) so I'll try to speak louder.

UNIDENTIFIED SPEAKER FROM AUDIENCE: That's better.

SENATOR LESNIAK: Better? Thank you. The pesticide contamination is a very serious problem in this State and in this country. It does not get the attention that we see when we see very visible oil spills -- like we've experienced in this area recently. Chemical emissions that you can smell are very nauseous, and have immediate consequences on numerous people that we have seen earlier, again in this area, and more dramatically in other areas.

It is a serious problem in terms of health, a serious problem in terms of contamination of our water supply, and a serious problem in terms of contamination of our environment. We recognize that pesticides are necessary and that there are important uses of pesticides. It's our role in government to minimize any harmful consequences through adequate protection of the pubic, and our farmworkers, and our environment. That's the purpose of today's hearing. Assemblyman Smith?

ASSEMBLYMAN SMITH: Chairman, I thought that you summed it up beautifully, and I would like to publicly express my gratitude for allowing me to work with you on this major pesticide legislation. You certainly are known in our Legislature as one of the real environmental leaders in the Legislature. It is a pleasure to be working with you on a major piece of legislation. Each year in New Jersey, somewhere in the vicinity of 20,000 farmworkers are potentially exposed to very serious exposures to pesticides. We are here today to learn the potential health effects on those farmworkers, the aconomic impacts on agriculture and on our New Jersey economy, and what is the potential for air and groundwater contamination associated with that pesticide use.

I guess the bottom-line question that we want to answer today as a part of this hearing is: Should farmworkers

have the same rights as other workers in New Jersey under our existing right-to-know laws? And with that Mr. Chairman, I, as you, are here to listen to our many distinguished witnesses, and I look forward to the hearing progressing.

SENATOR LESNIAK: Thank you, Bob. I'd like to at this time recognize Assemblyman George Hudak, from Linden. George? If you want to come up here and have a seat? I know that you are not on Bob's Committee but--

ASSEMBLYMAN SMITH: He's hereby appointed as a standby.

SENATOR LESNIAK: Oh, you are appointed, Assemblyman. Come on up and join us. By the way, the record for today's hearing will be kept open for two weeks. Anyone who wants to provide additional testimony, or anyone who is not here will have an opportunity to supplement the record for two weeks after today. It is our intention to deal with this legislation very promptly, and our target date is March of this year.

Our first people testifying will be the Department of Environmental Protection: Ed Neafsey and Ray Ferrarin? How did I do with your names?

E D M. N E A F S E Y: Fine.

SENATOR LESNIAK: Fine. Okay. Thank you for coming up from Trenton.

MR. NEAFSEY: My pleasure.

Good morning to the Chairman, gentlemen, and lady. I'm Ed Neafsey, and I am the Special Assistant to Commissioner Yaskin. With me is Mr. Ray Ferrarin, Assistant Director of the Department's pesticide control element. He's been running that program for five years, and he has been with the Department for 15 years. He'll be available to answer any questions that you might have.

On behalf of the Department, I would like to thank both of you for this opportunity to present testimony on these bills, which will strengthen the Pesticide Control Act of 1971.

The Department has been designated as the responsible agency for regulating pesticides in New Jersey. New Jersey is one of the leading states in this area. Farmworker protection standards, public notification prior to spraying, aerial restrictions, and termiticide requirements are examples of our progressive regulatory initiatives.

In addition, New Jersey has other programs that are nationally acclaimed, such as the Bio-Control Laboratory and the organic certification program within the Department of Agriculture, as well as the Integrated Pest Management Program at Cook College in Rutgers, which helps minimize the use of pesticides in controlling a variety of pests.

Again, if I could, I'd like to just commend the sponsors. I knew, before I heard the comments from Senator Lesniak, because I was well aware of your efforts for years with respect to this legislation that it's been a long time in the making, and overdue.

The Department of Environmental Protection, the Department of Heath, and the Department of Agriculture, as well as -- I understand -- environmental groups have been working with both of you on this, and I can tell you that we in the Department will continue to work with you. I understand that we would like to propose some technical amendments and may have some suggestions that we will forward to you and your staff members in written form at a later date.

While the regulated community for the most part including farmers, have been responsive in carrying out their responsibilities under the Department's current comprehensive regulatory scheme, this legislation would help prove and reinforce the current regulatory programs, and address some which require attention.

I would like to particularly note some of these provisions in the bills which will strengthen the program and the regulatory authority, and will also significantly

contribute to the achievement of the Department's legislative mandate, which is to protect human health, welfare, and the environment.

Firstly, the Home Inspection Program is supported by the Department, because it will provide the authority to regulate home inspection businesses who are responsible for structural inspections for wood destroying insects such as termites. These inspections are performed as part of nearly every real estate transaction in New Jersey.

Currently, there is no regulation or control over these businesses -- businesses which have major responsibilities in providing the public with recommendations regarding the presence of pests and the treatment of infected areas. A certification program will ensure that inspectors are competent individuals providing a service to the residents of the State.

Secondly, the Farmworker Protection provisions are supported by the Department with amendments which will be provided to you in writing. These provisions give farmworkers access to information, and also training on the uses of pesticides in the areas in which they are employed.

Thirdly, the medical education and reporting requirements are supported by the Department because they will require the education of medical providers and physicians, and also the reporting of pesticide exposure incidents. The Department feels that these provisions will benefit both the farmworker and the health care provider.

Fourthly, the codification of a right of Rrfusal of entry is something that the Department supports. Presently, the Department has regulations which specify reentry times and mandates that farmworkers should not be permitted to enter a field prior to the reentry time. What this legislation will do is, it will take that regulation and make it a statutory enactment.

And if I could for just a moment, I would suggest that the four things thus far I have discussed are all provisions which makes sense, because "An ounce of prevention is worth a pound of cure."

Finally, I'd like to just comment on the Job Protection for Farmworkers provision, in that a farmworker will not be discharged from employment for exercising his or her rights as outlined in the bill. The Department stands in favor of this provision to provide improved job protection to the farmer.

In summary, the revisions provided for by these bills will strengthen the Pesticide Control Act and assist the Department in meeting its goals and objectives over the next decade.

Again, on behalf of the Commissioner, I'd like to thank the sponsors for this opportunity to provide comment on this bill. If you have any questions, either I, or Mr. Ferrarin will attempt to address them. I'd also just note that we have two of our technical people from the program here in the audience, so they might be able to help you also.

SENATOR LESNIAK: Ed, I just have one question. Are you any relation to Chief Neafsey from the Elizabeth Fire Department?

MR. NEAFSEY: He's my cousin.

SENATOR LESNIAK: Oh, there you go. I would just ask you that those technical amendments, if you could submit them within two weeks. Is that possible?

MR. NEAFSEY: That definitely is possible.

SENATOR LESNIAK: Okay.

MR. NEAFSEY: As a matter of fact when you said that the record would be kept open for two weeks, I checked, and that will be done.

ASSEMBLYMAN SMITH: Mr. Chairman? Ed, has the Department in its continuing effort to protect New Jersey's

environment found any examples of groundwater contamination associated with the use of pesticides in our State?

MR. NEAFSEY: I believe that we have someone here from Science and Research, who is with the Department, who might be able to address that.

ASSEMBLYMAN SMITH: Would that person identify themselves and give us a little information?

J U D I T H B. L O U I S, Ph.D.: My name is Judy Louis. I am with the Division of Science and Research in New Jersey DEP. We have done a study of groundwater in New Jersey. Basically, it was a three-year study. It was done with the U.S. Geological Survey.

During that time we sampled a 120 wells; 40 of which were public wells, and the rest were basically domestic -- private domestic wells. The study was designed to be a worst case look at groundwater in New Jersey. In other words, we looked at shallow aquifers. We took samples from wells that were very shallow which were in unconfined aquifers. They were on agricultural land. The farmer used some of the pesticides that we were looking for. So this is a worst case scenario.

Basically, from the survey we did most of our sampling in the coastal plain of New Jersey, which is basically southern New Jersey -- the Potomic-Raritan-Magothy Aquifer System, the Kirkwood-Cohansey Aquifer System -- and we did some sampling in northwestern New Jersey.

Out of those 120, wells we found 27 different pesticide residues at low levels. There were a few of the banned pesticides that were present at an MCL or higher than an MCL, but most of them were far below the MCL. Several of the pesticides that we detected have been banned; things such as ethylene dibromide or EDB -- a metabolite of DDT, and a metabolite of dieldrin, which also is a metabolite of aldrin. These pesticides have not been used agriculturally for several years now, but residues of the pesticide do still exist in some wells.

SENATOR LESNIAK: Excuse me. I have to interrupt you because you are not being picked up by the stenographer's tape. You'll have to come to the front over here.

DR. LOUIS: Okay.

SENATOR LESNIAK: And while you are approaching the microphone, just for the record, would you describe -- for anyone who may read this record as layperson -- what an MCL is?

DR. LOUIS: An MCL is "a maximum contaminant level," or the maximum amount of a chemical, that's allowed in a drinking water supply.

SENATOR LESNIAK: Let me ask this follow-up question to that. Pursuant to what law were they established?

DR. LOUIS: The Safe Drinking Water Act, nationally--

SENATOR LESNIAK: Oh. Who was the sponsor of that?

DR. LOUIS: The national law?

SENATOR LESNIAK: No, no, no, the New Jersey law.

DR. LOUIS: Oh. The A-280--

SENATOR LESNIAK: Right.

DR. LOUIS: --Safe Drinking Water amendments. We do have some MCLs that are not national, and I believe Senator Lesniak was the sponsor of the A-280 bill. I should also say that the A-280 program has allowed us to do this groundwater sampling.

Do you want me to start over? What do you want me to do?

ASSEMBLYMAN SMITH: Pick up where you left off.

DR. LOUIS: Okay. Several of the pesticides -- as I said -- were from past use; some of the organic chlorine pesticides and the fumigant EDB. Others are still in use today such as alachlor, atrazine, carbofuran, etc. Approximately one-third of the wells had at least one detectable pesticide residue. Again, this was a worst case scenario.

There's been a national pesticide survey, which was a random survey, statistically based, to determine the level of

pesticide residue in groundwater nationally. They recently came out with their results, and about 10.4% of the community water supplies had one or more pesticide residues, and 4.3% of the private domestic wells had one or more pesticide residues.

ASSEMBLYMAN SMITH: What would be the-- Given the nature, the chemical nature of pesticides, what would be your estimate of the time that these pesticides would persist in their chemical form in groundwater?

DR. LOUIS: The ones that are leaching into groundwater are probably going to be around for quite awhile.

ASSEMBLYMAN SMITH: What do you mean by "quite awhile?" Give us an order of magnitude; not necessarily ten years, and three months, and two days. But roughly, what are we talking about?

DR. LOUIS: I would think your thinking a decade probably; at least. Some of the organic chlorine compounds will probably be around even longer. Groundwater moves very slowly, approximately a inch a year. So you're really talking about something that will stay there, once it gets there.

I guess the main thing that I want to point out about pesticides is that there are really two issues that are important with pesticides and groundwater. The first is use. New Jersey does has a very unique data base on pesticide use. We are one of the very few states that can say, in so and so municipality, farmers use this much of this pesticide at this rate. So we have taken advantage of that use data. We are also trying to do some more on looking at vulnerability of groundwater. And when you combine those two factors, I think then you will find areas of the State where you might have groundwater problems from pesticides. It's going to be very localized, but there are going to be areas where there are some problems.

ASSEMBLYMAN SMITH: What do you think the probability is that farmers -- the farming community -- may be ingesting contaminated water for their home use?

DR. LOUIS: As I said, we basically looked at a worst case scenario. We did not find any of the wells that were used for drinking water that had levels of contaminant above the health advisory level, or maximum contaminant level, in drinking water wells. Some of the irrigation wells had higher levels.

I think you can take the national data and say that probably 4.3% of the world's domestic wells may have a pesticide level, and the national survey suggest that about .6% of those would be above a health advisory level, or maximum contaminant level.

SENATOR LESNIAK: Any other questions from the Department of Environment Protection? (no response) Okay. Thank you very much, Doctor.

MR. NEAFSEY: Thank you.

SENATOR LESNIAK: By the way, after we get finished with this pesticide bill we're going to start working on Assemblyman Smith's nutritional habits. Sir, do you want to hold up that -- what you are eating here?

ASSEMBLYMAN SMITH: Sure.

SENATOR LESNIAK: Look at that. Now he really doesn't need that.

ASSEMBLYMAN SMITH: And it's pesticide proof.

SENATOR LESNIAK: We will now here from the Public Advocate's office, John Thurber.

J O H N P. T H U R B E R, ESQ.: Chairman Lesniak, Chairman Smith, Assemblymen, good morning.

SENATOR LESNIAK: Good morning.

ASSEMBLYMAN SMITH: Good morning.

MR. THURBER: My name is John Thurber. I am an Assistant Deputy Public Advocate with the Department of--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Can't hear you.

MR. THURBER: I'm sorry. My name is John Thurber. I'm an Assistant Deputy Public Advocate with the Department of

the Public Advocate, and I am thankful for the opportunity to present the Department's views on these very important bills.

Commissioner Caraballo regrets that he is unable to be here today, but asked me to present the Department's testimony on these two bills. And if I may, I'd like to just summarize the written testimony that we've presented to the Committee.

The Public Advocate appeared a little more than a year ago at the hearing on Senator Lesniak's prior bill on this issue. At that time, the Public Advocate strongly endorsed the need for this kind of legislation to address the very compelling and very urgent concerns in our State on this issue. And we appear again today to strongly support the comprehensive approach to the issue of pesticide exposure that is represented by these two bills.

Certainly based on the testimony we've just heard from the DEP, this is the time to act. There is a great deal of urgency about this issue, certainly in terms of drinking water, groundwater contamination, and exposure concerns on the part of farmworkers, as well as citizens across our State. Our Department frequently receives complaints from citizens in our State from both farming areas and elsewhere regarding exposure to pesticides, and concerns about the inadequacies of existing statutory protections for residents. So because of those concerns and other experiences that we've had with this issue, we strongly support the notification provisions, the training provisions, the restrictions on aerial spraying, and the other standards established in these bills to protect our citizens.

If I may, I'd like to just briefly address one of the provisions in these bills, and that is the citizen suit provision, provided for by section 19 and 20 of these two bills. In our view, the citizen suit provision are critical elements of these two bills. As you may be aware, there have been a number of studies, both in New Jersey and around the country, examining the effectiveness of citizen suit

provisions in helping to complement the enforcement efforts of government agencies, both in environmental statutes, and in other kinds of public interest provisions as well.

Those studies have indicated that citizen suit provisions are very effective in helping government agencies do their job in enforcing and carrying out the missions that they have, under the acts in question.

SENATOR LESNIAK: John, can I ask you a question on that right now?

MR. THURBER: Yes.

SENATOR LESNIAK: If I may? The citizen suit provision-- By the way, we're adjusting. (referring to public address system) We found out that the only microphone that will enable people to hear, behind this person testifying is the one that is in the back that we're not using. So maybe this will help us now. There we go.

MR. THURBER: Thank you.

SENATOR LESNIAK: Okay, great. Are the citizen suit provisions in the legislation that is before us today -- that we are hearing -- the same as in the Environmental Rights Act? I mean, do we track that language? Or is it different?

MR. THURBER: There is one difference in section 20 that I would like to bring to the Committee's attention. Section 19, which authorizes citizen suits against the Department of Health and the DEP provides for these actions to ensure that these agencies are carrying out their mandate. And they very importantly provide for awards. They authorize courts to award attorneys' fees, and expert witness fees where appropriate, to prevailing parties in those actions.

Section 20, which authorizes these actions against private parties who violate the statute does not include those provisions. And the Environmental Rights Acts and other kinds of citizen suits provisions, both in State law and Federal law, have that component. And it has been demonstrated that

allowing for the award of attorneys' fees to prevailing parties is a very critical element in ensuring that ordinary average citizens actually have the possibility of bringing these case.

As you are all aware, the cost of litigation is prohibitive for average ordinary citizens unless they have the possibility of being able to recover their litigation costs if they're successful in proving violations of the act. Therefore, we would urge the Committee to add the sentence that is in section 19 of these two bills, to section 20 which authorizes the award of litigation costs for prevailing parties in these lawsuits.

SENATOR LESNIAK: I just want to make this clear. The citizen suit provisions that you're talking about are those -- and that you've given a history about in terms of helpful enforcement of other laws -- are those against governmental bodies for not doing what they are suppose to do, pursuant to law; therefore, the citizens then have to take action.

MR. THURBER: That's right.

SENATOR LESNIAK: As opposed to a common law, or codified right of action, which is section 20. They're two different concepts.

MR. THURBER: Absolutely, they're two different ones. One would help ordinary citizens to hold government agencies accountable, and that's the -- I think -- important and novel approach in these bills, to be able to give citizens the power to make sure that these agencies are doing what they're supposed to be doing, and hold them accountable in that way.

And section 20 would codify, but I think even go beyond the mere codification of existing protections in enabling citizens to have a remedy for wrongdoing for violations of the act committed by private parties, in section 20.

SENATOR LESNIAK: Against them?

MR. THURBER: Yes. Exactly. Against them. And as currently drafted, these sections, I think are appropriate in that they establish liability once you can demonstrate-- You've established liability if you can demonstrate a violation of the act, and then the extent and nature of the harm goes to the damages awarded by the court. So I think again, the drafting of that provision is very appropriate as it is now, in terms of succeeding on the liability portion of these lawsuits. If you can show a violation of the statute, then the extent of the damage, or the nature of the damage would go to the recovery.

SENATOR LESNIAK: Okay, but what is the worth of establishing liability if there are no damages? Is there any benefit in that?

MR. THURBER: Presuming that you can recover nominal damages, it would insure-- It would help, I think, in providing a deterrent effect for other potential wrongdoers. It would ensure that the Act is being enforced as it's intended to be. At least I think none of these provisions in these two bills are superfluous. There's nothing that's a mere technicality in here. These are all critical provisions, and obviously section 20 would provide a way for ordinary citizens to ensure that all of the provisions in these bills are enforced.

ASSEMBLYMAN SMITH: One question for you. Are you aware of any successful litigation in the State under the Environmental Rights Act? I haven't seen an awful lot of it, quite frankly, in the courts. I'm wondering if perhaps the Public Advocate is more aware of it?

MR. THURBER: We are aware of some litigation in the lower courts under the Environmental Rights Act. And in fact, there is one lower court decision, which for us demonstrates the need to have section 20 in these two bills.

ASSEMBLYMAN SMITH: And what is that?

MR. THURBER: There is a lower court decision that as I understand it, interprets the Environmental Rights Act to protect the environment and not to protect individuals. So therefore, to the extent that section 20 allows individuals who are exposed to pesticides to bring actions to and enforce these bills -- the Act--

ASSEMBLYMAN SMITH: Can we--

MR. THURBER: It would go beyond the Environmental Rights Act, as interpreted by that court.

ASSEMBLYMAN SMITH: Is that decision published?

MR. THURBER: Chairman Smith, I'm not aware of whether it's published or not.

ASSEMBLYMAN SMITH: All right.

MR. THURBER: It was brought to my attention by another staff attorney.

ASSEMBLYMAN SMITH: All right. Can we ask that you forward to Chairman Lesniak, to be included as part of the public record, whatever information the Public Advocate has concerning that decision so that that can be put into the record for our review?

MR. THURBER: I'll certainly do so. I'll track that down for you.

SENATOR LESNIAK: I believe that there is a United States District Court case that's published on that point, and that may be what you are referring to.

MR. THURBER: It could be.

SENATOR LESNIAK: Thank you.

MR. THURBER: Thank you very much.

SENATOR LESNIAK: Any other questions from the Committee? (no response) Thank you, John.

Dr. Jessica Herzstein, from the Medical College of Pennsylvania?

J E S S I C A H E R Z S T E I N, M.D., M.P.H: Chairman, we are trying to avoid occupational hazards here. (witness referring to setting up an easel and exhibits)

SENATOR LESNIAK: If I might suggest-- I gather you are going to show us some charts?

M A R K L Y O N S, M.P.H.: Yes.

SENATOR LESNIAK: Could you put it closer to that wall so that the people in the audience can see it, as well as members of the Committee?

DR. HERZSTEIN: That's fine.

SENATOR LESNIAK: Will we be able to keep the copies or are you taking them with you?

DR. HERZSTEIN: Yes. It's nothing very complicated. You're welcome to keep it.

SENATOR LESNIAK: Of course we will or we may, want to put it into the record.

DR. HERZSTEIN: It's also in the written testimony.

SENATOR LESNIAK: Oh, it's in the testimony. Great.

DR. HERZSTEIN: Not in tabular form, but it is in there.

Good morning, Chairmen, and Assemblymen. My name is Jessica Herzstein. I am a physician, board certified in Internal Medicine and in Occupational Medicine. I did training in occupational environmental health. I did a fellowship at Yale University School of Medicine. I'm now an Assistant Professor of Medicine in the Division of Occupational and Environmental Health at the Medical College of Pennsylvania.

I am appearing today as an expert in the field of occupational health and the health hazards of pesticides, to offer testimony regarding farmworkers and pesticide health hazards.

For the past seven years I have evaluated patients with health problems related to pesticide exposures in the States of California, Connecticut, and Pennsylvania. I had set up surveillance programs to detect early health effects of workers exposed to pesticides. I have also evaluated field-workers, and published a case report of field-workers

exposed to residues long after application of a fumigant in a field. I have done educational talks for workers who mix and apply pesticides.

Today I will discuss the issues of how field-workers are exposed to pesticides and to what extent this can cause health problems. All workers who are exposed, and therefore, at risk of health effects, need training about pesticides. Education can accomplish two crucially important goals. One is to promote prevention; prevention of pesticide related health effects through improved practices such as handwashing before eating in the fields, and wearing of the proper protective clothing.

Unfortunately, not all pesticide exposures can be prevented, and if workers are exposed, education will allow them to be aware of symptoms that may follow; to seek early medical attention; and to seek corrective measures early on that can prevent further incidents.

According to the existing State law, mixers, loaders, and applicators are required to receive training and information about the labeling of pesticides. The issue here is should field-workers who are not mixers or applicators receive training about pesticides? Should they have access to names of the chemicals that they work with? Should they receive written information about pesticides?

It's important to know that pesticides are inherently toxic chemicals. Pesticides kill. Pesticides can also harm or kill humans, as well as pests. We are most familiar with their acute effects. They can also cause chronic low level exposures such as cancer, reproductive problems, and neurologic disease. Therefore, all exposures to pesticides should be kept to an absolute minimum. Even workers with low level intermittent exposures need education about pesticides.

Most of the studies done to date focus on the acute illnesses associated with pesticides. This is where most of

our data exists. Very little data is available on chronic effects.

Field-workers exposures emanate from basically three sources: One is direct spray, through aerial or ground applications; another is through drift from an adjacent field which may be encouraged by wind conditions; a third is through contact with residues on the leaves and plants, and this may also be encouraged through eating, drinking, and smoking, in the field -- which are common practices.

In New Jersey about 95% of the hired field-workers perform -- farmworkers perform only duties of a field-worker; non-mixacator, non-applicators. The issue then is, to what extent are residue exposures significant in this population?

In an effort to protect field-workers, FIFRA empowered the EPA to set reentry intervals for each pesticide, in order to prohibit the return of the worker to a treated field before it was safe. A small percentage of pesticides have these reentry intervals. Unsafe levels of pesticide residues may unfortunately remain on leaves after the EPA approved reentry times. This has been documented in a number of studies. There is very little scientific data upon which to base determination of reentry interval in a number of cases. In other cases, climatic conditions may decrease the breakdown of the chemicals in the field and produce prolonged exposures to the workers.

Several studies have shown that pesticide residue exposure after the reentry interval can lead to poisoning in these field-workers. These are two studies of physician diagnosed illnesses in two agricultural states. (referring to chart) One is the State of New Jersey, and one is the State of California. In both cases you can see that large percentages of the workers diagnosed as having pesticide induced illness, had as their only source of exposure, field residues.

The Department of Health study in New Jersey showed that 40% had exposure to field residues after the reentry time,

and the California Department of Food and Agriculture showed that it was 42%.

Highly foliar or leafy crops such as fruit trees, blueberries, and many vegetables collect most of the residues. These are the types of crops that are grown in New Jersey.

In addition to the studies that I've already mentioned, some biologic studies of field-workers have shown evidence of contact with residues. For instance, a New Jersey migrant farmworker study has looked at blood tests for exposure; cholinesterase enzyme levels and showed that these are significantly low as compared to nonexposed, nonfarmworker populations. These workers had not been exposed to spills, or drifts, or any other source of pesticide exposure other than the field residues.

The EPA has proposed rule changes to the FIFRA law. In discussing their proposal in the "Federal Register," they made these comments: "The Agency has examined information--" I quote from the "Federal Register": "The Agency has examined information on health effects in reentry situations gathered since 1974 from various sources which indicate that the problem of reentry poisoning exists throughout the country and activities taking place after the minimum reentry interval can present significant hazards to workers." In addition to the acute effects of post reentry time exposure to residues, "the Agency is also concerned with the potentially debilitating effects of repeated exposures to lower levels of pesticides from field residues."

In addition to exposure to residues, after the reentry interval, field-workers can be exposed also through premature reentry, direct spray, and drift.

In the New Jersey Department of Health study that I had previously shown you, 10% were exposed through premature reentry, and 35% were exposed through direct spray. These were workers with physician diagnosed pesticide illness. These two

studies that I have up here, done in New Jersey, and in the State of Washington are farmworker exposure studies done by field interviews of randomly selected farmwo:kers.

In the New Jersey study of migrant farmworkers done by Sa-Lantic, 35% of the farmworkers had been exposed to field residues through premature reentry into the field before the intervals had expired. In addition, 39% in that study had been exposed to spray or drift in the field. And in the State of Washington -- a large study with 450 farmworkers -- premature reentry was found in 39% of the farmworkers, and spray, or drift exposures, again, accounted for 43%.

In the New Jersey study done by Sa-Lantic, I quote from this study, "There is a problem associated with reentry. Many of the workers -- 35% of those in the survey -- have been directed to return to the field immediately after spraying has been completed, and have reported to us that the plants have still been wet from the spray. In some cases, workers have simply moved out of the way when the tractor has passed to spray, returning to the same spot to work immediately after the application of spray has been made."

Other studies have shown exactly what these studies have shown: very high rates of contact with pesticide among field-workers through reentry, exposure to residues, direct spray, and drift. These studies have been done as well as the ones that I have elaborated. They've also been done in Texas, Florida, British Columbia, Indiana, and in the southwest United States.

The New Jersey Department of Health study raises another important issue relevant to the right-to-know law, which I would like to mention; that is the lack of physician awareness concerning the diagnosis and management of pesticide related diseases. Pesticide diseases resemble other common medical problems. If farmworkers know about the chemicals that they work with, and the symptoms that may result from them,

they're more likely to see a physician, and they are more likely to raise the issue of pesticide induced toxicity and therefore, receive proper treatment from physicians who are not commonly educated about pesticides' health effects.

Personally, in my practice I have found that the lack of worker knowledge, and lack of access to exposure information has hampered my ability to correctly diagnose and treat, in a number of cases. In this field of occupational health, early diagnosis can be crucial to having effective treatment. Unfortunately, some cases that are not appropriately diagnosed and early diagnosed, may develop chronic effects.

In conclusion, I would like to say that field-workers are exposed to pesticides, predominantly through contact with residues, direct spraying, or drift. Some of these workers become ill due to their exposures. A number of studies have documented acute pesticide poisoning even when the prescribed reentry times are followed.

All farmworkers need to be educated about the toxic nature of pesticides, about labels, material safety data sheets, posting practices, and especially about decontamination and the importance of recognizing the early signs of poisoning and seeking early medical treatment. This worker training will aid in the prevention of pesticide poisoning, in addition to promoting prompt recognition and treatment of pesticide induced illness.

ASSEMBLYMAN SMITH: Doctor, a couple of questions have been stimulated by your testimony with respect to reentry times. The one statistic that looked devastating-- There were a lot of devastating statistics, but the one that really jumps off of the page is the one that says that 40% became ill due to exposure to residues after the reentry time had expired, which seems to indicate that the reentry times are not adequate to protect workers. It would seem to indicate that. Is there some other conclusion we should be drawing from it?

DR. HERZSTEIN: No. I think you have drawn the correct conclusion. I think that these were well done studies, where the reentry times were clearly followed -- the farm owners were educated about this -- and yet there were still physician diagnosed cases of poisoning.

ASSEMBLYMAN SMITH: Is the Environmental Protection Agency currently doing any research on the appropriate reentry time?

DR. HERZSTEIN: Yes. Oh, very much so. They are receiving information from studies done all over the country all of the time and trying to pull together more data to give as effective intervals as they can. It's very-- As I try to say, there's a real lack of scientific hard data in this field, and they have to sponsor more studies and collect more information and review them.

ASSEMBLYMAN SMITH: Well in light of the fact that the information is in the process of being gathered, and that more will have to be gathered, would we be better statutorily to delegate a rule making authority to the Department so that in the future as more data becomes available about reentry, they can then adjust the rules and regulation according to the known data at that time, as opposed to setting statutory standards?

DR. HERZSTEIN: I think that it's very important to have the reentry intervals, and to have that as an enforceable law. I also think that it's not going to entirely take care of the whole problem. I tried to elaborate on how workers can be exposed in a number of other ways. And I think that's why this bill is important. The reentry intervals -- even if they were accurate -- would not take care of the whole picture.

ASSEMBLYMAN SMITH: Of course. You mentioned in your testimony the adverse impact on cholinesterase activity to farmworkers from their exposure to pesticides. Are there any long-term health studies -- chronic health studies -- of what a decrease in cholinesterase activity means to people over long periods of time?

DR. HERZSTEIN: No, there are not. There are some studies that have looked at people who have worked with, usually a number of different pesticides, often these organelle phosphate pesticides over a period of time, and they suggest that there may be chronic neurologic problems as well as some increased risk of cancer and other long-term health effects. The data is not definitive, and not all of the studies have been done that need to be done before we can make final conclusions.

Some studies are now looking at cholinesterase levels as they follow patients, but this has not been done long-term.

ASSEMBLYMAN SMITH: Thank you. Are there any question from the Committee? (no response)

SENATOR LESNIAK: Thank you, Doctor, very much. Angel Dominguez, and Adalberto Alisea from CATA. Good morning, Angel.

A N G E L D O M I N G U E Z: Good morning. How are you doing?

SENATOR LESNIAK: Buenos dias.

MR. DOMINGUEZ: Buenos dias. My name is Angel Dominguez. Presently, I am trustee of the Board of Directors of CATA, which is a farmworkers' support committee. Adalberto Alisea is a farmworker who worked this past season here in a New Jersey on a peach farm. I'm going to give a very brief statement, and then I think it's better for you to really know what happened to workers in the fields, so I'm going to be translating Mr. Alisea testimony.

As you already know, CATA is a farmworkers' organization. They've been around since 1979, and we have members -- farmworker members in New Jersey, Pennsylvania, and Puerto Rico. Today we have members of CATA in the audience, and also we have from CATA our new Director Mr. Tony Vega, and also Mark Lyons who is the CATA health coordinator, and members of the Board are also here today.

Since 1984, CATA members have been very active on the issues of health and safety at the workplace. And since 1986, CATA members and staff have developed training programs related to farmworkers' health issues, specifically on pesticides exposure.

This morning I'd like to basically go over three specific things: incidents of farmworkers exposure, a survey conducted by CATA staff, which by the way, this is the first time we're making this survey public. We can give a copy of the survey to the Committee; where is the place, how many workers were involved, and the whole detail of the survey, okay? You can have that for your -- part of your background information.

SENATOR LESNIAK: Please within two weeks--

MR. DOMINGUEZ: Yes.

SENATOR LESNIAK: --because the record--

MR. DOMINGUEZ: You will have it in two weeks.

SENATOR LESNIAK: Thank you.

MR. DOMINGUEZ: Also, I'd like to also briefly go over some of CATA experience doing pesticides education in New Jersey. I was told by my lawyer not to mention names of the farms, so I'm not going to mention the name of the farm. But if you would like to know where those incidents took place, we have enough documentation to give to the Committee: the names of the farms where it happened, dates, and all of the data. So it is up to you how you want to handle this, okay? But I won't mention names in this particular testimony.

In farm number one, six farmworkers were sprayed on three occasions with pesticides from a tractor. The farmer told the workers that the pesticide was harmless, and ordered them to go back to work and not move out of the way of the spray. Three of the workers became ill because of the pesticide exposure, and they came to CATA for assistance. Then CATA sent out staff members and called DEP. After a DEP

inspection, it was determined that the harmless pesticides were guthion and endosulfan. It is my understanding that those two pesticides are very high in the toxic range, and have a reentry time of 48 hours. When the workers made the complaint, they were fired. That's incident number one.

Incident number two: Forty workers were sprayed on three different occasions. They developed rashes, eye irritation, and respiratory problems. On this particular farm there were no washing facilities provided in the field to wash their hands, and the person doing the spraying was not a trained person. You have to be trained to be able to spray pesticides. Fourteen workers signed a complaint requesting a DEP inspection. Two of these workers who organized the workers committee to do the complaint were fired by the (indiscernible).

I've given more examples, and because of time limitation I won't go into more detail. Again, I emphasize, if you want specific details, we will give it to you with no problem. In terms of the survey the CATA staff, during 1990 growing season, did a survey on 51 farms in five counties. There were Cumberland County, Gloucester County, Salem County, Atlantic County, and I believe Burlington County. Out of the 51 farms that were surveyed by CATA staff, only 16% of the farms were in compliance with State and Federal law, which says that you have to have drinking water, you have to have disposable paper cups, you have to have handwashing, and toilet facilities -- if the field is less one-fourth of a mile, when you are working. Okay. That's what the law says; State and Federal law. So only 16% of the farms were in compliance with that law.

Twenty percent of the farms surveyed by CATA provide handwashing facilities when they're required to do so by law. Thirty-three provided toilet facilities when they're required to do so, and 39 provided disposable drinking cups. In 69% of the farms surveyed, farmworkers had to drink from a single tin

can cup, or drink from their hands, and only 10% of the farmworkers surveyed knew that there was a law passed specifically to protect and guarantee in terms of sanitary facilities-- But they didn't know too much about that law.

Again, this survey was done this summer. We can provide to Senator Lesniak and Assemblyman Smith a detailed survey, and we'll do that within two weeks.

Over the training that we have done for the last couple of years, because CATA has been the leading organization for farmworkers in the northeast to reeducate workers on pesticidazation, we have found basically that workers need more information on pesticides. There's no question about they need more educational materials. Also, workers want to know more.

One of the concerns by the workers was about when they get sprayed, how do you do first aid, and how do you contact the appropriate authority -- like DEP, or whoever -- to file a complaint? That was a concern from the workers, after the discussions we had with the workers in the training session.

And finally, one of the great things that concerned the workers was, when they do file a complaint, the majority do get fired -- another reality we have to face in South Jersey. And I think that we should do something to protect the legal rights of workers to file a complaint.

To summarize, I think that Assembly Bill No. 4171, and Senate Bill 3741 would definitely give those workers the basic right-to-know and protection. And we support that 100%.

At this time, If I may, I'd like to introduce Adalberto Alisea; a farmworker who has been here for the last four years working in a farm in New Jersey. Again, we won't mention any of the farms, but if you guys and your Committee wants names -- specific names -- we have every single one for the Committee. Adalberto? And I will translate for Adalberto.

A D A L B E R T O A L I S E A: (witness testimony is being translated by Mr. Dominguez)

MR. DOMINGUEZ: It's like a story, okay. I told him how to do a story. I think you deserve a hand clap for your work Adalberto. (Mr. Dominguez claps his hands and is referring to chart that Mr. Alisea is demonstrating).

SENATOR LESNIAK: Angel? Which is the microphone that the public can hear? (discussion of the microphones follows)

MR. DOMINGUEZ: Okay. All right.

MR. ALISEA: First of all, good morning to everyone here. My name is Adalberto Alisea. I'm from Sangerman, Puerto Rico. I will give you a very brief story that relates to an incident that happened to me in this particular farm in New Jersey and my pesticides exposures problem. Here, I drew a map to show you more or less how I had contact with pesticides -- on the first and different times it happens.

The first time that I had contact with pesticides, about 35 to 40 workers, and myself also-- Like I showed you, that's a field of a peach orchards, and the other orchard was an apple orchard where the tractor was spraying pesticides. I was working on the peach orchards side. And this tractor-- The driver was the son of the owner of the farm.

Basically what happened, every time he goes by us, instead of turning off the tractor -- the fan that sprayed the pesticide -- he didn't do that, and we all got sprayed with the pesticides. That was my first direct spray, in contact with pesticides. The following day -- less than 24 hours -- we were told to work in the same field that was sprayed the day before -- the peach field, and that was trimming the tree. We had to trim the peach tree. Basically, we had to do it by hand. We had no equipment to do it -- like the big scissors we use -- and there was no ladder provided, so we had to climb the tree ourselves.

Okay, there was one or two occasions-- Now I'm going into the story. Again, we were working in the peach orchards and the same tractor, and the same driver, and because of the

high wind, again, we got sprayed. It was spray in the apple orchards, and we were working so close by, and again we felt the spray of the pesticides.

At any given time we were not given any warning of the spraying, or there was no written material about what was sprayed on the fields. Going back to the first incident, when we had the first encounter with pesticides, we gave a complaint, or grievance to the supervisor of the camp. They told us to wait until later on that afternoon, and tell the cook in the farmhouse. There is some kind of eye drop that they could use to clear your eye irritation.

The first contact that we had, our eyes were like real ripe tomatoes, real irritation. We used the potable water from the tank to clean our eyes because the irritation was so intense in our eyes, right away when it happened.

The reason why we didn't wash our hand on the facility that was provided by (indiscernible), because that water has been there for days, and it was a tank and it was outside -- outside water. And we feel that that water -- to put it on eyes was going to be worse, so we used the drinking water.

One of the symptoms I felt is that I couldn't sleep at night. I lost some weight. I couldn't eat, and I spent weeks putting just cold water on my face and on my eyes. And with all of those harsh doubts, I saw it through because I came here to work, and I finished my contract. I finished the season in that particular form.

After I finished working here in New Jersey I had another contract at a farm in New York, also in the apples, and I had problems working there because of my eyes. I had a vision problem and eye problem, so I came back out to New Jersey.

Do you have any questions on the incidents?

SENATOR LESNIAK: No. Thank you, Angel.

MR. DOMINGUEZ: Again, like I said-- Thank you very much. All of this testimony has been well documented and if you want more specific, we'll be more than happy to give it to you.

SENATOR LESNIAK: Thank you, Adalberto. Thank you. Rick Engle? Engler, I'm sorry. Sorry Rick.

R I C K E N G L E R: Thank you for the opportunity to testify on this important bill, which the Industrial Union Council supports. My name, for the record, is Rick Engler. I represent the New Jersey Industrial Union Council, AFL-CIO. We represent 200,000 in the public and private sector in New Jersey. I would estimate that approximately 100,000 -- just short of 200,000 are protected by various right-to-know laws, the exception being farmworkers.

In 1983, Governor Kean signed the New Jersey Worker and Community Right to Know Law, which at the time was the strongest right-to-know law in the country. It provided training. It mandated labels on hazardous chemicals. It mandated the production by the Department of Health, of hazardous substance fact sheets, and it required a list of chemicals to be compiled. Since that time and as a result of a burgeoning number of states that developed state right-to-know laws, the Federal Occupational Safety and Health Administration issued rules for hazard communication -- essentially the same thing as right-to-know, but on a national basis, so that in every state, workers have a right-to-know.

Initially that was promulgated only for the manufacturing sector. Subsequently, after litigation, all other workers -- with a notable exception -- were to be covered by the Hazard Communication Standard under the Occupational Safety and Health Act. And again, that provides training, labels, material safety data sheets, list of chemicals, etc. for all workers who may be potentially exposed under normal conditions of use, or in foreseeable emergencies. The notable exception, again, is farmworkers.

So let's take a very practical example: If I were a public sector worker, working in this building as a maintenance person, or on the janitorial staff in this building, before I could work with a hazardous chemical -- under the State Right to Know Law, which is fully enforced in the public section -- I would have to be trained. I would have a right to see labels on any of the cleaning supplies I used. I would have a right to a list of chemicals in a central file, at this facility. I would have a complex of rights as a public sector worker. But in the private sector, if I worked at any typical private sector facility that you associate with chemical use; a manufacturing plant, a chemical facility, an oil refinery, etc. no question: All of those things are also provided under the OSHA standard.

OHSA expanded this standard more broadly so that workers in all kinds of facilities-- For instance, grocery stores and supermarkets have rights under the hazards communication standard. And I was just looking at the standard again -- and to bring the point home -- let me give you an example that may be close to the Legislature, since I know a high percentage of you are attorneys and I believe both of you are attorneys.

SENATOR LESNIAK: Too high. (laughter)

MR. ENGLER: Perhaps. But the point still holds. I looked up the SIC Code for attorneys -- legal services -- in the preamble to the OHSA standard it says, "that only 5% of people in legal and law offices may be exposed to hazardous chemicals." And I suppose that it is possible, especially in larger firms -- from photocopying machines, and other types of equipment that could eventually produce a chemical exposure. And yet--

SENATOR LESNIAK: But we're covered under the law.

MR. ENGLER: You got it. You're covered by the Hazard Communication Standard, so are securities and commodity

brokers, insurance agents, and in case of you-- If any of you have combined businesses of real estate, law, insurance, etc., it's all covered. So right now, if it is a potential exposure, before a chemical can be used, you've got to be trained, the chemical has got to be labeled, there has to be an immediately accessible material safety data sheet, and there has to be an overall list of chemicals. So whether you are in the private sector, or in the public sector, or whether you work at Exxon in Linden, or whether you have a law office, the point is that everybody is covered except farmworkers. And it is time for that to end. That's why we support this bill.

SENATOR LESNIAK: Thank you, Rick.

MR. ENGLER: Thank you.

SENATOR LESNIAK: Anthony Carracino, from the AFL-CIO?

A N T H O N Y N. C A R R A C I N O: Senator, and Assemblyman, my name is Anthony Carracino and I represent the New Jersey State AFL-CIO. I want to thank you for this opportunity for hearing our statement, and letting us testify.

Four million pounds of pesticides are sprayed every year on New Jersey farms and green acres. Yet, the 15,000 farmworkers of our State who grow and pick the food we eat neither have the right-to-know the kinds of pesticides they use nor the proper safety measures needed to insure good health.

Likewise, our communities are denied the right-to-know what pesticides are used on our roadways, greenery, and nearby farms. For obvious reasons, the health needs of our State farmworkers and communities must be made a top priority in order to insure the well-being of our future generations.

Amendments A-4171, and S-3079 do just that. These amendments give the farmworkers and residents, the right-to-know what pesticides are being used on our farms and communities, pesticides safety training, and education. They also ban aerial spraying of toxic pesticides over residential areas, and lastly, expands the Pesticide Control Council to include farmworkers, and citizen representatives.

The New Jersey State AFL-CIO supports these amendments and respectfully requests that both Senate and Assembly Committees support these amendments. Together, A-4171, and S-3079 promote a few of the very guidelines essential to the future health and welfare of our State.

SENATOR LESNIAK: Thank you.

MR. CARRACINO: Thank you.

SENATOR LESNIAK: Dick Sameth from the Pest Control Association?

R I C H A R D E. S A M E T H: Good morning, Chairman Lesniak, Chairman Smith, and Assemblyman Hudak. Thank you for the opportunity to submit these comments on both bills.

SENATOR LESNIAK: Excuse me for one second. We want to welcome Assemblyman Neil Cohen to our proceedings. He was right next door, a former Union County Freeholder as well. Thank you. I'm sorry.

MR. SAMETH: Thank you.

Other members from our Association are also present in the audience, should there be any questions. My name is Dick Sameth. I represent the New Jersey Pest Control Association, which serves the structural and urban pest control industry in New Jersey. This industry comprises approximately one-half of all the commercial pesticide applicators in the State.

The pest control industry, through NJPCA, has endeavored to place New Jersey at the forefront of pest regulations by proposing and supporting training for technicians and one of the most comprehensive notification programs in the nation.

First, we congratulate Senator Lesniak, and his staff on S-3079. It addresses many issues in a practical and efficient manner and permits industry a greater opportunity to work with the regulatory agencies in developing sound regulations. Senate Bill No. 3079 and Assemblyman Robert Smith's companion bill, A-4171, achieves these objectives.

NJPCA recognizes the significant input of DEP and other State regulatory agencies in the development of S-3079. Some of the issues in earlier bills have already been addressed by DEP.

NJPCA feels that the following sections need further refinement:

Section 1 provides for expanding the Pesticide Council. Because our industry comprises approximately one-half of all of the commercial pesticide applicators in the State, and as our industry's use of pesticides in and around structures is uniquely different from pesticide applications made by other industries, NJPCA requests that the expanded Pesticide Council include a representative of our industry, in addition to a representative of an outdoor pesticide application industry.

Section 5 authorizes only the DEP to conduct pesticide application training programs. Budget and personnel constraints will impose an overwhelming burden on DEP to accomplish such training. Our industry has conducted training programs for many years. In addition, Rutgers University and the Agricultural Extension Service regularly supplement these programs. NJPCA asks that the bill be modified to permit industry to continue training with the understanding that DEP would review, approve, and monitor such training to assure compliance with DEP standards.

Section 6 requires certification and registration for persons who inspect structures for pest infestation. Rather than create a new certification category, NJPCA recommends that the current category 7b be expanded to include such certification. An inspector must know not only how to inspect, but what control techniques are appropriate, and conform to the DEP Pesticide Control Program's strict regulations. Category 7b already includes application techniques and regulations. It would be most cost-effective to expand the existing category rather than to create a new one for inspections only.

Section 15 requires pesticide incidents to be reported. In order to better define what type matter should be reported and to avoid a misleading indication of pesticide exposure, the bill should specify the "reporting of incidents where there is only clinically determined evidence of an adverse health effect as a result of a pesticide exposure." This will reduce costs to the agencies involved and develop more meaningful data to determine any real problems which may be associated with pesticide applications.

Section 20 provides for a civil suit solely on the basis of exposure to a pesticide. The allegation of some personal or property damage should be necessary to bring suit. Since the public can already bring suit under such circumstances, this section should be dropped.

Section 21 gives DEP wide discretion in assessing fines of up to $25,000 for violations of the Act. The structural pest control industry is primarily composed of small family-owned businesses. The average firm has three or less applicators. A $25,000 fine would cause many businesses to close their doors. We recommend that DEP be required to develop a matrix for fines based on the severity of the violation, prior violations and the size of the business in question. This would be consistent with the enforcement policies recently adopted by the United States Environmental Protection Agency. The maximum fine should be reserved only for willful, wanton, reckless, or habitual violations of the Act.

The NJPCA welcomes the opportunity to discuss any of the above concerns in detail with members of the Senate Labor, Industry and Professions Committee, and the General Assembly Energy and Environment Committee. We clearly support the direction that S-3079 is taking, and look forward to continuing working with the Committees to enact the best possible bill.

Thank you for very much.

SENATOR LESNIAK: Thank you, Dick. I just want to make one comment with regard to reporting of incidents of chemical exposure, and your recommendation that only clinically determined evidence of an adverse health effect -- that a result should be reported. The problem with that is that that often is not able to be determined until years later. I think in order to get a proper data base, from which later on we can call the facts out and isolate the evidence of any damage done, and/or lack of-- So therefore, I think it is important from everyone's standpoint that we get the incidents of pesticide exposure, then from that, can determine any adverse consequences, and establish some kind of tracking problem.

MR. SAMETH: I'll keep it very brief. Our experience, at least in the pest control industry which I can address having spent 30 years there, is that many incidents that people perceive are related to pesticides, we later find out were really something else.

SENATOR LESNIAK: Well, that will be determined--

MR. SAMETH: Unless somebody investigates it very quickly, because to investigate it-- In many cases, 48 hours or 72 hours later all of the evidence -- the factors have changed. So in order to develop meaningful data -- and that's what we are trying to do -- make sure that the data that's put in is a pesticide incident, truly a pesticide incident, and it's not the flu or something else.

SENATOR LESNIAK: Well, the important point of that is that we will be working with -- and you will be working with, as well--

MR. SAMETH: Right.

SENATOR LESNIAK: --the Department of Health, in terms of developing this program. Chairman Smith?

ASSEMBLYMAN SMITH: Two quick comments. I thought your suggestions on section 1 and section 5 were excellent. I'm not quite sure I understand what you're talking about with

regard to the inspectors' current classification as a 7b category. What is the impact of having a separate category, as opposed to combining with the existing category?

MR. SAMETH: I'm all for combining it into one category.

ASSEMBLYMAN SMITH: Into an existing category?

MR. SAMETH: Right.

ASSEMBLYMAN SMITH: Right. But what are the implications for the State? I mean, what would be the difference if we had the other category?

MR. SAMETH: In order to become certified you have to pass a core exam, and then a category exam. That means another manual has to be developed for the category exam. A separate examination has to be given. These exams are given throughout the State, and already the DEP has a hard enough time fulfilling its existing demands for exams. We're just adding another category, which I really don't think is necessary.

ASSEMBLYMAN SMITH: All right. What is the title of a 7b person?

MR. SAMETH: It's a person who is certified in termite control and wood-destroying organisms.

ASSEMBLYMAN SMITH: Thank you.

SENATOR LESNIAK: Thank you, Dick.

MR. SAMETH: Thank you.

SENATOR LESNIAK: Is it, Ilona Gray, from the Environmental Alliance for Environmental Concerns? Is she here? **I L O N A G R A Y:** Yes, I am. I'm here. Good morning, Committee. I was just waiting for the comments to be distributed before I began. I will not read the whole statement that is written there. Those are just my written comments, and to save time and to allow for others to give their comments, I will just particularly stress some certain points that we consider of strong concerns.

Briefly, what I would like to give you is an introduction about the Alliance for Environmental Concerns. It's a not-for-profit organization representing through its association members, a majority of the professional pesticide applicators in New Jersey, as well as those whose livelihood is dependent upon the appropriate use of pesticides in New Jersey.

There is a list of the association members attached to the back of these comments. As part of our mission, the Alliance issues newsletters updating its members on regulations, legislation, -- which is what we are going through right now -- and on educational information concerning pesticide use. The Alliance was founded back in 1981 to address the complicated issues regarding pesticides in the State of New Jersey.

Now I'll follow-- I'll try to follow along as in the bill. On page one, section 6.a., the bill discusses the expansion of the Pesticide Control Council. As of this point, right now, the Council consists of nine members. This bill would increase that Council to 16 members-- I'm going to leave from my comments right now. I have sat on a public entity -- an elected public entity -- of nine members, and I can tell you that it is quite difficult sometimes to get nine members to move on important issues. I believe that making the Council into 16 might make it into a bureaucracy in itself.

Therefore, I would recommend the expansion of the Council be limited to possibly 12. I go over in my comments specifically which members I think would be more advantageous to the addition to the Council. I won't go over that right now in my comments specifically, except to address possibly the expansion of the Council with nonscientific users.

There is several that we would agree with you on the science level. That would be possibly including the M.D., the integrated pest management expert, and the hydrologist. We feel that these expansions to the board would be constructive additions to the Council.

Whereas, with the organic farmer-- We feel we would be opposed to this individual because it possibly represents less than 1% of the farming community, and they often hold unscientific opinions concerning pesticides. And I go into a couple of examples real briefly, and quickly: A number of the biological and natural pesticides advocated by these organic farmers are not registered in New Jersey. Many of these organic farmers believe that these products are relatively harmless. Several of these natural products are actually more toxic than the commonly used synthetic pesticides.

For example, nicotine, contains a "Danger" label on it, and rotenone -- these are two that are presently registered in New Jersey and can be used -- is a very toxic fish killer. This bill does not specify or define what the organic farmer really is, and defers to a recognized organization of organic farmers.

Now I will skip.

The other portion that we agree with the New Jersey Pesticide Association -- I don't mean that -- the New Jersey Pest Control Association; Dick Sameth who just spoke, is the section on page four, section 5. That would have-- "The Department shall conduct a training program for persons working under the direct supervision of a certified pesticide applicator, registered with the Department as pursuant to the Public Act of 1971." And we would request also that the Department would also approve of training programs conducted by the applicator industries. As Mr. Sameth had presently said, Rutgers University presently does training through the Cooperative Extension. There are several training programs going on through the industries. This bill would eliminate those avenues of training.

The next section of concern to us is on page five, section 7. That would be the prohibition of any aerial applications of broad spectrum pesticides to nonagricultural

lands. This would limit, by law, the options available to control pests in a safe, economical, and effective manner. The decision to use one product over another in a local situation should not be made by a State law. These choices are best based on local situations and conditions.

There are areas in the State that cannot be reached by land, which includes several insect breeding areas. I'm sure a number of you are familiar with the Atlantic County and Ocean County areas. They're our tourist and resort areas. The procedure that would be proposed in 7b, which deals with these aerial applications on emergency basis, would be difficult and expensive to address and could not be done in a timely manner.

In utilizing integrated pest management principles, the timeliness of the application is one of the most important factors in minimizing the use of pesticides and maximizing their benefits. I have another concern too, since I have written to and spoken with the President of the Audubon Society. This bill might actually -- through the Audubon -- eliminate all aerial applications to protect trees, because strictly speaking, bacillus thuringiensis, which is presently used today in the State by the Department of Agriculture, is not considered a "narrow spectrum" pesticide by definition of the Audubon Society. They would consider no narrow spectrum chemical pesticides. They are opposed to BT because they feel that it kills a wide range of lepidopterous insects, and therefore, it affects the bird population.

Now, on section -- I'm sorry -- page five, section 8, which is a new section. This one we have major concerns on: that would be the establishment of notification zones, and procedures for avoiding pesticide exposure. Regulations that address this are already in place. They were the result of over two years of public hearings, and have been carefully drafted by the New Jersey Department of Environmental Protection.

The proposed bill would create the need to totally redevelop the notification procedures and would consume resources that are sorely needed elsewhere in the DEP. This concept of notification by mail, phone, and personal service was addressed in the public hearings held in 1987 and 1988. It was rejected after being dutifully considered because it is totally unworkable.

The proposal to notify by mail, telephone, or personal service, we believe should be limited to those individuals who so desire that notification. These individuals can register with the Department of Environmental Protection or the DOH. This list could then be made available as public record to inform the applicators of these persons requiring these notifications.

ASSEMBLYMAN SMITH: How would--

MS. GRAY: There's a section--

ASSEMBLYMAN SMITH: Stop for a second. How would people be aware that -- someone in the neighborhood, a residential citizen of the State of New Jersey, the average Joe citizen-- They would have this right to put themselves on a list, and then get notification?

MS. GRAY: Okay.

ASSEMBLYMAN SMITH: How would they ever know that?

MS. GRAY: All right. There's presently a system operating right now in the State, Assemblyman Smith. It's called the Model Ordinance. It was a proposal many years ago, and the ordinance was sent out to, I believe, 567 municipalities. I may not have that number right. In this ordinance, there is -- and I'm just going to paraphrase -- it allowed for the municipalities to put into those public papers which are most widely read, that those individuals who wished to be notified of pesticides exposure, or pesticide spraying nearby to their property, or bordering to their property, would register with that municipality prior to the spray season, which I believe would be like March or April -- April first.

This particular list, Assemblyman Smith, then would be made available to the pesticide applicators when they came into that municipality, and they would then notify these people prior to, or actually on the day of the spraying. They would either call them or they would show up at their door, and knock on their door. It was a system such as this. Therefore, those persons who wished to be notified would be afforded this opportunity.

ASSEMBLYMAN SMITH: Just to refresh everybody's recollection, I wasn't around for the 87' and 88' hearings. What was it that was so unworkable about mail notification to individuals?

MS. GRAY: Okay. I'll explain it to you. In the application of pesticides, what happens is if you can give a proposal date-- There are two things operating here. First of all, it would be the cost of notifying, depending on how many people you wish to notify. It might be-- Some have projected or suggested 100 feet; some have said just property adjacent to the property where you are spraying.

We did a cost analysis many many years ago on it, and it was quite substantial. And this cost would then naturally be put on to the costs of pest control for the homeowner.

ASSEMBLYMAN SMITH: Would you forward to this Committee the cost analysis that you did several years ago--

MS. GRAY: Okay.

ASSEMBLYMAN SMITH: So we can take a look at it?

MS. GRAY: If I can locate it. It's a couple of years back but I think maybe it could be done. After discussing this though, the assumption, as I said, came out that we felt it would be better if it was those people who wished to be notified. And that list -- may I please tell you -- should be updated by the municipalities, because what happens in some of the municipalities, they will keep the same list going for several years and those individuals on that list might have

moved, or died, or something like that. So we suggest that the municipalities possibly charge a nominal fee each year. That would make it so there wouldn't be nuisance type things that would occur too.

ASSEMBLYMAN SMITH: Well let me just throw this out for your consideration. I do planning and zoning, as a part of my practice, and we're required to notify residences within 200 feet of an application that there is a proposal for a development. We just simply write to the town clerk or to the Department of Public Works. We ask for the list -- or to the Tax Assessors Office. They provide it at a very nominal fee, and we send out mail. On the attorney's end of it, in development applications we generally don't have an awful lot of problems finding out who are the adjacent property owners, or the property owners within several hundred feet. The municipality provides it easily, at a nominal cost. And the mailing charges are very minimal. So I would really like to see for the Committee's benefit, some--

MS. GRAY: Well, may I suggest the other thing? The other part was--

ASSEMBLYMAN SMITH: --detailed set of evidence, or research from your group, because the comment that you used here was that mail notification was "totally unworkable."

MS. GRAY: Right.

ASSEMBLYMAN SMITH: I'd like to see some more justification from that, because quite frankly, and as a representative of the public, I have some difficulty saying the burden's on the public to find out that pesticides are being applied, or to put yourself on a special list, as opposed to the burden being on the applicator to notify the public that it's being applied. So I think if you want to make that point solidly with the two Committees, I think you'd better provide some more evidence on it.

MS. GRAY: Okay. We had discussed this with the Department of Environmental Protection, and they would follow with our point. May I ask that, please, if they could look back in their records-- If they can help us in coming up with the numbers, and the figures, and why it is so difficult.

Another thing, too, with pesticide application, you will have to put it down in a timely manner. It depends on what type of a notification your looking for. Whether you are looking for a post-notification, or a pre. And I won't get into that, but it gets very difficult if it's a predate because you have changes in weather, and you have also a number of factors that would change the actually date of the pesticide application. Therefore, we felt that the most effective way is to let them know either on that date or as close to that date as conceivably possible.

ASSEMBLYMAN SMITH: Okay.

MS. GRAY: Do you follow?

ASSEMBLYMAN SMITH: Yes.

MS. GRAY: Then it becomes very very difficult. We felt that with regulation -- another thing, Assemblyman Smith -- if there are problems with notification they can always be worked with the Department of Environmental Protection. If this was to become a law, as you can well imagine if it becomes unworkable, then it becomes more difficult to change a law around than it does to change regulations. Okay. May I move on, please?

ASSEMBLYMAN SMITH: Surely.

MS. GRAY: Okay. Thank you.

On page five, section-- Oh, I'm sorry; I did that one already. I apologize. There's another part too-- The bill would also very much eliminate what is presently used in this State for notification requirements for a highway, municipality, and utility right-of-ways. I just give a little philosophical discussion in there.

I say, for example, railroad right-of-way treatments would become an extremely expensive operation given the numbers of individuals who live within a notification zone of the railroad yards, terminals, and track. Railroad labor regulations often require for safety, and fire prevention to have weed control done on the roadbed to keep the roadbed from moving -- as you can imagine -- with the ties if you were to allow weeds and trees to grow in there. These costs would then have to be passed on to our mass transit system at a time when mass transit is needed to solve some of our very serious environmental problems.

Presently, right now, Assemblyman Smith, there is a notice put in the legal portion of the paper as to when there will be spraying going on, and who is the responsible party. You could possibly ask the Department of Environmental Protection. They could provide you with what presently is used for notification for highway right-of-way and railroad. But again, -- referring back to that -- direct mail, and direct personal service to those along highway right-of-ways as you can well imagine, would just be totally cost prohibitive.

Next part-- On page eight, section 15, -- which is the new section; that's the part on reporting of incidents. That would, again referring to Mr. Sameth-- We concur with him. We feel that requiring the physicians and veterinarians to report incidents of pesticide exposure to the Department of Health would be too broad and if enforced, this language would probably dilute valuable information with unsubstantiated reports.

So we suggest that the phrase "incidents of pesticide exposure" be substituted with, "clinically determined evidence of adverse effects from pesticide exposure," and that the DEP in cooperation with the Department of Health devise a standard reporting format so that this information could be put to best use. And then I go on a little bit further.

Now moving on to page 10, section 20. That's a new section. I skipped section 19, which would allow for the departments-- I won't go into that. We have some concerns with that, but especially with section 20, which would allow for the civil action of any violation of this Act. The right to sue for damages already exists under current law, and this bill would propose that any violation -- even those with no substantiated damage relating to it -- would be subject to compensatory damages.

This bill would permit any individual who has been exposed to pesticides resulting from a violation of this Act, the ability to sue for the damages. We believe that exposure does not equate to damage. Simple exposure without damage provides no basis for a just claim of damages. And we feel that actual damages have to be shown in order to determine what type of compensatory award would be made.

This bill would also allow for punitive, and I won't get into that, but that would become very subjective, as you can well imagine if there is an allowing of punitive award, besides the compensatory award. We feel that violations should be dealt through a system of fines, cancellations of pesticide applicator certifications, and/or business licenses, instead.

Page 11, section 21.k.: That would allow for the DEP fees to reflect actual or projected expenses incurred by the Department for a registration certification and permit fees. I had a discussion about this with Vice-Chairman, Christopher Jackman. The discussion that we got in to was, he wanted to know what about with the Legislature: How would it get involved with this? I tried to give a little more clearly on this.

I said, current funding sources for the DEP include EPA grants and State Treasury appropriations. These funding sources should remain in place. To permit the DEP to cover State shortfalls in funding is, we believe, a abnegation of

legislative responsibility. It permits the regulatory agency to tax its constituents for its actual projected costs. We believe this bill would leave no checks and balances, and would permit, possibly, an easy abuse of the power by the DEP. I feel that this approach in funding is possibly unprecedented in any state that we are aware of, for pesticide regulations.

I called outside of New Jersey to find out if there are any other states that allow for this. And at this time, sir, I believe there are not. That was the information that I got back. And the last part--

ASSEMBLYMAN SMITH: Great. However, it is a very common practice among the regulated communities and the various permit processes and review processes that the DEP now does, other than in the area of pesticides. It's commonly used across the spectrum. In the last administration, that policy was adopted as a goal towards which the DEP should be heading.

MS. GRAY: Well, if-- I won't get-- There's something in here that I've discussed. I feel that if you increase the license fee, the business fee or the pesticide applicator still becomes cost prohibitive. You might have a problem where you might actually not have those individuals registering for their pesticide certification license, or you might have a number of people who might be operating illegally just to escape the cost of the licensing fees and other things. I won't go into that any further.

The last part is on, page 12, number 22., section 10.b. That discusses the fines and penalties. I don't have it written out here. Specifically, it suggest that we go from $3000 to $25,000. And I say the fines and penalties proposed here would represent similar amounts covered under the Federal environmental laws. But this proposal bill would take into account -- should take into account, I'm sorry -- that these fines would become confiscatory for most of your small businesses. I had to look that up; I put that in there.

But what I am essentially saying is, if you were to take a small business of pest control that might have one or two employees with gross receipts of possibly $50,000, and they had an incident in which they were fined for $25,000 per incident per day, you can imagine that within a very short time they could not afford to pay the fine. So what we suggest is that there should be some type of relief, especially also if they were to be fined on the Federal level -- and the Federal would also come under this too-- That there should be some type of relief from the Federal and State fines for the same offense.

I would just like to tell you that we welcome the opportunity to discuss any of these above concerns with the members of the Senate Labor, Industry and Professions Committee, and the General Assembly Committee on Energy and Environment, and we look forward to continuing working with these Committees to enact the best possible bill. I thank you very much for this opportunity to present our Association's concerns.

ASSEMBLYMAN SMITH: Thank you. Any questions for Ms. Gray? (no response) There being none, thank you Ms. Gray.

MS. GRAY: Thank you.

ASSEMBLYMAN SMITH: Jane Nogaki, from the New Jersey Environmental Federation?

J A N E N O G A K I: Chairman Smith, because a couple of people have to leave, could I ask that Lori Talbot -- a physician -- be called to testify--

ASSEMBLYMAN SMITH: Sure.

MS. NOGAKI: --along with David Robertson, who has to leave before noon?

ASSEMBLYMAN SMITH: Not a problem. Dr. Talbot? Mr. Robertson? Please come forward.

L O R I C. T A L B O T, M.D.: Good morning. Thank you for letting me testify early.

ASSEMBLYMAN SMITH: Sure.

DR. TALBOT: I have to get back to work.

ASSEMBLYMAN SMITH: Thank you for coming.

DR. TALBOT: My name is Dr. Lori Talbot. I am a board certified, family physician. I have worked with migrant farmworkers for about nine years, in New Jersey, Delaware, Maryland, and Virginia. I currently work with Bridgeton Area Health Services. I'm also their Migrant Farmworker Coordinator.

Bridgeton Area Health Services is a community health center in Bridgeton, alongways from here this morning. We have Federal and State funds to serve migrant farmworkers. We're one of two clinics in New Jersey that does that.

Because of the number of years that I've worked with migrant farmworkers, being relatively familiar with their health problems, I'd like to go on record personally and also as a representative of my organization as being fully supportive of these proposed amendment changes. My board, which is composed of local community persons, happened to have a meeting last week and they discussed this, independent of me, and wanted to let you know that they voted unanimously also, to support the bill.

I'd like to make three points, and I'll try to be quick about it. The first is that, I think there's a great lack of knowledge of the part of physicians about pesticide poisoning, recognition, and treatment. There's basically minimal to nonexistent training about this in medical school. I've not been out of school that long, and I can personally testify that I basically received no training about it in medical school, or during my residency.

The only training that I received is when I did a paper myself, and presented it to my medical school class about this problem, because I happened to be interested in it. I also prepared a brief booklet on pesticide recognition and treatment when I was in medical school, for a little community

hospital in a rural county in Virginia, where thousands of migrant farmworkers come every summer, and where there are many many farms.

I presented it for the emergency room physicians in that county hospital. They had never had any access to that kind of information, before. Yet, they're sitting right smack in the middle of a county that has all kinds of problems of that nature; just underscoring the fact that physicians basically know very little about it.

Physicians I've worked with in clinics that are set up like mine, specifically for migrant farmworkers, have told me, "Gosh, I never see migrant pesticide problems. Are there really any?" And I'm just flabbergasted. When I go through and do some training with them and tell them what the symptoms are, and how people present, they're frightened because they realize that they have probably missed many many cases in the past, simply because they didn't know what to look for. I've been impressed, and distressed about that.

So my first point is, general physicians, family physicians out in practice, know very very little about this problem. My second point is that, there's an equally great devoid of information in migrant farmworkers and farmers about pesticide poisoning.

The vast majority of farmworkers have absolutely no idea what chemical they work with. I've never had a patient be able to tell me what chemical they were sprayed with or exposed to. I ask the farmworkers, when they come in, what kind of work do you do? Where do you work? What crops are you working with? What are you doing? Those things they can tell me. Then I'll ask them if they've been exposed, ever, to pesticides? And some of them will realize that they've been sprayed. They've gone out in the field early in the morning and there's been pesticide residue, and they'll say yes. Never have I had someone be able to tell me what chemical it was that they were exposed to.

I am absolutely appalled that this group of workers does not have the right-to-know what chemical they're working with. It just amazes me that they've been excluded up until now, from this right-to-know.

When I was hired where I work right now, it was explained to me about the toxic chemicals that I work with. I had to sign one of these material safety data sheets, telling me that the toxic chemicals that I work with was alcohol swabs, and formaldehyde. Every year I have to sign a paper that says, I understand what they are, and what to do in case I get poisoned, etc., etc. Yet, we have a group of workers that works with extremely toxic, tragic chemicals that not only do they not know anything about, but if they ask, they don't have the right-to-know. That just appalls me that they don't have the right to that information.

I find that workers seldom fully understand the routes of pesticide exposure, or the need for protective clothing. I had a patient who was spraying pesticides; he was working in a tractor doing the spraying. One day when he was out spraying, he suddenly became very sick. He got real sweaty. He started to throw up. He had diarrhea. He stopped the tractor, went out to the side of the field, and passed out. I saw him three or four days later, when he happened to come in to see me, and he was telling me this story. I asked him if he'd been exposed to pesticides, and if he thought that had something to do with his problem?

He had been well, and half an hour later he was very very sick and passed out. He said, "I was in the cab. I didn't get any of it on me. I didn't get sprayed. I was in a protected cab. I don't think it had anything to do with it. I think I probably have the flu." I asked him, "Are there any vents in this cab? What's your air supply situation?" He said, "Oh yes, they're vented. Air comes in all of the time, but I didn't get sprayed with the pesticide."

This guy didn't realize that there are different routes of exposure. You don't have to get sprayed. You can breath it in. This is a guy that was an applicator. He also didn't realize that his symptoms could have been pesticide related, and undoubtedly, were. He thought he had the flu. I think there is a real need for worker education programs to explain to them how they can be exposed and what the symptoms are so that they will know to seek care when they do get ill.

I also find -- in agreement with the CATA study that Angel told you about -- that workers rarely know that they have the right to have handwashing facilities where they work, toilet facilities, and drinking water. I've uninformally asked them. I have not done any fancy studies. I've asked them, and rarely do they know that those things are supposed to be out there. And when I ask them, rarely do they tell me that those things are available. So my second point is, farmworkers and farmers really don't know very much about pesticides, or pesticide exposure.

My last point is that, I think it is outrageous that health care providers -- myself included -- don't have access to information about what chemicals my patients are exposed to, unless it is a dire emergency. In no other occupational medicine situation that I am aware of, does the physician not have access to that information. I have been denied this information in the past. I was flabbergasted that I couldn't find out what chemicals my patient had been exposed to.

I had a crew who was picking gladioluses. A bunch of them came in one night. Almost all of them had big rashes on their left arm and shoulder. The one guy had the same rash on his right arm and shoulder. I got to talking to them. I found that they picked gladioluses, and the right-handed guys would pick it with their right hand and slap it over their shoulder. They'd carry a big bunch of them to the truck and then dump

them. The left handed guy would do the same thing. So he had the rash on his right arms, and the rest of them had the rash on their left arm.

I felt that it was probably pesticide related. I called the farmer. I said, "Look, I've got 10 of your guys in here and they all got this rash. What are you spraying on your gladioluses? Can we figure out what is going on?" He asked me, "Is it an emergency?" I said, "No." He said, "I don't have to tell you." And he hung up on me. And legally, he didn't have to tell me. I couldn't get that information. I was outraged, but I couldn't do anything about it.

So my last point is that I think health care providers need to have access to that information. Acute emergency or not, I should have had that information. I couldn't make a diagnosis. I didn't know if it was pesticides. I didn't know if it was because they were wet. I didn't know if it was because the plant was irritating to them. I couldn't make a diagnosis, and I couldn't offer an appropriate treatment.

So my last point is, I feel very strongly that health care providers need to have access to that information. I think I'll close. If you have any questions, I'll be glad to answer them for you.

ASSEMBLYMAN SMITH: Thank you, Dr. Talbot. Is it Mr. Robertson?

D A V I D R O B E R T S O N, ESQ.: Yes, it is. Good morning. My name is Dave Robertson. I reside in Demarest, New Jersey. I'm sorry that Senator Cardinale couldn't be here today, but I'm sure he will read this testimony given the importance of this bill.

I am an attorney in Hackensack. I am also the father of a beautiful son named Matthew, who was born one-and-a-half years ago without a left hand.

If you, or your husband, or wife ever have such a child born without a limb, I suspect you'll do what my wife and

I did after our son's birth, that is, to examine the first trimester of pregnancy to determine what, if anything, we could have been exposed to that could possibly have caused such a defect.

I should preface my testimony with the following remarks. My wife, Marilyn, totally abstained from alcohol, drugs, tobacco, or any other harmful substances during her entire pregnancy. Neither of our families have ever had any children born with birth defects. We have been "cleared" by the geneticist at Hackensack Medical Center. We also have a perfectly health son named Michael.

Unfortunately for us, approximately five weeks into Marilyn's pregnancy, a portion of our kitchen became infested with small moths. Despite repeated attempts to remove them manually, they continued to reappear. We contacted an exterminator to determine what could be done to remove these insects? He advised us that the Dow pesticide Dursban could solve our problem.

Prior to Dursban's application, we required the exterminator to produce Dow's Dursban literature which we scrutinized. It's only warning was to the applicator, not the consumer: "Product may be fatal if swallowed. Excessive absorption through skin may be fatal." Note that these warnings were for the product at full strength, not in its diluted state at the time of application. Nowhere on the label was a warning regarding exposure by pregnant women, or any suggested time period to stay away from the chemical after it had been applied.

In addition to the above, we brought the Dursban product information to Marilyn's obstetrician for a second opinion just in case Dow had failed to warn us to the possible side effects to a fetus. The obstetrician advised that pesticides could not harm a fetus as long as there was proper ventilation.

In addition to all of the above, Marilyn left our house prior to the application of the pesticide and remained out of the house for the entire day to avoid any type of exposure. She was six weeks pregnant at the time of the application, and we have since come to learn that limb buds form at or about the sixth week of pregnancy.

Now, after our son has been born and after extensive investigation and research on our own part, we have learned that an active ingredient in Dursban is chlorpyrifos. According to the New Jersey Department of Health, evidence exists suggesting that this substance may damage the developing fetus. That particular publication was published prior to my wife's pregnancy, but of course it didn't come to our attention until subsequent to the birth of our son, after we took extensive efforts to find that information.

We ask you: Why didn't our exterminator know that this pesticide could damage a developing fetus? Why didn't our doctor know this? Why didn't this appear on the Dursban warning? Why isn't it required that our son's exposure now be documented in a central agency to protect other pregnant women from exposure?

Despite repeated articles suggesting that such limb deficiencies are extremely rare, we have met within the past year eight other couples in the New York, New Jersey metropolitan area whose children have experienced the exact same limb reductions. Apparently, no efforts are being taken to examine whether a common link exists regarding pesticide exposure and birth defects.

We would not have stayed in our home the night of the application -- or the night following the application of the pesticide -- had we known what we know now about its active ingredient. We could have gone away for the weekend or we could have exercised any number of other options in order to avoid its exposure.

We were deprived of the opportunity to avoid exposure to the pesticide by weak laws that do not require a corporation to warn of known or suspected hazards regarding exposure to its products; also by an uninformed exterminator; and by an ill-informed doctor.

We submit that the bill before you today, had that been in operation during Marilyn's early pregnancy, our family's life might well be different today, especially for our son Matthew. Thank you.

ASSEMBLYMAN SMITH: Thank you, sir. Henry Rupp, Superintendent of the Somerset County Mosquito Commission?

H E N R Y R. R U P P: Committee members, thank you for the opportunity of addressing the issues raised in these two companion bills. My name is Henry R. Rupp. I am Superintendent of the Somerset County Mosquito Extermination Commission. I am also President of the Pesticide Association of New Jersey, an association dedicated to education about the safe and proper use of pesticides. It is in this latter capacity that I speak today.

Before moving to a brief discussion of the bills under consideration, I would like to propose a redefinition of terms so that we may more accurately speak about the materials we use. I would put it to you that the appropriate term for these materials is "environmental medicines" rather than "pesticides." Let me make two analogies. We use boric acid as an eye and ear wash, and for athlete's foot. It has antibacterial and antifungal properties and is a medicine for a sick body, but we must use it with care, for it can be toxic.

We use boric acid in powdered form to control ants and cockroaches. It is the same material, but now you call it a pesticide. I would call it a medication to cure an unhealthy environment. Similarly, warfarin sodium, better known as coumadin, is used to thin blood for those with heart conditions. It can be toxic if used without caution. Warfarin

is also used to kill rodents, but now you call it a pesticide. I would again say that it is a medication used to cure an unhealthy environment.

As you listen to the testimony presented today about environmental medicines, I would ask you to recall that many, if not most of the medicines that we use are poisons that are taken into the body at sublethal dosages to create a hostile environment for the organisms that make us sick. All material are toxic; it is the dose that determines the effect.

Lest some should foolishly think that those of us who use environmental medicines see no merit in this proposed legislation, let me put your minds at rest on that score. The sections dealing with the Technical Advisory Committee, which exists in fact if not in law, have merit as do those sections which provide for a program of education about the effects of environmental medicines and the interchange of information on poisoning from their "improper use," the correct term to be used rather than "exposure."

We believe that the addition of an integrated pest management specialist, a groundwater hydrologist, and a representative of a local health agency to be worthwhile additions to the Pesticide Control Council, which reports appropriately by law to the Commissioner of Environmental Protection, not the Governor nor the Legislature.

While all of us who use environmental medicines for the benefit for society can understand, although not always appreciate, the efforts of some to rid the world of as many toxic substances as possible, we do have difficulties with the methods used to achieve these goals and the results we see following such achievement. We fear the rigid constructionism resulting from overly explicit legislation would limit governmental agencies' ability to respond to technological advances as they can more easily through the regulatory review process. Such rigidity would be analogous to saying we should

not use voting machines because they were not mentioned by the founding fathers, unless we passed a law authorizing their use.

Some of us here today have argued this position previously in hearings on earlier versions of this legislation. Indeed, representatives of the Department of Environmental Protection have so stated this on many previous occasions. We also have put forth the proposition that much, if not most of the power envisioned in these proposed bills, already resides in law or in the regulations of the Department of Environment Protection, and the Department of Labor.

We would remind Committee members that the majority of the legal rights provided in the bill already exist in law, and that those proposed, particularly section 19, can only lead to what we used to call in the Marine Corps "conduct to the prejudice of good order and discipline." We are saying to you once again, "If it ain't broke, don't fix it."

It may seem ironic for the Pesticide Association of New Jersey, which is dedicated to education about these environmental medicines, to oppose a bill that is in essence a right-to-know bill, a bill mandating education for farmworkers. However important as we recognize such training to be, we would ask, in turn, has any thought been given to the economic impact the educational requirements provided for would have on New Jersey agriculture? Farmers in neighboring states will be delighted to see the prices of New Jersey produce rise as theirs remain the same.

As one who is a qualified trainer under the New Jersey Right to Know Act, I see hours required to provide adequate training, hours for which workers must be compensated, hours requiring a DEP-certified trainer who must be compensated, hours for which the farmer must pay, but hours for which the farmer will not be compensated through price increases to his buyers.

It seems ironic that a bill which aims at helping farmworkers may in fact cause them to lose their jobs, as farmers find New Jersey a less and less acceptable State in which to ply their trade. We hope you can resolve this issue to the satisfaction of all concerned in an equitable manner.

Another general area of concern relates to the pesticide control program's proposed ability to make it self-sufficient through the fee structure. It will come as no great surprise to Committee members that there is resentment -- if I may indulge in understatement -- about taxes in New Jersey. What these bill propose is an indirect form of taxation, taxation in the increased cost of doing business that will have to be borne by the consumer of goods and services. One might note parenthetically that certification fees under the Right to Know regulations are not intended to be recovered in increased prices, but rather in increased business.

These proposed laws will not increase business so that costs may be amortized. They will, instead, increase operational costs that must be immediately recovered through increased prices or with governmental agencies' increased costs that will be recovered through taxes on the citizens of New Jersey.

At a time when citizens are demanding that governments become leaner, less costly, and more efficient, it is perplexing to see legislation proposed which perpetuates and reinforces the status quo. Furthermore, there are those of us who view this proposed operation in self-sufficiency as an abdication of legislative oversight through the power of the purse. It is a proposal that weakens the system of checks and balances propounded by the founding fathers.

Committee members, others will enumerate in detail their difficulties with these bills. They will cite chapter and verse where these bills duplicate already existing legislation or regulations, and I will not burden you with yet

another litany of complaints. Rather, I have tried to point out in broader strokes those areas that are of concern not only to use as users of environmental medicines, and taxpayers of New Jersey, but also those areas of concern that you as our legislators should be pondering as part of an overall philosophy of government in a time of fiscal constraint.

Senators, Assemblymen, in these difficult times, our Governor bit the bullet and made the decisions he felt best for New Jersey. He has admitted to only one failing -- that he should have listened more. We hope that you too will listen as you make the decision that must be right for our State. Thank you.

ASSEMBLYMAN SMITH: Thank you. Are there any questions? (no response) There being none, thank you for your testimony. Our next witnesses are Susan Shaw and Nancy Coleman from the New Jersey Coalition for Alternatives to Pesticides.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Would you read that again, please? I couldn't quite understand you.

ASSEMBLYMAN SMITH: Sure. Our next witnesses will be Susan Shaw and Nancy Coleman from the New Jersey Coalition for Alternatives to Pesticides. And next time, I'll speak into the microphone. Go ahead.

S U S A N R. S H A W: What's being handed out now is a summary of the bill. I'm going to very briefly just provide some comments which will show you why I feel these provision are justified. I'm Susan Shaw, representing New Jersey Coalition for Alternatives to Pesticides.

We feel that the Pesticide Control Council should be expanded to include these members. According to present law, they specify an ecologist, a farmer, and a toxicologist, and three members from the general public in addition to representatives from certain departments like the Departments of Agriculture, Health, and Rutgers. In the past, these

general public members have been from the pesticide industry. And now we feel this is a more balanced approach by having all these areas represented on the Council.

We feel that the creation of a Pesticide Technical Advisory Committee is very important so that we have people with proper expertise to evaluate the hazards of pesticides. According to present regulations people working under pesticide applicators are trained according to guidelines set up by DEP. One wonders if these guidelines are indeed being followed by companies, because we see so many people applying pesticides, improperly clothed for the job, and we wonder if they really are indeed being told the hazards of the products that they're working with? So we really feel that DEP should set up the training program, and conduct the training program for those working under the direct supervision of pesticide applicators.

We feel that the DEP should require the registration of people who are doing structural pest control inspections. Some of the most hazardous pesticides are being used on structures, and the potential for contamination is immense because we're dealing with an indoor structure and we can have a great deal of air pollution resulting from it. This registration would ensure that the person doing the structural pest control inspections would be competent.

As far as the ban on aerial application of broad-spectrum pesticides for nonagricultural lands, Connecticut has had this ban since 1971, I believe. They do not allow any broad-spectrum chemical pesticides to be applied from the air on nonagricultural lands. We have expanded this provision by allowing for emergency exemptions for health reasons, agricultural reasons, and environmental reasons, but this provision-- If the spraying was necessitated by an emergency, there would be some form of getting the notice out to the public, or interested parties, which would be very helpful, and a written report would have to be written up by DEP, actually outlining why the aerial spraying was justified.

The notification requirement section is very very important because while we do have a notification -- the posting of signs for outdoor spraying, for example for lawns, and where tree and shrubs are going to sprayed, and golf courses, and also for indoor spraying, there are certain areas that are not being posted. Your lakes are being treated with weed killers. People are swimming in lakes that have been treated, and they do not know that it has been treated. Your rights-of-ways -- your utility rights-of-way, your Department of Transportation road rights-of-way are being sprayed.

There is no notification for mosquito spraying or agricultural spraying. And this bill would mandate that the DEP, in consultation with the Department of Health and the Department of Agriculture, adopt regulations that would provide for more people to be notified and minimize their exposure to pesticides.

The permit program for municipal gypsy moth control is very important. As it stands now, the Department of Agricultural will decide what areas of the State need to be sprayed for gypsy moths, based on scientific tests and egg mass surveying. Not all municipalities will participate in the Department of Agriculture's spray program. Some feel that they want the entire township sprayed, and they will go ahead an hire their own aerial applicators. What this permit program would do, is to see if that is exactly justified; their spraying for gypsy moths. This is very very important that a permit program be established for the local government to prevent unnecessary gypsy moth spraying.

Right now, New Jersey does not have a mandatory reporting system for pesticide illnesses. At least eight states already have such a system. Many pesticide illnesses are going unreported because of the fact that physicians and veterinarian are not trained in the proper diagnoses and treatment of pesticide illness. This bill would provide for an

educational program for physicians, veterinarians, and health care providers for the proper diagnosis and treatment.

I need not go into the protection for farmworkers, because it has been discussed. I'd like to point out that they are one of the most exposed groups of people, and the least legally protected people, and these provisions in the bill are very important. I'm going to stop here to allow Nancy Coleman to speak. Thank you very much.

ASSEMBLYMAN SMITH: Sure. Ms. Coleman?

N A N C Y B R O W N E C O L E M A N: Hi. My name is Nancy Browne Coleman. I am the owner of Organic Lawns, a nonchemical lawn maintenance company. I'm a professional Turfgrass Manager, and Certified Pesticide Applicator. I wholeheartedly support this bill, and I have the following comments.

Increased fines on pages 10 and 11 are necessary. Many in the pesticide industry take violations very lightly. I have seen this in my business, watching other applicators. I've noticed this especially in some lawn and landscaping applications. For example, there are many that are not licensed and not properly trained.

The bureau claims that there's not enough money to provide needed monitoring, inspections, patrol, and investigations. These fines will allow for those. I have seen sloppy applications, spills on driveways, lawns, and streets, and no attempt to clean them up. For many applicators, there is little attempt to keep applications from nontarget sites, and no attempt to ascertain property lines. With increased fees, maybe this will be the rule.

There's no protection for workers. I've seen many many applicators, as Susan said, without protection. I took classes, and attended turfgrass conventions with many of these, and they tell me that their bosses tell them that they should not wear the protection. They say, how would the customer feel if they walked up to the application site fully protected? Obviously, there are violations going on.

There's been total disregard by some applicators to wind conditions and subsequent drift. Heavy fines will make most applications, and most applicators take care and precautions seriously, and will allow funds for policing violations.

The ban on aerial spraying in this bill is much needed. As Susan stated, "Connecticut has such a ban on broad-spectrum pesticides." Aerial spraying is the biggest potential exposure for human exposure. It allows a high percentage of nontarget sites to be applied on, from drift on to driveways, roofs, pools, children's play areas, and gardens. Also, since I have a nonchemical lawn care business, this broad-spectrum pesticide spraying in the area affects my business.

Aerial spraying can negate and work against the industry's and the public's attempt to use alternatives to pesticides. Aerial spraying of broad-spectrum pesticides could interfere in the services I provide for my customers, and for customers who buy my products for self-application. Aerial spraying with broad-spectrum pesticides can interfere and negate the valuable Department of Agriculture's Beneficial Insect Program, whereby the Department tests, rears, and releases beneficial insects capable of helping to control insect pests. This is especially true for the Gypsy Moth Suppression Program.

It's my understanding that the Department will not release the beneficial insects in a particular county which runs its own aerial spray program -- spraying year after year -- because the beneficial parasites cannot be established in that county, and it is a waste of taxpayers money.

ASSEMBLYMAN SMITH: What do you mean by that?

MS. COLEMAN: The Department of Agriculture has a beneficial insect rearing program--

ASSEMBLYMAN SMITH: Right.

MS. COLEMAN: --where they test and raise and release parasites of the gypsy moth.

ASSEMBLYMAN SMITH: Right.

MS. COLEMAN: And these parasites help to limit the populations, and help hold the populations--

ASSEMBLYMAN SMITH: It's a biological control?

MS. COLEMAN: That's right.

ASSEMBLYMAN SMITH: All right.

MS. COLEMAN: It's my understanding from speaking to someone in the Department of Agriculture that there's a county in South Jersey that runs its own aerial spray program, and they cannot establish these parasites as well in that county, so they don't release them. They can establish them in other counties--

ASSEMBLYMAN SMITH: And why can't they establish them in that county?

MS. COLEMAN: Because the aerial spraying is done year after year. They run their own spray program.

ASSEMBLYMAN SMITH: In other words, because of the spray program you can't use the natural control -- the biological control?

MS. COLEMAN: Right. It interferes in establishing the parasites.

ASSEMBLYMAN SMITH: Thank you.

MS. COLEMAN: I agree with Susan that the Pesticide Control Council composition is important in this bill. It is important to have a wide variety of members, especially members who are informed and opened to recent innovations in the field of alternative pest control for landscape, as well as for farming.

The creation of a Pesticide Technical Advisory Committee on page three is important. It is important to have scientific accessability and evaluation of pesticides, but it definitely should be by persons who do not have vested interests in the promotion and use of pesticides.

The training program for under direct supervision of applicator, page four, currently-- When the requirements are left up to interpretation, they ask for abuse. I have seen this many many times. As I said, I've taken courses with applicators, and I have gone to turfgrass expos, and spoken. I also hired a couple of applicators -- people that have done applications in the past -- and they say that there is much abuse out there. There is really not very much supervision, and there is no consistency in the training for people under the "direct supervision of applications."

I have to say, I do not agree with Mr. Sameth, that these inspections -- the structural inspections -- should have to fall under certified pesticide applicators. It was brought up before that structural inspection standards would be a duplication of requirements. I just totally disagree, because if you make structural inspectors have to become certified pesticide applicators, thereby you're creating a monopoly. The industry should allow for inspectors who wish only to do inspections. They should not have to take pesticide training.

Notification, on page four, section 8, is very important. I have spoken to customers and the interested public at garden talks when I do educational speeches. They have no idea that spraying is done in apartment buildings, hospitals, schools, and restaurants. And if not informed, how is the public to know that they are experiencing symptoms?

Permits for non Department of Agriculture gypsy moth spraying definitely is essential for the protection of the public. I wholeheartedly agree with the farmworker protection provisions included in this bill. I won't go into detail. I think it's all been covered.

I agree with sections 19 and 20, on pages seven and eight, given the right to bring civil action against the DEP or the Department of Health for failure to enforce, and especially that proof not be provided of personal loss or damage, of civil action against any person in violation. I agree with that, too.

The section about instituting legal proceedings for the prevention of violations including issuing orders accessing the application and operations of chronic violators, is very very important. I remember hearing, at one point, that aerial applicators that had been guilty of violations were hired for successive years in the gypsy moth spraying by the State. This should not be. People that have chronic violations should not be allowed to continue. They should certainly be taken-- The courts should try to handle that situation.

On page nine, I agree that the fees should reflect DEP expenses for regulating and monitoring pest use in New Jersey, and I hope that you will go ahead and move this bill along so that it can become law. Thank you.

ASSEMBLYMAN SMITH: Thank you very much for your testimony. Thank you, Ms. Shaw, and Ms. Coleman. Our next speaker will be Peter Furey from the New Jersey Farm Bureau. Mr. Furey?

UNIDENTIFIED STAFF MEMBER: I don't think he's here, Mr. Chairman.

ASSEMBLYMAN SMITH: He's not here?

UNIDENTIFIED STAFF MEMBER: We've been watching for him because we want to get him on.

ASSEMBLYMAN SMITH: All right. Mr. Furey? Last call for Mr. Furey? (no response) If he comes in later would you let me know?

UNIDENTIFIED STAFF MEMBER: Sure.

ASSEMBLYMAN SMITH: Okay. Our next speaker will be Armand LeSage, New Jersey Turfgrass Association. Mr. LeSage?

A R M A N D H. L e S A G E: Good afternoon. My name is Armand LeSage. I am the Golf Course Superintendent at White Beeches Golf and Country Club in Haworth, New Jersey. I also serve as the Government Relations Chairman of the New Jersey Turfgrass Association.

The New Jersey Turfgrass Association was formed in 1970, with the purpose of advancement and promotion of turfgrass. The advancement has been the education of those working in the industry, making the general public more aware of the benefits of turf, and the assistance given to research and facilities at Cook College, Rutgers.

The promotion is due to all the benefits that our industry provides; the increased professionalism within our membership, and the representation accorded to all, through our working in legislative and regulatory areas. Our Association represents various segments of the turfgrass community, and attached I'm going to leave you a list of our present Board of Directors, and the various industries that they represent.

Turfgrass is a large part of the answer to our troubled environmental problems. The New Jersey Turfgrass Association supports both S-3079 and A-4171, with modifications.

One thought to remember is that responsible regulation is best left up to people and organizations that are already in place doing a very good job at promulgating regulation. The DEP in the State of New Jersey has been at the forefront of pesticide regulation that has been used as a model in numerous other states. Legislation should be based on scientific evidence and not on assumptions or biased public opinion.

Page one, section 6.a.: Council members. We have an objection to the organic farmer on the Pesticide Council. Organic farmers have approved pesticides that they may use, but they chose not to use them. If they don't use pesticides, why should they have a seat on the Council? This slot should be replaced with one from the green industry: golf course, landscape, lawn care, cemetery, sod, etc.

We are a very large group, and the organic farmer is a very small minority in our State. Our economic impact in the State is tremendous as is evident by the economic report that I'm going to be attaching. It was done by New Jersey Turfgrass

a few years ago. This report is several years old, but an additional 5% increase per year is a safe number to add to the total monetary value. The number of commercial applicators that are from within our industry is very significant. It is our extreme concern that by the addition of these new people and increasing the Council, it will become politically divided. I just don't want to see the Council become a political ballpark.

Page four, section 7.4.a.: This sentence should be added to the paragraph: "One member should be versed in the fate of pesticides." The Advisory Council is a positive move. We support this as a move to benefit everyone. The Council must disseminate information, both good and bad, back to the industry and the public.

Page four, section 7.5.: The New Jersey Turfgrass Association supports this section on training. The more training and education our applicators receive, the more professional they will become in their applications.

Page five, section 7.7.a.: Problems can occur with the severe limitations or aerial spraying. Gypsy moth control programs could be crippled. Hazards of pesticides pale compared to the defoliation of trees, and rashes to our children's skin from the contact with the larvae. Aerial spraying should continue, and as new biological chemicals come on the market, they can be adapted into the aerial program.

Page five, section 7.7.b.: The chemical that is presently being used, BT -- bacillus thuringensis -- is not a narrow spectrum pesticide. BT's use is opposed by the Audubon Society as affecting the bird population.

Page five, section 7.8: This entire section is already covered by new DEP regulations, and it is working very well. It is redundant and not necessary.

Page 10, section 7.20: The word "exposed" in the beginning of this section is very vague and ambiguous. It

should be changed to "proven to have been damaged" or simply "damaged" by a pesticide. Exposure does not equate damage. Simple exposure without damage provides no basis for just claim of damages. Actual damage has to be shown in order to determine what compensatory award is to be made.

Page 11, section 9.9.k.: The burden of funding the DEP should not be placed directly on the applicator. Present funding sources should remain in effect. The cost of doing business in the State would become prohibitive. Our fees could be increased at anytime and this would be an unfair tax on people whom are registered and licensed. I'm going to add a little bit to this. I think -- it was mentioned before -- if you keep raising the fees to actually pay for the DEP programs, you're going to drive a lot of applicators, and really good businessmen out there, underground. And you're going to see a lot of these little businesses out there not registered and the fee structure-- The fees for people that are registered will increase. It will be a large burden.

Page 12, section 10.10.b.: Fines are very severe and should be changed to $10,000 versus $25,000.

Page 13, and 14, section 10.10d. and e.: This will encourage bounty hunting. It encourages a quota system whereby fines become revenue producers as opposed to their intended purpose of being deterrents.

My additional comments to this bill are that this bill gives me the feel that a perceived problem of the farmworker, or farm applicator regarding the application of crop protection materials is being translated as a problem to all applicators. Our recent regulation changes and constant updates and inspections by the DEP have kept the turf care applicator abreast of the situation and in compliance with the rules. Thank you.

SENATOR LESNIAK: Thank you, Mr. LeSage. There aren't any Committee members left. By the way, for those of you who

are interested in having lunch, we will not be breaking for lunch. We will be taking testimony through,so be guided accordingly.

SENATOR LESNIAK: Are Raymond Miller and Robert Cryan here from Delsea Sanitation Services Corp.?

R O B E R T C R Y A N: Okay. Mr. Chairman, members of the Committee, in reference to these two bills, I'm speaking on the pesticide side here. I have nothing to do with farming.

But, allow me to introduce myself. Of course, I am a professional living through the environmental pursuit, licensed in the State of New Jersey, Pennsylvania, and Delaware, and also federally accepted.

I promoted the quality of life through my profession for many years before the advent of the Federal EPA and the New Jersey DEP. In the beginning, pest control operators manufactured their own pesticides using dangerous materials, in the control of disease-carrying insects and rodents. We tried until we found materials that would effectively control insects and we would attempt to control. I graduated from the school of hard knocks.

Chief Justice of the United States Supreme Court, Oliver Wendall Holmes, so eloquently stated, "The life of the law is not logic, but experience." My credentials are such.

I am recognized as a conservationist and environmentalist and have numerous awards for such, one being the Rothrock Award from Pennsylvania for my efforts in conservation.

My company has added to the endless battle to preserve life by the elimination of disease-carrying insects and rodents. At this time, we have in place all the necessary laws to do just that, and they are working. In the last 65 years we have added 25 years of life through sanitation, medicine, and pest control. This State has some of the strongest environmental laws in place which has already made companies

leave our State. This bill would only add to the exodus and would stop new companies from entering. Your constituents would not have the opportunity for employment and it would reduce their rights to happiness, because of environmental overkill.

There is a path that we must take and we are already there. California's constituents recently voted for pesticides. They realize that without them it would be chaos. Your constituents may be seeing the same thing. To vote for these bills would be a backward step. It will set back the forward motion of this State's ability to attract new business, therefore cutting back on employment for your constituents. I believe your vote against this bill is a vote, really, for New Jersey. We need a balance, but not an overkill of ecological paranoia.

Thank you.

SENATOR LESNIAK: Thank you.

Can we have-- Oh, both of you are going to testify? (affirmative response) Oh, I'm sorry. You're Raymond Miller.

R A Y M O N D V. S. M I L L E R: Yes, sir. I am Raymond Miller.

SENATOR LESNIAK: Could you add some specifics to the last testimony, because they were only conclusions. That's why I have no questions to ask.

MR. MILLER: I have several specifics, but I would like to introduce the portion I'm most concerned with myself. I'm not a lawyer, however, when I went to school they taught us a great deal about civics. I studied civics very intently. I practiced it all my life. I read the Constitution; I study it. I fought the Delaware Port Authority because their attitude--

SENATOR LESNIAK: Could you testify on the bill?

MR. MILLER: I beg your pardon?

SENATOR LESNIAK: On the bill, please?

MR. MILLER: I'm trying to give a little background so that I could present the portion I want to present, sir.

When I fought the Delaware Port Authority--

SENATOR LESNIAK: I want to hear testimony on the bill, sir.

MR. MILLER: All right, sir. I have testimony. The testimony has to do specifically with a portion of the bill that you haven't even looked at, which is page 11, lines 23 through 27. In the bill, on page 11, lines 23 through 27, where you grant the DEP the right to fine persons who are in violation. This is unconstitutional. When I went to school, I was taught-- I studied in the State of New Jersey. I've been in the State of New Jersey since 1928 and I was taught, in the State constitution, that when you gather any money it goes to the general fund. Everything is expended through the general fund. Your bill does not do that. Your bill permits these people to go ahead and spend the money for whatever they want to spend it for, without accounting to anybody, no inventories made, or anything. So therefore, according to the State constitution, I say that that portion should consider this.

SENATOR LESNIAK: Okay. I'll respond to that.

Every year we have a budget resolution. That budget resolution supersedes all the laws in terms of spending. This legislation gives that Budget Committee direction in terms of what the Committee and the Legislature -- if this becomes law -- wants the budget to do. The budget can always supersede that in any year because the budget is a law--

MR. MILLER: I wasn't referring to the budget--

SENATOR LESNIAK: I'm not finished. A budget is a law and therefore, provisions like this, which are common in legislation, are not unconstitutional because it has to be appropriated by law through the budget.

MR. MILLER: I wasn't referring to this-- I was referring to the fact that when they collect fees, those fees

go into the general fund and not to any fund that they want to put them into. That's what I'm trying to call your attention to, sir. They have no right to spend the money other than what the money they spent through the budget, which comes from the Constitution. When they collect the funds, they put it back into it.

SENATOR LESNIAK: You're absolutely right. It has to be part of the budget process.

MR. MILLER: But it is not.

SENATOR LESNIAK: I beg to differ with you. All funds have to be expended pursuant to the budget resolution.

MR. MILLER: When I went to school they taught me that in the Constitution it says that you will deposit those moneys into it. That's what I'm saying. When they get those funds, they have to put that money into the general fund, and that's what I was trying to say.

SENATOR LESNIAK: Okay, we'll take your opinion under advisement.

MR. MILLER: Well, I would prefer to take it to the Supreme Court because when I attempted to take it there, since I wasn't a lawyer, I was disqualified from bringing it there. It cost $45. I'll gladly give you the $45, and you could take it to them.

SENATOR LESNIAK: It costs $75 now.

MR. MILLER: All right, $75. I'll gladly give you $75 if you take it to them, because that's what my opinion is, as a citizen and as one of your constituents.

SENATOR LESNIAK: Okay. We just have a difference of opinion in terms of the law.

MR. MILLER: Well, that's why they have the law. But the strength of this country is in our laws.

SENATOR LESNIAK: You bet.

MR. MILLER: The weakness in our country is where these laws are neglected, particularly by our legislators.

When our legislators do that, people think less of them as a result of this. That's what I was trying to say. For your own protection and for my protection, this should be determined by that, because as far as I see, we are subverting the law with this.

SENATOR LESNIAK: Okay. I just respectfully disagree with you.

MR. MILLER: Okay. Well, that's what I'm trying to say.

The second thing I'm concerned with-- I, too, am a student of hard knocks. I went to school and learned the hard way.

SENATOR LESNIAK: Guess what? So did I.

MR. MILLER: Welcome. I have, on occasion, done much work in many of these fields. I'm a pharmacist according to the government. Under the New Jersey Environmental Health Association, I'm a Registered Sanitarian. Under the DEP, I am a--

SENATOR LESNIAK: You don't want to be bored by my qualifications, either. Can I hear what you have to say?

MR. MILLER: What I have to say is quite simple. I've looked over the quality of life as I've deemed it, during my lifetime. We have gained 25 years of better living because we have passed laws like we have, and we follow them. Every time we try to re-invent the wheel, we flop. We flop, not for a long while, but we do for a certain period of time while these laws come in.

The laws that we currently have are working. Since you originally sponsored your bill, I have a rough draft that gives you an idea of how we've achieved it. Right here. I couldn't find it through the State of New Jersey, so I had to go research it myself. So I went to the State of New Jersey and I researched it, and this is where the gain has been since you took your last bill into account. So, we're not going

back; we're going forward. And I would like to say, let's continue to go forward; not by re-inventing the wheel, but by following what we're doing right now.

Now where we have some weaknesses -- where we do have these weaknesses, we can strengthen these weaknesses. The way we strengthen these weaknesses is not to go ahead and jump frantically; rather to take the conservative approach we have always taken, so that we gently, step-by-step, follow where our weaknesses are and overcome these weaknesses.

I have many things that we've tried to put on the market. We can't afford to because it's so cost prohibitive. I have products which would very well interfere with gypsy moths, which could be locally applied. I can't afford it and not only with that but the residual portion is that it is in the United States Pharmacopoeia for 70-something years. There's an eutectic mixture which we tried to apply to the gypsy moth in the trees.

SENATOR LESNIAK: Let me just respond. First of all, I think we have taken a conservative approach. Since 1981 we have been trying to expand the protections of the Pesticide Control Act. We've done it through legislation which I have introduced which has not passed. But we've gotten movement from DEP, as you recognized in terms of affording additional protections to the public and to farmworkers, particularly. So, I think we have taken the conservative approach. I believe the fact that the Department of Environmental Protection, the Department of Health, the Agriculture Department is supporting major provisions -- if not all provisions of this legislation -- shows that this is not a farfetched idea, but that it's an idea who's time has come.

The people testifying here -- this testimony is open to the public, as you know -- and 95% of the people testifying here are in support of what we're trying to do. So I just think that we're not really that far apart, and I don't think

that what we're doing is excessive -- far from it.

MR. MILLER: What I tried to do-- There was a guy named Gus Kourambis that I used to work with. I don't know if you're acquainted with him. I think Mr. Lesniak -- or the other legislator that comes from Union was acquainted with him--

SENATOR LESNIAK: Neil Cohen.

MR. MILLER: --and Gus Kourambis and I used to work with him in 1960 when the rights of the migrant farmers were a laugh. Senator Harrison Williams adopted much of what we tried to do into law because of this.

What we're trying to do is to show you a few things we know. I've been around the world four times. I was in the medical department of the Navy, and I had to okay all the foods that came in. We would go to China, for example, and there we had organic farmers, and you know what they fertilized their farms with? Human excrement. And that's what they would put on. This is the kind of thing we're trying to bring. We're trying to bring people like this into making our legislation. It is not organic farmers that we're talking about--

SENATOR LESNIAK: There's no provision in here regarding human excrement in this bill.

MR. MILLER: No sir, but there are organic farmers, and that's what organic farmers believe. The majority of the world's organic farmers use human excrement.

UNIDENTIFIED MEMBER OF AUDIENCE: No, they don't.

MR. MILLER: I'm sorry, ma'am, but I've been around the world four times and I've seen it. Not only that, I've had to skin the tomatoes because they were so bad.

SENATOR LESNIAK: Okay. Is that the only objection you have to this bill -- besides the budgetary thing -- is the organic farmers?

MR. MILLER: Oh no, sir. The other section is--

SENATOR LESNIAK: I would just suggest to you that you put your specific objections to the bill in writing, because

other than that one provision, you really haven't raised any specific objections to the bill. If you have any, we have two weeks to give you an opportunity to submit them to the Committee. Okay?

Thank you, very much.

MR. MILLER: Thank you.

SENATOR LESNIAK: Can we have people here from the various New Jersey Mosquito Control Commissions come up to testify? Henry Rupp, I believe, testified while I was out, but we also have Judy Hansen from the Associated Executives of Mosquito Control in New Jersey, Martin Chomsky, New Jersey Mosquito Control, and Ralph Evans, New Jersey State Mosquito Control Commission. Can we have all three of you come up?

M A R T I N C H O M S K Y: Senator, I would prefer to testify on my own.

SENATOR LESNIAK: That's fine, but that's not your choice; that's mine, and as long as I'm Chairman, you'll come up. (laughter)

J U D Y A. H A N S E N: My name is Judy Hansen, and I am Superintendent of the Cape May County Mosquito Commission in New Jersey. I am also Immediate Past President of the American Mosquito Control Association, representing professional and scientific agencies throughout the 50 states and over 100 countries. I speak to you today representing the mosquito control community in New Jersey through the Associated Executives of Mosquito Control Work in New Jersey. We wish to comment on the Senate Bill No.3079 and the companion bill, Assembly Bill No.4171.

First, a bit of background information. Mosquito control began in America and in New Jersey around the turn of the century for reasons of disease prevention, and to increase the comfort and well-being of our citizens and their domestic animals. Today, the reasons have not changed, but the methodologies have become sophisticated, scientific, and even

high tech. Control is based upon surveillance, research data, and need. Modern mosquito control programs are designed to benefit or to have minimal diverse effect on people, wildlife, and the environment.

Specific programs include source reduction using larvicides, and water management techniques. Our primary methods of control are aimed at reducing the mosquito larvae concentrated in areas where they breed. Our efforts here are aimed at preventing large numbers of adult mosquitoes from emerging and dispersing. Continued efforts through the season to keep the adult mosquito populations at a low level is not only for nuisance control, but it is our primary defense against disease. Water management, larviciding, and localized adulticiding are done to prevent the need for large scale widespread adulticiding.

Along the East Coast, Eastern Equine Encephalitis, EEE, is a threat to swelling coastal populations. The disease is 70% fatal to humans, with serious residual brain damage to survivors. Last summer the Centers for Disease Control in Atlanta, Georgia issued warnings in five states for EEE, and the State of Florida had a St. Louis Encephalitis, or SLE, outbreak. These are all mosquito-borne diseases. Mosquitoes from wetlands may disperse from five to 50 miles and invade, annoy, and transmit disease to nearby communities.

With this background in mind, I would like to ask for changes in these proposed bills so that mosquito control, so vital to the health and well-being of citizens and visitors to New Jersey, can be continued, using the most environmentally acceptable and economically sound methods available to us. Timeliness in mosquito control is the key to its success:

1) We recommend the number of members on the Pesticide Control Council not be increased, with the rationale that the larger the Council becomes, the more cumbersome and unworkable it is. However, if the decision is made to increase

the Council, we respectfully request a member of the Mosquito Control Association or control community be appointed.

2) Under section 7, which is a new section, we suggest the language read: "No person may aerially apply any broad-spectrum chemical pesticide on land not actively devoted to agriculture or horticultural use, except in the case of professional mosquito control provided by county and State government agencies pursuant to State Statutes 26:9-1 et. seq., or where the Department determines that no practical alternative is available.

The reason: Mosquito Control is already regulated by the Department of Environmental Protection Bureau of Pesticide Control with regard to pesticides and their use, and only specific materials may be used according to the recommendations of Rutgers University, Agricultural Experiment Station, where research on pesticides is ongoing. We feel that the proposed language is ambiguous and subject to interpretation. The purpose of our chemical applications are preventative in nature. We prefer to avoid an emergency that would entail widespread adulticiding applications, such as the one Massachusetts had this past summer when small localized adult applications would solve the problem.

3) Section 8.c. Notification: We request the last paragraph in this section read as follows: "To the greatest extent practicable, notification shall be made to directly mail, telephone, or personal service to affected persons prior to a pesticide application except for notification given by a State or County Mosquito Control agency or commission operating under the provisions of N.J.S.A 26:9-1 et seq. and Federal FAA regulation 137.51.

The State and County Mosquito Control Commissions and agencies fulfill notification procedures in compliance with N.J.A.C 7:30-9.8 and FAA Part 137.51. When we conduct aerial applications, we notify local police departments, local

municipal halls, and two local radio stations approximately 12 hours in advance. We telephone any person who had requested we call them in advance, and we comply with the monthly legal notice in two local newspapers. These procedures we can live with, but we cannot live with direct mail notification and personal contact. It is not possible with regard to mosquito control because mosquitoes are migratory. They move anywhere from one-half to 50 miles and they must be tracked and treated in certain areas. We rarely know more than 12 hours in advance of the application. Timing--

SENATOR LESNIAK: Judy, could I just point-- I'm sorry. If I could just point out one thing. The provision says: "to the greatest extent practicable." Now obviously, if you don't know until 12 hours in advance, you can't notify by mail. So, I mean, there's not any inconsistency there in the statute.

MS. HANSEN: If that's applied when the regulations are written-- We're not sure how that will come out. That's the problem.

But our timing-- What I think I'm trying to explain is that timing is of the utmost importance.

SENATOR LESNIAK: I don't think even DEP would require you to mail something for 12 hours notice.

MS. HANSEN: I hope not.

But timing is of the utmost importance, so that we may adulticide smaller areas and not have to conduct widespread adult applications. Please don't tie our hands in this most efficient and efficacious method. For instance, in Cape May County, we have a summer transient population. It would be impossible for us to notify all affected people by mail because some people are only in town for a day or a weekend, and there would be no possible way we could ever know where to contact them or when. This would, in effect, stop our pesticide

application, which supposedly is not the intent of this legislation.

4) We would like to object to sections 19 and 20 in their entirety as promoting unneeded, unwarranted lawsuits that would result in a huge number of undefendable court cases and cost the taxpayers of New Jersey untold amounts of money. We feel there should be other ways of establishing exposure.

5) Section 21.a.: The proposed language in this section deletes Rutgers, The State University and the Agricultural Experiment Station as the primary research source. May we ask, "why?" The Mosquito Research and Control unit in the Department of Entomology at the Agricultural Experiment Station is a valuable research arm to mosquito control in New Jersey and has been since the early 1900s. They began mosquito control and research in New Jersey and were mandated by law, and now we find that they are arbitrarily being eliminated. We'd like to know why? This is most detrimental to our research and vector surveillance methods.

We request you keep Rutgers as a primary research source; not eliminate them. The Department of Environmental Protection is a regulatory agency and in our opinion should not be a prime candidate for research funds. A State University is most capable and funded for this purpose.

6) Finally, under section 22.b., we request the language read: "No civil administrative penalty shall be levied except subsequent to the notification of the violator by certified mail or personal service. Notification must take place within 90 days of the occurrence of the alleged event."

It is only fair that a violator be notified when the violation or alleged violation is reasonably new in his/her mind, and facts and information gathered effectively for defense. This basic American right should not be eliminated.

In closing, we would urge you to remember that Mosquito Control Commissions and agencies in New Jersey work

under the public health statutes, and we have a mandate to control mosquitoes. We feel it is of the utmost importance to protect human health and well-being in the form of public protection from insects and vector-borne diseases. The New Jersey mosquito control community has always tried to abide by all the laws and regulations governing its activities. This bill seeks to protect public health, and we urge you not to forget that mosquitoes are deadly as well as a nuisance, and the economy and health of the citizens and visitors to the State may well hang in the balance.

We use all pesticides sparingly and conservatively in our programs, but they cannot be eliminated or timeliness of applications suppressed for effective control. When the State budget for Fiscal 1991 was presented minus a State Mosquito Control program, the public outcry resulted in this budget being restored in its entirety. We ask you, please do not tie our hands by eliminating or overregulating a most important tool in this program.

I would like to thank the members of the Senate Labor, Industry and Professions Committee and the Assembly Energy and Environment Committee for allowing us to comment publicly on this issue that is of major importance to we who work in mosquito control in New Jersey.

Thank you.

SENATOR LESNIAK: Thank you.

With regard to your question regarding the school of Agriculture of Rutgers, The State University as the primary source of assistance, that recommendation came from the Department of Environmental Protection, itself. So, you can certainly speak to them in terms of why they want that provision deleted.

Martin? Ralph?

R A L P H W. E V A N S: Good afternoon, gentlemen, ladies. My name is Ralph W. Evans and I represent the New

Jersey State Mosquito Control Commission. I would like to thank Chairmen Lesniak and Smith, and the members of the Senate Labor, Industry and Professions Committee and Assembly Energy and Environment Committee for allowing me the opportunity to comment on the legislation being heard here today: S-3079 and A-4171.

The statutory obligation of the State Mosquito Control Commission, as specified in title 26: chapter 9, is to make recommendations to the Governor, to the Legislature with regard to any and all matters pertaining to mosquito control. The Commission appreciates the opportunity to fulfill its legislative mandate.

As an appointed body comprised of both public members and members ex officio from the Departments of Environmental Protection, Health, and Agriculture, and from the New Jersey Agricultural Experiment Station, the Commission would like to go on record as being in support of the intent of this legislation; to strengthen the State's programs to ensure the safe use of pesticides. Surely safety, when it comes to the use and application of pesticides, is of particular interest and importance to the Commission and to the general public.

We do, however, have several reservations with regard to several sections of the bills, as they would make it difficult, if not impossible, for the State and county mosquito control agencies to effectively and economically carry on their mosquito abatement programs. There are, in addition, several new sections in this legislation which are repetitive, in light of existing pesticide regulations now in place within the Department of Environmental Protection. I would like to review these aspects in general terms, and then offer some insight with regard to how the mosquito control community and the public would be impacted. Perhaps, then, some alternative language may be considered.

1) I refer to proposed restrictions on the application of pesticides in general. The Commission questions the motivation to restrict, in the future, aerial applications of pesticides, which, though an activity high in profile and visibility, certainly does not appear to be a cause of routine DEP enforcement activity. The Department of Environmental Protection, via the Pesticide Control Element and the Pesticide Control Council, annually reviews, records, and reports violations and enforcement actions. Year in and year out, these reports reveal the documented fact that such violations as they relate to aerial pesticide application are routinely the lowest in number of all categories of pesticide applications as established by DEP. As an aside, mosquito control violations are so insignificant that a category to record them does not even exist.

2) regarding changes in the notification procedures: There are modifications in this legislation on which we would like to offer some comment and resolution regarding feasibility and practicality.

The State Mosquito Control Commission is administratively part of the Department of Environmental Protection. One of our operations is the State Mosquito Airspray Program, an essential program whether in DEP or elsewhere. This program, like other mosquito control operations in the State, works within the existing rules and regulations of both the State and Federal government that apply to pesticides, whether applied by air or from the ground. Such rules include adherence to guidelines published annually by the New Jersey Agricultural Experiment Station, which bases its recommendations for insecticides used in mosquito control on research which has been ongoing since 1912. With this is mind, we feel an obligation to comment on how the State and local governments relate to this proposed legislation. We believe that the State mosquito control community safely and

effectively operates within the existing pesticide regulations and, in fact, extends itself beyond that which is required in both aerial applications and public notification.

To be specific, let me examine Section 7 of the legislation. References to "emergencies"; consultation with the Departments of Health and Agriculture; and "broad-spectrum" insecticides are all either repetitive of existing laws, unnecessary, or just short of impossible. You may know that mosquito control is proactive, not reactive. That is to say, that when properly done, most mosquito work is performed in order to prevent such emergencies. The biological and physical need to function responsibly within the mosquitoes life cycle would be impossible under the terms of this legislation.

SENATOR LESNIAK: Let me just respond to that, if I may, because this is the second time it's been brought up and you seem to be missing, or reading through, or ignoring part of that paragraph, because it says: "except where no practical alternative is available." It doesn't refer to emergencies. Later on it says, "or other environmental, health or agricultural emergencies," but first it says: "where no practical alternative is available." That deals with the proactive type of situation that you're speaking of.

MR. EVANS: Okay. Well, we just wanted to get our point across, and maybe we're looking at it a little different.

SENATOR LESNIAK: Yeah, I understand, but I don't want you to ignore that part of it, because we're not just talking about emergencies.

MR. EVANS: Additionally, I have already reminded you that the State Commission has representatives from aforementioned State departments, the New Jersey Agricultural Experiment Station, and from the public who are thoroughly involved before, during, and after any such emergencies.

Therefore, it is our recommendation that the first sentence in section 7. be amended to read as follows: "No

person may aerially apply any broad-spectrum chemical pesticide on land not actively devoted to agricultural use, except in the case of mosquito control as conducted by State and county mosquito control agencies as described in Title 26, chapter 9 of the public statutes of New Jersey, or where the Department determines that no practical alternative is available, or other environmental, health, or agricultural emergencies, as defined by regulation adopted by the Department."

The second recommendation is directed specifically at section 8. As the proposed legislation suggests, there are situations which arise where some desired notification procedures are not practicable or feasible.

I know this was mentioned by Judy, but I would like to continue.

Direct mailing, telephoning, or personal service is such an impracticality. Due to the widespread habitat, and therefore involved areas associated with mosquito mating, feeding, resting, development, and flight, it is economically and practically impossible to consider direct mailing.

Therefore, we recommend that existing regulations which deal with notification -- N.J.A.C. Title 7:30-9.8 -- be kept in place in order to maintain a consistent method of notification. With regard to aerial applications, it should be noted that FAA Regulations Part 137.51 requires such radio, television, newspaper, or door-to-door notification already, when pesticides are to be applied over congested areas. Rest assured, our constituency rely on our personal contact and/or contact via municipal governments prior to and during such applications, usually followed by a request for even more service for mosquito control.

Finally, with regard to Section 19. and 20., the definition of how and when legal action may take place as related to pesticide applications is inappropriate for pesticide control legislation. Such matters should be dealt

with via the judicial system, with a legal format as its basis. Common sense dictates that the bringing forth of legal action based on simple exposure to a pesticide, without having to prove that one has suffered, would result in a mass of undefendable court cases of indefinite volume. We believe that the opportunity for civil action should be available, but sections 19 and 20 should be deleted or amended in order to reflect a responsible consideration of those criteria involved in initiating court action.

Thank you for the opportunity to testify at these proceedings. We, the members of the State Mosquito Control Commission, stand at your service to assist in this matter and all others pertaining to mosquito control in New Jersey.

Thanks, again.

SENATOR LESNIAK: Thank you, Mr. Evans.

Mr. Chomsky? I'm sorry, Judy?

MS. HANSEN: Senator, could I make one additional comment?

SENATOR LESNIAK: Sure.

MS. HANSEN: I just wanted to give you an analogy of the reason that we are so concerned about the language for broad-spectrum and the timing.

The Freshwater Wetlands Bill was approved -- and a very good bill -- and in that bill, it stated that mosquito control would be able to be applied with pest management practices. We have developed these pest management practices and have been working with DEP and other agencies to try to do this. In the last several years it has been almost impossible for us to get Freshwater Wetlands permits to do mosquito control, even with these pest management practices. So, just to give you a background of why we are so concerned, the law says we may do it, but the regulations almost prohibit us from doing much. So this is the reason that we are so concerned about this, because it doesn't actually spell it out. We're

afraid that the regulations might obstruct us from doing some of this.

SENATOR LESNIAK: Without commenting pro or con on what you have to say, could you write to me specifically what your problem has been, and I'll take it up directly with DEP.

MS. HANSEN: Yes, we most certainly will.

Thank you.

SENATOR LESNIAK: Okay. Thank you.

MR. CHOMSKY: Chairman Lesniak, Chairman Smith, Committee members, thank you for giving me this opportunity to appear here before you this afternoon.

I'd like to preface my remarks by saying that I am a founding member of the Deer Lake Restoration Commission, a founding member of the Ocean Township Environmental Commission, a charter member of Citizens Against Water Pollution, an 18-year member of the Central Jersey Health Planning Council Board of Directors. I'm a licensed health officer in the State of New Jersey and I have a Master's Degree in Public Health from the University of Michigan. In addition to that, I currently serve as Superintendent of the Monmouth County Mosquito Extermination Commission, and I'm also currently the Chairman of the Monmouth County Board of Resources Association, the New Jersey Mosquito Control Association and Associated Executives of Mosquito Control in New Jersey.

When I called the Office of Legislative Services to advise them that I wished to testify on this proposed legislation, the woman on the other end of the line asked me if I wanted to speak in favor or in opposition to this bill. Without much though I indicated that I was opposed to the bill.

But, after giving the matter some additional though, I know that is not my position.

I am for protecting the environment.

I am for protecting the economy of the State of New Jersey.

I am for State and local governments being able to function without imposing outrageous additional taxation upon our residents.

I am for Rutgers, The State University of New Jersey being able to serve as the primary research institution for the State sponsored programs.

But first and foremost, I am for being able to fulfill my obligation to protect the public health of the residents of New Jersey, which, by the way, includes right-to-know protection and education for farmworkers.

And it appears to me what you've done in this legislation is take a bill and give it a very needy subject, that subject being protection of farmworkers and right-to-know legislation for farmworkers, and surrounded that with a lot of extraneous material that really becomes a "wolf in sheeps clothing." Who is against protecting farmworkers and educating farmworkers? They're a very vulnerable segment of our population, and a segment very much in need of protection. I don't think anyone is opposed to that aspect of the legislation.

SENATOR LESNIAK: Not until recently. I must tell you that we have received, in the past, real strong resistance to that proposal and it's been, I guess, eight years -- maybe not quite eight -- maybe six -- since the original Right-To-Know Act excluded them, and we've been fighting since then to get them included, and I think now we've finally reached a point where people have dropped their resistance to it. So, it hasn't been easy.

MR. CHOMSKY: Well, I know that mosquito control agencies are involved in right-to-know regulation and are constantly being evaluated by the right-to-know regulators. I think if you check the records of those regulators,you'll find that there's a high degree of compliance within the mosquito control community, and a great degree of sensitivity and awareness within the mosquito control community, as to the

requirements of the right-to-know legislation.

In his State of the State Message to the Legislature and the people of New Jersey, Governor Florio coined the phrase "New Jersey Works." I'm afraid that if you adopt this proposed legislation in its proposed state, you might change the name of that phrase to "New Jersey Used to Work." The Garden State might become "The Unemployment State."

SENATOR LESNIAK: It's still a bit of an overkill, isn't it?

MR. CHOMSKY: I hope not.

SENATOR LESNIAK: Just a wee bit?

MR. CHOMSKY: I hope not. Let me go on, please?

New Jersey needs mosquito control. I don't think anyone sitting there could argue that mosquito control is not an important activity as far as the residents of New Jersey are concerned, and from year to year we plod along never taking the road of high visibility in our efforts to control an insect that has the ability to transmit disease, infirmity, and even death if left to its own devices.

We provide this service in virtual obscurity except during those times when emergencies occur.

I'd like to take a minute, or two, to paint a picture for you.

It's the July 4th weekend and our resort areas have been mobbed. Your family begins its trip home from the shore. On the way home your 10-year old son complains of a headache and fever. You figure that it's because of the sun that this is happening. Upon arrival home you feel his head and it feels like he's burning up. You take his temperature, and it reads 103 degrees. He's now disoriented and his body is starting to tremor. You rush him to the hospital and he lapses into a coma. For three days you sit at his bedside while the medical staff works on trying to bring him out of the coma. Finally, on the fourth day, he wakes up, the symptoms have subsided.

He's one of the fortunate ones who has survived a case of Eastern Equine Encephalitis, a mosquito transmitted disease that has been often overlooked by laboratories doing viral studies.

It turns out that the viral study done by the laboratory confirms that it's an EEE case, and that there was another confirmed case eight miles down the road, but that was in another county, and in that particular instance, that child died. The newspaper wire services had picked up the reports. A good reporter trying to contact local and State officials can't reach anyone at that particular time, so he calls a doctor friend that he knows and the doctor informs him -- looking in the medical book -- that Eastern Equine Encephalitis is a disease transmitted by certain mosquitoes, and that the disease has a relatively high incidence of mortality.

Can you picture tomorrow's headlines? "Encephalitis Outbreak at Jersey Shore -- One Dead."

Now the radio and TV and newspaper crews have begun habituating the mosquito control agencies and all hell starts to break loose.

They're down at Rutgers talking to the two mosquito control experts on the staff there, Dr. Sutherland and Dr. Crans. The phones at the State Mosquito Control Commission and Office of Mosquito Control Coordination -- that's Dr. Bruder and Bob Kent -- two people in the State of New Jersey with the awesome responsibility of coordinating mosquito control work; two, mind you. They're being interviewed by every newspaper and TV station in the State. That evening, every TV station, radio station, and newspaper, is sensationalizing the story and our constituency -- and I should point out who our constituency is, the residents of the State of New Jersey and visitors to the State of New Jersey -- is starting to become fearful about returning to the shore.

The State airspray program begins daily airsprays over the affected areas. People start staying in at night. The number of visitors to the entire shore area declines dramatically. The summer has become a nightmare for the resort industry.

County mosquito control agencies that prior to the outbreak were reluctant to conduct adulticiding activities, are now working around-the-clock using foggers, ULV apparatus, and anything else they can get their hands on in an effort to prevent an escalation of the outbreak and attempt to salvage the season.

Forget it! The summer is over.

The year end financial recap of business activity has a small paragraph that says, "Resort activities were off 40% this year. Analysts attribute this to a midsummer outbreak of a disease carried by mosquitoes."

Five campgrounds, 14 motels, and more than 50 retail stores have been forced out of business. Our constituents have to find another place to vacation. New Jersey loses.

That's an outrageous scenario, you say, and there's virtually no chance of such an occurrence here in New Jersey.

Well, with the exception of the year end statistics, I'm sorry to say you're wrong; dead wrong. The data from the case history I just cited were not the actual events surrounding a case where the child lived. No, my friends, unfortunately, the case I'm talking about occurred in 1989, and the child died.

For the benefit of the Committees, I am attaching a copy of a presentation made by the father of that child before the New Jersey Mosquito Control Association and contained a letter that was sent by him to Governor Florio urging the continuation and expansion of mosquito control activities in New Jersey, at a time when the funding for that service was being considered for removal.

SENATOR LESNIAK: You're going to have to excuse me, because I'm not following you. Are you stating that this actually occurred in 1989 in New Jersey?

MR. CHOMSKY: I am, sir.

SENATOR LESNIAK: Okay. And, you're also stating that was the reason for the decline of people going to the shore in 1989?

MR. CHOMSKY: No, I said, except for those statistics, that's a mythical scenario.

SENATOR LESNIAK: Oh, okay, because I was confused by that. I remember there was a--

MR. CHOMSKY: No, I can certainly attest to other activities -- maybe not in 1989, but prior to 1989 -- that might have kept people away from the shore.

SENATOR LESNIAK: There was, I believe in '89 -- if not '89, certainly '88, a severe decline in the use of the Jersey shore and it was as a result of some sensationalism by the press. I certainly would agree with you that that occurs, but, it was when hypodermic needles started washing up on the shores.

MR. CHOMSKY: Right. I'm aware of that.

And unfortunately for the affected family and the others-- It's a disease that's not often looked for in hospital testing and, you know, they thought it was-- Or you may think it's a wild scenario, but that's what they thought in Massachusetts prior to last year, when they had to spend over $1 million doing a statewide aerial spray because of the notification by the Center for Disease Control that Eastern Equine Encephalitis may have been present in the area.

SENATOR LESNIAK: But what specific provisions of this bill are you concerned with?

MR. CHOMSKY: Well, I think there are a number of them. Number one, I'm concerned, and I think I go on to

address those as I finish my testimony. But, I'm concerned that it's overkill, all right?

SENATOR LESNIAK: You made that quite clear. What specific provisions are going to cause this rampant unemployment in the State of New Jersey that you're fearful of? What specific provisions in this bill?

MR. CHOMSKY: I think definitely-- Is it sections 20 and 21 that give the right for everyone to file frivolous suits?

SENATOR LESNIAK: There's no right to file frivolous suits in the State of New Jersey. As a matter of fact, we have a specific statute preventing frivolous suits, section--

MR. CHOMSKY: Whose burden is it to determine the frivolity of the suit?

SENATOR LESNIAK: The court's.

MR. CHOMSKY: The court. But you're placing the burden on all of the agencies and businesses in the State to defend themselves against "frivolous suits."

SENATOR LESNIAK: And, if there is a frivolous suit filed, there are sanctions against both the litigant and the litigant's attorney that are available. Section 19 is merely a codification and extension of the Environmental Rights Act concept as it applies to pesticide use, and I haven't seen any adverse consequences as a result of that. I think the frivolous suit statute that we have on the law, is a sufficient deterrent against someone just willy-nilly filing a lawsuit.

MR. CHOMSKY: I would certainly defer to your legal knowledge versus my legal knowledge, because I think you're a lawyer. I'm not.

SENATOR LESNIAK: Well, but it is a recent statute, so you may not be aware of it, and a lot of the public may not be aware of it at this time, but believe me, certainly lawyers are aware of it because they can get hit with sanctions, as well.

MR. CHOMSKY: But the right to sue for exposure without defining what constitutes exposure, and without

defining what degree of pesticide -- what concentration of pesticide -- what the application rates of pesticide to be used are, these are all things that -- at least I know people in the mosquito control community-- I'm sure licensed pest control applicators all deal with formulation, and with concentrations, and with application rates. You have nonspecific regulations, and now you're trying to have very specific laws.

SENATOR LESNIAK: Well, if I'm not mistaken, the right to sue only arises from a violation of the Act.

MR. CHOMSKY: Well, in whose determination? In the Department's determination, right?

SENATOR LESNIAK: Well, no. The court would in this case have to determine whether the person violated a law. So, there would have to be first the violation of law before any right occurs.

MR. CHOMSKY: Well, certainly my colleagues who spoke on behalf of the State Mosquito Control Commission and the Associated Executives of Mosquito Control in New Jersey, had indicated the portions of the legislation with which we have the most difficulty. I certainly think that another portion is the determination of emergencies, of what is an emergency, and what constitutes an emergency, and who will make the decision as to whether or not an outbreak of a particular type of mosquito constitutes an emergency? Is that going to be made by the Office of Pesticide Control, or Commissioner Yaskin, or a Deputy Commissioner? Who is it going to be made by?

SENATOR LESNIAK: Again, I think there may be some misunderstanding here. The Department will establish the criteria for the determination of an emergency. It would be your agency that determines an emergency exists pursuant to the criteria. And I believe your agency does very well; I'm sure it does. But, I just say that generically in terms of any one individual agency. There are other agencies that may not, and there should be criteria that they have to follow in order to

make these determinations. I just, again, want to emphasize that in terms of the aerial application, it's not exclusively an emergency situation; it's also where no other practical alternative exists. So, I think we've covered the territory pretty well. I think you, just as we, have to be concerned with and follow the Department's actions with regard to this law. That's what we have to do in any law.

MR. CHOMSKY: I forget whether it was you, or Assemblyman Smith, who brought up the point about an ounce of prevention being worth a pound of cure. Well, that's one of our goals in mosquito control: to prevent outbreaks of disease and prevent proliferation of nuisance-causing mosquitoes to the residents and visitors to the State of New Jersey. Maybe it's just our experience dealing with the legislative process, and having been burned on more than one occasion by supposedly well-meaning legislation being put in the hands of regulation writers, and regulations not coming back mimicking the intent of the legislation-- You know that regulators, as a rule -- and I don't consider legislators regulators--

SENATOR LESNIAK: No, we're not.

MR. CHOMSKY: Okay, so I want to differentiate between the two. But regulators, as a rule, want to regulate to the best of their ability on a straight and narrow course, and sometimes they go about it with blinders on. They can't see what's happening to the left of them, and they can't see what's happening to the right of them. They look straight ahead and go right after you, and they don't know that there has to be -- and there should be in State government -- an educational approach, because the more aware you make your constituents, your county and municipal agencies, and the private sector, the better the relationship you can establish with them. And there should also be a cooperation established between all levels of government. I tell you, Senators and Assemblymen, that that state of cooperation currently does not exist, and I especially

make that remark dealing with the Department of Environmental Protection in the State of New Jersey. They have taken this approach on an ad infinitum basis, and keep banging away: regulate, regulate, regulate, but never educate. And I'm telling you that education should be the foreword here.

SENATOR LESNIAK: Today because we are dealing with this specific legislation that, in many respects, I agree with you-- And that's a broader problem, but I think--

MR. CHOMSKY: I know the Governor is trying to address that problem. He has written to me on a number of occasions indicating that he's conducting this audit, and that he expects positive results out of this audit. I certainly wish him well in this quest.

SENATOR LESNIAK: I must state, though, to a great extent, the Department of Environmental Protection on this issue I believe, has been very cooperative with all types of agencies. Maybe your experience is different. I don't know.

MR. CHOMSKY: Well, let me just respond to that, because I think that there may not be an agency or an association in the State of New Jersey that has a better relationship with the educational structure of the Department of Environmental Protection's Pesticide Control Element than the Mosquito Control Community. We've worked with them hand in hand in establishing training programs for all of our applicators and operators, and they always participate in our annual training programs. Now you're talking about associations that have been in existence for close to 70 years. We're not "johnny-come-latelies." We've been around and we know what's happening -- in fact, almost 80 years.

We are probably the most informed segment of the population when it comes to the use of pesticides, because they're ever changing on both the Federal and State level. We have to be on top of it because we're always looking for new and better ways of dealing with the problems of mosquito

control. In fact, many of our agencies are involved in integrated pest management, using natural and biological means of trying to control a segment of this pest in New Jersey.

I don't think I should even continue reading from it. You have what I had to say there. I will try my best to answer any further questions that you have.

SENATOR LESNIAK: Thank you and I'm sure that the Department will be working with you with continued cooperation.

MR. CHOMSKY: Thank you very much.

SENATOR LESNIAK: Our next witness will be John Canright. Is Mr. Canright here? (negative response) Mr. Paul B-L-E-J-W-A-S? Are you here, sir? Paul B-L-E-J-W-A-S? (negative response) How about Joan Diefenbach, New Jersey Council of Churches? Joan, if you would approach the microphone and identify yourself?

J O A N D I E F E N B A C H: Good afternoon, and thank you for giving me the opportunity to speak with you. My name is Joan Diefenbach. I am Director of IMPACT for the New Jersey Council of Churches, an ecumenical organization comprised of 16 member Protestant denominations.

The NJCC is here today to express its wholehearted support for this legislation. This springs from our long history of involvement and commitment to issues involving both the safeguarding of New Jersey's environment and legislative protection for our State's farmworkers.

In New Jersey, it is estimated that approximately four million pounds of pesticides are applied to crops annually. The list includes both known and suspected carcinogens whose use has been linked to various forms of cancer, birth defects, brain and nerve damage, respiratory and eye illnesses and more. Farmworkers are exposed to them on a daily basis. In addition, farmers and their families are not immune to these same risks.

Despite efforts at both the State and national level to protect farmworkers from physical abuse and economic exploitation, it is apparent that they are still suffering deprivation. Even though farmworkers are currently exposed to some of the most dangerous chemicals, in the form of pesticides, they nonetheless do not enjoy the protection afforded other workers under our State Right-To-Know Law. This bill will cure this inequity by giving farmworkers the basic rights to know the chemical being applied, the safe reentry time, and what vehicles to use to deal with contamination.

Much of the farm labor in New Jersey is done by people for whom English is a second language. This legislation addresses this concern by requiring that posting of information be printed in both Spanish and English.

Additionally, the bill prevents recrimination to the farmworker for refusing to enter the field before minimum reentry time or exercising other rights under the Act.

According to the National Safety Council, farm work is now ranked as the most dangerous U.S. occupation, ahead of both mining and construction. Surely the evidence compels us to act to protect both our own health and the health of farmworkers and farmers.

Finally, we support the inclusion of farmworkers on the expanded Pesticide Control Council. If the Council has representation from both farmers and the pesticide industry, we believe farmworker representation is a necessary component to the full functioning of this body.

While, unarguably, there are laws on the books designed to protect the rights of our farmworkers, we feel many are not stringent enough, not sufficiently defined, and inadequately enforced. We believe this legislation will be a significant step in curing these inequities.

I thank you for giving me the opportunity to speak.

ASSEMBLYMAN SMITH: Thank you, Ms. Diefenbach.

Are there any questions for Ms. Diefenbach? (negative response) There being none, our next witness is Harry P. Banker from Trees, Inc. Mr. Banker.

H A R R Y P. B A N K E R: Thank you for the opportunity to speak. I am the President of Trees, Inc., West Orange, New Jersey. My comments are those of the small businessman engaged in the care of trees.

I'm opposed to increasing the size of the Pesticide Control Council. It already has nine members. Increasing it to 16 would only help it to become more unwieldy. Several of the suggested additional appointees would be self-serving. The Council should remain advisory to the Commissioner of the DEP.

The notification provision has been discussed repeatedly over the years. The concept of using mail, phone, and personal service has been rejected because it is unworkable. Only those individuals who require notification should be contacted. Under the State model ordinance they can register with the towns and receive notification in advance of any spraying. Already notification requirements in New Jersey are a gigantic obstacle to the implementation of an IPM program. Currently each customer has to be contacted by mail with the proposed date of application, the material to be used and so on, along with a consumer information sheet in advance of any spraying. It seems to me that we, as an industry, have gone out of our way to let the customer know what, when, and why.

To further complicate the process, after the years of public hearings that have already been held, is unreasonable. The new section for civil actions would permit any person who has been exposed to pesticides to sue for damages. An exposure does not necessarily mean injury or damage. Exposure without damage should be no basis for a suit.

The section on fees is ridiculous. Not only did the fees just go up over 100%, but the new language would permit

projected expenses to be funded by raising the fees. And to give a regulatory agency the ability to tax for projected costs is unbelievable. There would be no check and balance. These additional costs to certified applicators will probably cause many people to leave this type of employment and would only encourage the unlicensed application of pesticide materials by amateurs.

Finally, the levels of the fines being considered are so high as to practically eliminate the ability of my small business to comply.

Thank you.

ASSEMBLYMAN SMITH: Thank you, sir.

Are there any questions for Mr. Banker? (negative response) There being none, is John Buechner, Lawn Doctor, Inc. present? Mr. Buechner.

J O H N B U E C H N E R: I'd like to thank the Committee for this opportunity. My name is John Buechner and I am the Director of Technical Services for Lawn Doctor, Inc.

We currently operate 63 lawn care franchises in the State of New Jersey. As business partners with our franchisees, we work with them, updating them on regulations, legislation, and educational information affecting pesticide use. On behalf of our 63 franchises, I would like to comment on the proposed legislation.

You have my comments and some of the points have already been emphasized. Therefore, I would just like to reemphasize one point rather, than reading my comments in entirety.

Page four, Section 5.: If the intent of this section is to ensure the proper training of pesticide operators, I feel this places an undue hardship on DEP. I would like to see this section also to include approved industry training programs as a means to provide operator training. This would not only relieve the DEP of total responsibility and expensive training,

but be more convenient for the pesticide application industry.

Currently our industry is regulated by Federal Right-To-Know Laws under OSHA which require us to inform our employees of hazardous materials in the workplace. I wholeheartedly support the portions of this legislation which protect farmworkers and their right-to-know information pertaining to the hazardous materials in their workplace.

Thank you.

ASSEMBLYMAN SMITH: Thank you, sir.

Are there any questions for Mr. Buechner? (negative response) There being none, our next witness is Clark Benton from the New Jersey Christmas Tree Growers. Mr. Benton, are you here?

C L A R K B E N T O N: My name is Clark Benton. I have a small farm in Chester, New Jersey. I'm a Director of the New Jersey Christmas Tree Growers Association, and a member of the Morris County Board of Agriculture.

I hate pesticides. We all hate them. I've had to work with them for the past 45 years, and the use of pesticides as fertilizers have resulted in plenty of high quality, low cost food in great variety, and a tremendous improvement in health and nutrition.

There has developed recently an exaggerated chemophobia, much of it based on reactions and white mice, not people, publicized by celebrities, not scientists. Yet this bill recommends the present Pesticide Control Council be changed from nine to 16 members, some of these having predetermined bias against all nonnatural chemicals. You all know well how large committees work. Maybe we should change the present makeup or allow more people from modern services, like Integrated Pest Management, to be a part of it.

At a time when the State is cutting back on the funding of research, Integrated Pest Management-- I'll comment that we have already eliminated Integrated Management in our

ornamental horticulture. My farm is diversified and I do raise fruit, vegetables, and brambles, as well. I have a farm market, and we do have IPM in some of the areas.

Other technical assistance programs have also been cut or eliminated. We should be consolidating our bureaucracy at this time, rather than expanding it. Rules of notification of pesticides already exists through the DEP. Regulations through OSHA exists regarding the health and safety of farmworkers. Labeling clearly defines these regulations for licensed applicators. Can you imagine all those people in State vehicles, traversing the State, in search of transient farm laborers to train them in health and safety? Okay. The elimination of aerial application of broad-spectrum pesticides, except for agriculture or mosquitoes, would eliminate the gypsy moth program. It costs us great damage in our forests.

My greatest argument with this bill is the cost of operating redundant programs rather than observing existing ones, and in some cases eliminating helpful or useful services aiding best management practices.

A couple of points that I noted, listening to people: How many examples of people would we have to notify when we spray? A number of them in our area are beekeepers, and we're required to do that already.

Minor use pesticide -- and these are additions other than my prepared statement -- have become so costly; the listing of these to suppliers that they are no longer listed under the present laws. This makes it difficult to raise crops that aren't lost to degradation. Many of these chemicals that you talk about you can't even purchase unless you are a registered and licensed applicator. And I don't think anyone has brought up that point. But it really can't go into the hands of untrained people because you have to have a license to be able to purchase the chemicals.

Symptoms-- Oh, that beneficial insect program that they were talking about? That's one of the programs that lost its funding under the present budget cut. That really is, perhaps, the most specific type of control, and we're eliminating it.

My greatest argument with this bill is the cost of operating redundant programs. If we can get funding for this, why don't we restore it to the programs that are existing and being reduced?

ASSEMBLYMAN SMITH: Thank you, Mr. Benton. Are there any questions for Mr. Benton? (negative response) There being none, our next speaker will be Marie Curtis from the New Jersey Environmental Lobby.

M A R I E A. C U R T I S: I'm afraid I have to begin with an apology to the Chair and the Assembly Energy and Environment Committee. When I sat down at the computer to do this, I had a sense of deja vu. Here we go again -- Senator Lesniak, the Pesticide Control Act and Senator Lesniak's Committee. I guess I phased out the Assembly Committee, so at the top, I don't mention you and I apologize, Assemblyman Smith.

ASSEMBLYMAN SMITH: Don't worry about it.

MS. CURTIS: I am Marie Curtis, Legislative Representative for the New Jersey Environmental Lobby. The Lobby represents roughly 1400 members, both individuals and other organizations who share a concern for our natural resources and environment. We're here today in support of these bills to amend the Pesticide Control Act of 1971.

I'm not going to read the entire testimony. You have it before you. I'm sure you're capable of absorbing it. There are a couple of points that I would like to make.

The education of farmworkers in the bill, in the use and protection from pesticides, is long overdue. In addition,NJEL supported extension of the right-to-know to

farmworkers when that legislation was first introduced some years back as you heard earlier from the Senator.

Regular exposure to pesticide residue is probably more common in agriculture than in any other area of employment, and we are very concerned about it. The last time this bill came before a Committee, I believe there was concern over the cost of notification and posting of notices and the printing of notices, etc. I see the procedures in this bill as presenting a very minimal burden to the farmowner and yet providing vital information to the farm employee, especially the information concerning medical assistance within the area trained in the observance of pesticide dangers. The pamphlets, as I said, provide essential information at minimal cost and effort, and we think that these measures alone would be a giant step forward in protecting workers who are accidentally exposed to pesticides. We are concerned about exposure.

According to the Illinois Hazardous Waste Research and Information Center, only pesticides and herbicides qualify for their highest toxicity rating of six when viewed among all the hazardous chemicals that can be encountered in homes or on farms. This listing is based on a scale of one to six with the six designation listed as "super toxic." That is their verbiage, not mine.

So with all of this adverse effect well known, the ban on aerial application of these chemicals is something that we feel is long overdue. If the emergency procedures outlined in the Act must be employed and an aerial spraying takes place, certainly we think that notification of all those affected by such spraying is a requisite prior to the spraying.

I heard somebody earlier today mention post notification. It seems a little like locking the barn door after the horse, etc. But even more so, if indeed, the notification comes too late, you've already had the effect on the pregnant woman or the infant child, or the asthmatic,

whatever. So, we would certainly endorse prior notification.

We endorse also the expansion of the Pesticide Control Council as delineated in the bill. We have some question why we've waited so long on all of this. When we look at what can happen to one exposed to these pesticides, damage to the central nervous system, damage to liver and kidneys, internal bleeding, birth defects which we heard about so tragically today, these are among the adverse effects that exposure can cause.

The Illinois study that I mentioned earlier concluded that, "All pesticides are dangerous to some degree." Thus, even the least harmful provide some risk for those who handle them or are otherwise exposed.

For this reason we heartily endorse the training program proposed for those who are under the direct supervision of pesticide applicators. The registration requirement for those who inspect for pest infestation is another matter of public protection that we endorse as well. Only qualified applicators should be using such dangerous materials, and only when a valid infestation warrants such usage. We strongly endorse the measure.

Again, as I mentioned my sense of deja vu, I must once more apologize. If you stayed with me thus far you'll note that at the very conclusion of my testimony I had to change the bill number because I was still thinking S-3741 which we tried so valiantly to pass in the last session. I do hope we have more success this time. I commend both sponsors for their sponsorship of this legislation.

Thank you.

ASSEMBLYMAN SMITH: Thank you, Ms. Curtis.

Are there any questions for Ms. Curtis? (negative response)

There being none, our next witness is Amy J. Bahruth, CWA Local No.1031.

A M Y J. B A H R U T H: Good afternoon. I'd first like to thank you for this opportunity to testify in support of the Pesticide Control amendments which would expand the scope of Pesticide Control Act of 1971.

My name is Amy Bahruth, and I am currently employed as a Staff Representative, and Health and Safety Coordinator for the Communication Workers of America. You might have heard of us, Local No.1031. Local No.1031 represents the support staff at the nine State colleges and the Department of Higher Education. I also serve as Council Member on Governor Florio's Workers and Community Right-to-Know Council. And finally, I'm a graduate student at Hunter College, City University of New York, on a fellowship from the National Institute on Occupational Safety and Health, which is the research arm of OSHA. I'm studying Environmental and Occupational Health, specializing in Industrial Hygiene.

The first four pages of my testimony which I have copies of, and I forgot to bring up, deals with farmworkers and pesticide exposure. In order not to duplicate testimony from this morning, I'll not read my entire comments, but I'd just like to mention a few points.

Farmworkers labor under some of the worst conditions of any group of workers in the United States. The are excluded -- completely or partially -- from Federal laws that protect other workers, including the National Labor Relations Act, the Fair Labor Standards Act, and the Occupational Safety and Health Act. Because of this exclusion, farmworkers, especially in the area of occupational safety and health, are exploited.

Additionally, drifts of pesticides have been reported as far as 50 miles from the site of application, depending on particle size and wind conditions. Pesticides also easily invade our water supplies and remain as residues on food. Clearly, pesticide use is not only a worker health and safety

issue, but a consumer and community resident health and safety issue.

This bill is merely an attempt to correct the injustices of previously excluding farmworkers of information and rights to act on information and by giving farming community residents the right to ask question and get real answers. Its aim is to educate workers and the community in order to prevent harm to themselves and their families.

I additionally want to address the problems of pesticide use in the office environment where most of my members work. A provision in the bill mandates rules and regulations to establish "notification requirements to afford all people who may be exposed to pesticides the opportunity to minimize their exposure." The bill then gives examples which may -- but aren't required -- may be included, such as posting of notices during pesticide applications and maintaining those notices for a period of time. I'm assuming these regulations would also be extended to the office environment.

I don't believe that posting notification at the time of pesticide exposure guarantees the kind of rights that people should have in order to minimize their exposure to a pesticide. The language should be broadened to include that prior notification be given to people who are likely to be exposed to a pesticide, including when, where, and what kind of pesticide, and the health effects of such pesticide. In addition, the bill should reflect the New Jersey Department of Health's recommendation that pesticide application in the office environment should not be applied during working hours and should have ample time to air out prior to reoccupation of the building.

At several of our work sites -- State colleges -- pesticides have been applied during work time, or I should say,were applied during work time and in work areas. As a result, several people did have acute health problems from

those incidents, including nausea, dizziness, headaches, and vomiting. Because of our concern and due to many struggles, the State colleges and the Department of Higher Education now adhere to the guidelines from the Department of Health and recommendations from the Department of Health. So, it is feasible that it can be done with prior notification and no workers being exposed.

Additionally, Local No.1031 represents many workers in South Jersey, especially in farming and rural areas near Stockton State College and Glassboro State College. Our members are very concerned specifically with aerial spraying and the effects of drifts into their communities. We strongly support the ban on aerial spraying over residential areas except for emergency situations.

In conclusion, I must reemphasize the need for this bill. We can no longer sit back and treat farmworkers and farm community residents like second class citizens. People deserve to know what they are exposed to on the job, whether they be an office worker, construction worker, assembly line worker, or a farmworker. And just as workers deserve the right-to-know, community residents deserve the right-to-know what they and their children are exposed to in their neighborhoods.

This bill is fair and it's reasonable, and I strongly urge the bill be supported in the Legislature.

Thank you. Any questions?

ASSEMBLYMAN SMITH: Thank you, Ms. Bahruth. Any questions for Ms. Bahruth? (negative response) There being none, our next witness is Richard Fletcher from Chemlawn Services. Mr. Fletcher?

Did we already do Chemlawn?

R I C H A R D F. F L E T C H E R: No, we haven't.

UNIDENTIFIED STAFF MEMEBER: No, we did the other lawn service.

ASSEMBLYMAN SMITH: We did the other lawn service. (laughter)

MR. FLETCHER: Chairman Smith, Chairman Lesniak, members of the Committee. Thank you for this opportunity to speak. As my comments are being passed, around I'll be brief. A lot of the points have already been touched on, but I do want to make certain statements, based on what you have in front of you.

First, to identify myself, I'm Richard Fletcher. I am the Regional Technical Services Manager for Chemlawn Services Corporation. I am providing you comment today on behalf of Chemlawn in regards to the Senate Bill S-3079 and Assembly Bill A-4071. I am resident of the State of New Jersey. I'm an agronomist by profession. I have extensive experience in both turfgrass and ornamental management.

Chemlawn as a business, provides lawn, tree, and shrub services to residential and commercial customers in the State. We have branches throughout the United States and Canada. Currently in the State we service over 72,000 customers and employ a staff of over 350 people.

To make my comments specific: Requiring the notification requirements and pesticide exposure: After careful review of the proposed legislation, I have some concerns with page 5, section 8, and I wish to make several points.

Regulations to address the notification of the general public are currently in place. These were the results of over two years of public meetings held by the DEP. The proposed bill would create the need to redevelop the notification framework and consume resources that the DEP and the State do not have.

Secondly, the proposal to notify by mail, phone, or personal service has been proposed in the past. It was rejected as being unworkable. The use of legal advertisements

has long been an accepted procedure for public notification.

SENATOR LESNIAK: That's what we're trying to change.

MR. FLETCHER: Understood. But my question is what will happen when the State needs to make a large scale application in mosquito, gypsy moth, or right-of-way type applications along our State highways?

SENATOR LESNIAK: Well, I think the law provides for that. They don't tailor make other than those requirements to that application. I mean the worst thing we would do is put some-- Do you even believe in notices? Do you know how many people read legal notices?

MR. FLETCHER: I, for one, read them.

SENATOR LESNIAK: You do. Okay. All right, I would guess that you're one out of 500 or 1000, unless you're looking for bankruptcies or insolvencies, or whatever they have in there. But come on, we can do better than legal notices.

MR. FLETCHER: I'll continue.

Providing said notification will require extreme costs and potential health risks caused by delays in applications as if we wait to notify everyone. The persons to notify should be limited to those persons who require it. "Right-to-Know" laws protect this right. These individuals can register with the Department of Environmental Protection or the Department of Health. Those statutes already exist for that registration. This list could be made available to all certified applicators as public record of those persons requiring the right to minimize exposure.

At Chemlawn, we currently provide this type of service to customers and noncustomers alike. Any individual who informs a Chemlawn facility of their desire to be notified is afforded that right. I'm just stating that the methodology is something that we need to work on.

Reporting pesticide exposure: I wish to take a moment to applaud section 15.c. on page 8. The bill's intent to

provide a mechanism of education to medical professionals on the symptoms, diagnosis, treatment, and reporting of pesticide related health effects is long overdue. However, the bill would establish a mechanism for reporting by physicians and veterinarians of incidents of pesticide exposure. I wish to emphasize two facts:

1) Physicians and veterinarians are not toxicologists. A majority of reported exposure cases were not related to pesticides or their proper use.

2) Until the Department of Health establishes the necessary education programs, implements them, and evaluates their performance, we will not have an accurate mechanism for reporting.

I strongly suggest that the phrase "incidents of pesticide exposure" be changed to read "clinically determined evidence of adverse effects from pesticide exposure." We have a great need for factual information in our current environment.

SENATOR LESNIAK: Could I just address that issue? Again, the problem with that is -- and you're right -- physicians are not toxicologists, but physicians are the primary source where people come when they get ill. And by establishing a reporting mechanism we can cull from that those which are pesticide related, those which are not, and develop statistics from that. If we do it the other way around, there's no opportunity to do that, because it just won't be reported at all. So I don't want you to think that, you know, there's just going to be a mass of reporting incidences and, then that's going to be considered to be thousands of pesticide exposures without clinically supported evidence taken thereafter. If that's what the Department of Health does with it, then it's wrong. You just don't expect them to do that.Certainly this legislation doesn't ask them to do that. Okay, I just wanted to let you know what our intent is.

MR. FLETCHER: I would point out one just obscure fact in that when the Department of Health and the DEP got together and posted a hot line number for persons concerned with pesticides, this bit of information caused that phone number to literally ring off the hook. And that's good. I'm glad people are concerned and want to be educated. My point here is that I think we're putting the cart before the horse. We need to have the education procedures first before we can accurately report what we're seeing.

The Department of Environmental Protection and the DOH should devise a standard reporting format that is linked to the educational programs so that the information gathered will be useful and reliable. This reporting should be equally shared between the DEP and the DOH to enforce existing regulations and provide a safe environment to the public.

The next point I would like to speak on is the Department of Environmental Protection and the self funding issue. Page 11, section 21.k. breaks new ground. This paragraph converts the New Jersey DEP into a self-supporting organization, in my view. If left alone, this approach to pesticide regulation funding would be the first of its kind in the nation. I wish to make several points:

1) Currently funding for the DEP comes from the Federal and State levels in the form of grants and appropriations. Other funds come from fees and regulatory fines. Changing this money flow allows a regulatory agency to tax the private sector for the public good.

2) The bill provides no checks and balances. It could lead to an abuse of power by the Department. What will constitute actual or projected costs, is my question.

The purpose of the DEP in pesticide regulation is to serve in the public good. However, they are accountable to those they protect and regulate. Chemlawn supports strong, consistent enforcement of pesticide regulations and that

promotes proper, safe use of products for the public good. Changing the DEP into a self-supporting organization removes the accountability of spending funds in a prudent manner to support the private and public sectors.

The last point I wish to touch on is just the fines and penalties issue. The fines and penalties proposed on page 12, item 22, section 10.b., represents similar amounts covered under Federal environmental laws. Having to pay both Federal and State fines for the same offense would constitute double jeopardy.

Lastly, in conclusion, Chemlawn supports reasonable pesticide legislation and regulation. Although this bill does represent improvements on the educational front, it fails to improve the public good in my opinion. Redefining notification requirements and creating a fee supported organization only weakens the position of the DEP. This poses a threat to the real issue, which is the consistent enforcement of existing laws and regulations. Safety to our customers, our employees, and the environment are of the utmost importance to us. We share the same goal in this bill, I know. It is unreasonable to think, though, that the induction of this bill will effectively improve the public good.

I wanted to make one other comment as I sat and listened to the testimony before me. And that is, it's my opinion, that it may be better suited that the farmworker issue -- which is important which I wholeheartedly support -- be separated from this bill and addressed separately.

SENATOR LESNIAK: Let me just reiterate what I said before about the budgetary process. Regardless of the source of funds, DEP's budget still has to be approved by the State Legislature and signed into law by the Governor. So, whatever you think of that process notwithstanding, it is not just the DEP's sole decision to take this money and do with it what they want.

MR. FLETCHER: That's understood, but I'm just looking in the realm of the State which has a deficit, and this is a way to support an organization without State money or the reduction of State money. We've already got an environment where the Federal government is reducing funding to organizations such as this. And this would tax the private for the public good. The DEP is a public organization. It should be supported by the public.

SENATOR LESNIAK: Okay. Thank you.

Peter Furey from the New Jersey Farm Bureau. Good afternoon. Or buenas tardes, I should say.

P E T E R J. F U R E Y: Good afternoon, Mr. Chairman, Assemblyman Smith. I appreciate your patience in sitting through all the testimony getting a chance to hear from us.

My name is Peter Furey. I'm the Administrator for the New Jersey Farm Bureau representing the largest private organization of farmers and farm families in the State.

Mr. Chairman, in the interest of time, I'd like to explain that this statement kind of says it all. It's organized in three sections: The first would be some background comments about agriculture in the State, designed to explain agriculture as it is in the State today as it might relate to the issue of pesticides.

The second section has some general comments about the bill, and the third section would be some specific recommendations we would make about the bill. Perhaps I will read the general comments, because I think the specifics bear out what the general comments are, and if you'd like, I can answer anything in the statement.

Speaking generally about the bill, we would think that the bill as written has the potential of imposing some significant additional restrictions on farmers throughout the State.

We are not aware of any analysis of the bill yet that reviews its terms from the standpoint of putting farmers at a competitive disadvantage. What we mean by that is, we think that perhaps the DEP, as the administrator of the pesticide code, ought to take a look at what the bill calls for in the context of what other states' pesticide codes have, from the standpoint of what the farmers in New Jersey would be looking at from a competitive situation. In the absence of this analysis and with the knowledge that New Jersey's Pesticide Code ranks with California and Texas as among the most restrictive in the nation, we are concerned that the bill as written would add to the regulatory burden which makes farming in New Jersey difficult and contributes to the loss of New Jersey farmland.

The bill needs an economic assessment, to determine what the costs are and who will bear these costs. Fees, like taxes, are difficult to assimilate during a recession in the economy, particularly for agriculture and ag-related businesses that have seen marginal returns in recent years. We understand that the Departments of Health and Environmental Protection estimate the cost of implementing this bill to be in excess of $1 million.

We believe that New Jersey should have an effective, scientifically-based and well-enforced pesticide control program. However, we are concerned that there is an anti-pesticide undercurrent in the bill which would eventually result in being at cross-purposes with the pursuit of farming in New Jersey. We accept the role of advocacy and think it has its place, but we should be very careful when it affects legitimate business pursuits.

The trend in pesticide usage in New Jersey is toward safer products that break down faster, making applications on a less frequent basis, and moving toward more biological controls just as fast as the Research and Extension Service at Rutgers

can lead farmers in that direction. We believe that the Bureau of Pesticide Control in the DEP has been fair and balanced in its administration of pesticide rules and the need for legislative mandates is limited.

The core of the bill seems to be centered on the training and education mandates for farm employees. This is an issue that we have a keen interest in and have been discussing with our farmer members for the past two years. We realize that every farm employer bears a responsibility for informing his or her employees about the potential risks of exposure to chemicals in the workplace. The question is not whether such should be done, but rather how it should be done. A practical, effective program in fact should be part of a farm employer's worker training program. With or without this bill we were already developing recommendations for adoption by farmers in association with the Rutgers/NIOSH program.

We strongly believe that any set of mandatory requirements for a worker training or education program should be related to a worker's potential level of exposure to chemicals in the workplace.

Since the introduction of the original version of this bill several years ago, there have been some other changes in pesticide control management that address some of the same concerns outlined in the bill which may preclude the need for parts of this bill. For example, the "FIFRA-Lite" bill enacted by Congress in 1988 mandates the retesting and reregistration of all pesticide products registered before 1984. The cost of this re-registration is so expensive that one of our biggest problems now is manufacturers deciding to discontinue certain products because the cost of re-registration exceeds the return on the sales. Senator Bradley has attempted to assist New Jersey farmers by seeking Federal appropriations for the independent testing of these "minor use" pesticides at the IR-4 project at Rutgers. OSHA is now very active in farm employee

exposure issues, and the EPA is finally nearing the release and final review of its farmworker standards.

The last two general comments, Mr. Chairman, will be that we support the move toward reduced pesticide usage, which will in turn reduce potential exposure to pesticides. The Legislature could make a substantial contribution to reducing the use of pesticides in agriculture by expanding its appropriation to the Integrated Pest Management Program at Rutgers Cook College and the Department of Agriculture's Beneficial Insect Lab. The Director of the Ag Experiment Station commented just yesterday that cuts of about 30% in the pesticide usage in New Jersey agriculture could be achieved with additional funding support. We would much prefer that the Legislature take this approach to reducing potential exposure to pesticides.

We have already taken action on our own with regard to worker education and training on pesticide safety. We formally communicated our support last year to the DEP Bureau of Pesticide Control for them to prepare a program for later incorporation into the State pesticide code. Each spring we conduct pre-season farm employment management seminars in several locations throughout the State. We have been stressing the importance of pesticide safety at these informational meetings. Perhaps most significantly, we have been developing a bilingual video program on pesticide safety for use by growers in labor camps. We think with our endorsement, growers will feel confident in the educational value of this and will welcome its use.

This generally, Mr. Chairman, is the sentiment we have about the bill. As I expressed previously, we see there have been many changes from the original version, and these comments and specific recommendations that are contained in the last section of our statement, we bring before you our perspective on the bill.

SENATOR LESNIAK: We'll get back to you with regard to your specific comments. Any questions? (negative response)

Thank you, Peter, very much.

MR. FUREY: Thank you very much.

ASSEMBLYMAN SMITH: Is Mr. Mark Lyons here from Economic Impact? Mr. Lyons.

MR. LYONS: I appreciate the Committee's attention. I know it's been a long dayfor you as well as for the rest of the people who have been hanging on here since 10:00 this morning.

Actually I'd like to talk about two things. Originally I had planned to talk about the issue of day haul workers which I know is of major concern to farmers and to us, and also talk a little bit about Economic Impact. I'll keep them both short.

I'm Mark Lyons. I'm the Coordinator of Health and Safety for CATA the farmworkers' support committee. Some people testified earlier, so I won't explain who we are.

I'd like to talk a little bit about the Economic Impact and give you some figures that I've come up with because I think it's a real issue. Clearly the people were involved in the development of this bill and certainly CATA, as an organization that represents farmworkers, does not want to see the impact of any legislation to put farmers out of business, and therefore, to cost jobs to our constituency.

Let me tell you what I did -- and this information is very difficult to come by and is a rough sketch -- but I think it is a start, and puts us in the ballpark about how to think about the economic impact.

Talking with the Department of Health and the Department of Environmental Protection about what they think the general cost of this legislation will run, the number that keeps coming up is around $1.2 million a year, which is consistent with what Mr. Furey said. I assume that comes into his conversations with those two agencies as well.

What I'd like to do is talk about an example of how that money could be raised through the current registration and fee schedule, and also talk a little bit about what impact that would have on farmers -- and primarily on the consumers -- assuming that all of this was eventually passed on to the consumer in terms of increase in the price of food.

Here's a breakdown of how we could raise that $1.2 million a year. A major source of that could be the present registration fee system for product manufacturers and formulators. There are approximately 9000 to 10,000 of those now. The estimate of the DEP is that may drop to around 8000 or so after the new registration process promulgated by EPA is put into process. If you raise those fees $100 per product every year, that would generate conservatively $800,000 of that $1.2 million we would need. To give you an idea about how much that would be-- Probably the most important or the difficult piece of this information to get, is the total cost of sales of all pesticide products that are registered in the State. The general estimates are that it's probably approximately $80 million for sales of all pesticide products.

Now what you need to know is that less than half of that goes to farms. It's, you know, in the rest of the community as well. If pesticides, as an example, represent approximately 10% of the total production costs of a farmer to produce, say, a pound of tomatoes-- Let me back up just a minute. If the total sales are $80 million a year and we raise $800,000 a year by increasing the registration fees $100 per product -- basically, 1% of the total sales would be increased by increasing the registration fees, remembering that this is a total sales of pesticides. Now if the farm owner's cost of production-- If 10% of his or her costs of production are for pesticides, then we're talking about 1%, or 10% of that 1% cost, or approximately 1 mil tax, basically, passed on to the consumer by raising these product fees $100.

Giving you an example, if you buy $10 worth of tomatoes after this bill was passed and $800,000 was raised through this registration -- product registration system -- the cost of these $10 worth of tomatoes would go up to $10.01 or 1 mil would be passed on to the consumer. Ten dollars of tomatoes will go a long way -- in my family, anyway. We're not vegetarians; they might go not quite as far in another family. So that's one major source and we're talking about relatively, with that cost spread over the consumers -- a very small impact on the consumers -- assuming all the costs were eventually passed onto us who eat those tomatoes.

Another major source would be to raise the fees for commercial operator licenses $50. They're presently $75. If they were raised to $125 that would generate $365,000 a year. We did some estimates about how many applications are done a year, and what that basically comes out to according to our estimates is: commercial pesticide applications would increase the cost $.08 per application. If somebody came in and applied pesticides in my house, say if they cost $30 per application, it would now cost $30.08. Again, a very small amount, assuming it was all passed on to the consumer and not partially absorbed by the applicator.

Basically, those two sources of revenue would raise almost $1.2 million; it's $1.136 million which is basically the amount -- the ballpark figures -- that would be required to raise this bill. So what I'm saying is, basically, the total cost to the consumer, assuming it was all passed on to us as an indirect tax, would be very, very small. Ideally, that would be-- Those costs would be shared by the consumers, by the farmers, and by the formulators and the applicators, and it would be an even smaller amount for all of us.

I'd also just like to address one other economic issue, which is the cost of providing this training to the farmers. According to the bill, all the materials will be

developed by, and paid for, by the Department of Environmental Protection out of this estimated $1.2 million, per the fees. We estimated the cost of training -- an average training from our experience -- of farmworkers is about an hour-and-a-half, to do a good training of field-workers. It's certainly longer for mixers and applicators but that's-- You know, they receive training under a different law, I mean, under the DEP regulations already, so we're really talking about field-workers.

Given what their average wage was and an hour-and-a-half training, it comes out to basically $5.77 per worker per year for a farm with 12 workers. It would be less if you had more workers and more if you had less workers. But that's the average farm, and that's what we estimated it by. To give you an idea of what that would come out for a farm with 12 workers, it would cost the farm owner $3.45 more a week over a 20-week harvest season to provide this training to their workers.

That's all I have to say in terms of the economic issues in terms of our analysis. And I want to say that it's a rough analysis, but it's the kind of analysis that needs to be done. And everybody's been saying this is going to cost us a whole lot of money. This is an analysis similar to the one done in California. I don't think it's out of the range and I would certainly welcome other analyses, rather than people coming here and saying this is going to drive us out of the business whether we're applicators, or farm owners, or whomever.

ASSEMBLYMAN SMITH: On the issue of economics, I think it would be appropriate for Mr. Furey. I'm sure you've listened to Mr. Lyons' analysis of the economic impact. You've indicated in your testimony that you thought an economic impact analysis was absolutely necessary and should be considered by this Committee. I've checked with OLS. They tell me that they don't feel that there's anybody in the State government who

could really provide the kind of analysis that you're talking about. So, what I'd like you to do is -- within the next two weeks, we're keeping our Committee record open -- I would appreciate it if you would respond to Mr. Lyons' testimony concerning the economic impact. He's provided, on the record, what he anticipates will be the increased costs to New Jersey farmers. You've made the statement that you feel farming may become "uncompetitive" if the bill is passed in its present form. I'd like to see what numbers you can come up with, and what assumptions are used to make those numbers as a final conclusion. Now, if you would provide that to the Committee in the next two weeks, we would appreciate it very much.

MR. FUREY: I'd be happy to do that on the direct cost to farmers, and I'd like to add that elsewhere in my statement, there is the issue of the indirect costs on support industries, like aerial applicators, farm suppliers, pesticide manufacturers, and so forth.

ASSEMBLYMAN SMITH: Anything you can do to quantify those numbers would be very helpful.

MR. FUREY: I appreciate it. Thank you.

ASSEMBLYMAN SMITH: All right. Mr. Lyons.

MR. LYONS: Thank you. I'd like to just talk a couple of minutes about the issue of day haul workers because it's an issue that farm owners have raised, which I think is a very legitimate issue. To those of you who aren't familiar with day haul workers-- Aside from the seasonal and migrant farmworkers of which there are about 15,000 or so -- 12,000 to 15,000 in New Jersey -- there are another between 6000 and 8000 day haul workers who are people who get on buses and come from primarily Camden and Philadelphia, and come to work in the fields during the height of the harvest season, basically. We talked to the Department of Labor, and they say on a peak day there will be 2500 to 3500 day haul workers in the fields on any peak day. Those farmworkers come -- there are 121 registered crew leaders

who are registered with the Department of Labor, who drive 126 buses, who basically bring these day haul workers from primarily the two large cities that I mentioned, as well as some smaller cities.

Most of these day haul workers are Asian, Cambodian, Laotian, Vietnamese and Hmong. Most of them don't speak English, so the problems of developing the training for people who are coming back and forth -- and in fact there's quite a turnover, more of a turnover even than the migrant population in terms of on a daily basis -- presents a real problem, a logistical problem and for the farmers, I think, a nightmare.

I would like to pose a solution that CATA, the farmworkers' support community, has been considering in talking with some Southeast Asian communities services and advocacy groups in Philadelphia for the last two years. And the fact that this bill is on its way, prompted us to have an all-daylong meeting with the Nationalities Service Center, which is the largest service and advocacy center for refugees in the Asian community in Philadelphia. They're an organization that has been around in Philadelphia for many, many years, and has as many of its constituents, in fact, the day haul workers, which has worked as a consultant to many organizations such as the Public Welfare Department, Jefferson Hospital, the Department of Health in Pennsylvania, developing the materials for them in the four languages of the four Asian subcultures that I mentioned. They've developed these materials written at a third or fourth grade reading level, written with culturally appropriate drawings and culturally appropriate language, as well as developed both videos and audio tapes for training.

In the meeting that we had all-day, they suggested what I think is a very workable model for doing training; although not ideal, I think it is workable and logistically possible for training these day haul workers. And it goes like this: Basically they spend an hour-and-a-half -- an hour to an

hour-and-a-half -- each way going to the fields of New Jersey from Camden and from Philadelphia. During that time, an audio tape could be developed which would be played over a simple microphone system, which would be keyed to a pamphlet which basically is photographs or drawings. Some of these buses already have microphone systems, others would have to be provided and we'll talk about the cost of that in a minute. This is one that's been developed in the State by the Department of Health (displays pamphlet) which has quite a lot of language. It's written on a fourth grade reading level, but in fact, in the same way when you have children, you play an audio tape and say turn to page one, and then the book illustrates the spoken text of the tape. That same kind of thing could be done on these buses that go back and forth between New Jersey and Philadelphia.

So a tape could be developed that would be required by the crew leader who, under State law, is a co-employer with the farm owner of the farmworkers, and would be played-- And these booklets, which would be developed for each of the languages, would be handed out and the tape would be played, and they would follow along with all the basic information that's required under the law.

Now what we've found in talking to several people who work a lot with the day haul community is if you have a Hmong crew leader, almost all of the people on his or her bus will be Hmong, so they speak the language. We could give that person a tape in Hmong and give them the handouts in Hmong. I think it's a very workable solution. People would get the training more than once because they go back and forth on the bus more than once. We could also do training of the 121 crew leaders and 126 drivers, and do a basic training so that they could answer any questions, as well.

I think it's a very workable possibility. The only cost, other than the development of materials which would be

paid for by this bill,-- would be for the amplification equipment and a small tape recorder to put on these buses. We estimate that as $300. We suggest that be shared equally, possibly, by the DEP, by the crew leader and by the farmer; each putting in $100. It's a one-shot thing. It doesn't occur every year, obviously, assuming the material and equipment continues to work.

The Nationalities Service Center -- I've given you a letter they wrote, they weren't able to be here today -- basically said they have lots of experience developing these kind of materials and would be very happy to cooperate with the DEP and the Department of Health in developing these materials in the four languages, both the audio tapes, as well as the written materials.

Thank you.

ASSEMBLYMAN SMITH: Thank you, Mr. Lyons, for your excellent suggestion. Are there any questions for Mr. Lyons? (negative response)

I have a number of people signed up who may, or may not, be present. Let me please check if they're here. Ramon Rivera? (negative response) John Canright? (negative response) Wynne Falkowski? (negative response) Bill Neil? (negative response) And, from earlier in the day, Paul Blejwas? (negative response) Then the only other person I know that has signed up to testify is Jane Nogaki. Are there any other members of the audience that wish to testify today? Yes sir, would you tell us your name?

J O S E P H C. S H O E M A K E R: My name is Joe Shoemaker.

ASSEMBLYMAN SMITH: And Joe, whom do you represent?

MR. SHOEMAKER: I represent myself.

ASSEMBLYMAN SMITH: Okay, very good. All right, Joe, why don't you come forward and we'll have Ms. Nogaki as the anchorperson?

MR. SHOEMAKER: As I said, my name is Joe Shoemaker, and I'm the third generation in my family to be in agriculture in the State of New Jersey. I farm 160 acres in Cumberland County and I own and operate Oaklyn Farms Crop Service which is an ag materials sales and service. We do ground and aerial application. I thank the Committee for the opportunity to speak, and this represents the third try in trying to exercise my rights in the system.

A few years ago, in Senator Dalton's Committee hearings for similar legislation, I didn't make it to the floor, but neither did the bill--

ASSEMBLYMAN SMITH: In this case, both things will be changed. (laughter)

MR. SHOEMAKER: --but that particular piece of legislation probably had the greatest impact on my business than any other piece of legislation since I've made this a career. Some of it was good and some of it, not so good. It resulted, I think, primarily in the rewrite of the DEP regulations. It was an extensive rewrite. It took a lot of work on the part of the Department of Agriculture, the DEP, the Department of Health, the regulated community, and citizens with an interest at large. I think there's a lot of things in here that we can use to answer the questions that are raised in this bill.

I'm not really good at this.

SENATOR LESNIAK: That's all right.

MR. SHOEMAKER: Some particular points that were dealt with was farmworkers' right-to-know, farmworker protection. It sharpened our skills in conducting our business as farmers and aerial applicators, or ground applicators, or whatever we were. We had to become more aware of what we were doing, and so I think it was a benefit to the whole agricultural community.

One of the primary spin-offs of that proposed legislation was a new buzzword: It was IPM. Integrated pest management had been a common practice in agriculture, and all us farmers knew what it was; we'd been using it for years. Rutgers University, of course, was helping to develop better ways of using it. We were aware of it, but the rest of the State really wasn't.

Some of the things in that particular piece of legislation were detrimental to integrated pest management but, because of the publicity, I think we got some funding that we may never have gotten otherwise, and it went into research projects. The Beneficial Insect Laboratory, for instance, received additional funding and, as a result, we're doing a better job with biological controls. I think Don Prostak, in his Integrated Pest Management Program with the University, received more funds. He was able to expand. We were able to expand that into crops that formally had not been treated with a formal, in-depth Integrated Pest Management Program. So that has been expanded and as a result, I'm sure, in a great savings to the farmer and a great savings in the environment by a reduction of the use of chemical pesticides. So a lot of good came out of that.

I attended another hearing in Trenton, I think it was last year, and at that hearing someone made the mistake of saying that there was nothing of value in that proposed piece of legislation. But we all knew, and I'm sure that person knew, there was a considerable amount of value in that legislation. And I think that this legislation that we have before us today has even more significance and merit. But -- and for me, that's a big "but" -- because this is going to hit me in my pocketbook, I feel.

I don't think anybody in agriculture in the State of New Jersey would argue that we can't improve the level of education, as far as it's concerned with the use of pesticides,

for farmworkers. I think they have the right-to-know. I don't think anybody argues with that fact. I think we need to do a better job there.

I listened to Governor Florio's State of the State Message, and I think he had some points that would be pertinent in the consideration of this legislation. He suggested that government should be as small as it can be and still get the job done; that government should get out of the way if someone else can do it better; that government should make common sense; that government should be the engine that drives the economy, not the weight that holds it back. But I think most important, especially in this time of economic stress for the State and particularly the agricultural industry, the government should concentrate on what needs doing most and do it better.

As our government statistics show, the New Jersey agricultural industry is, in fact, doing a pretty darned good job. DEP's statistics that come out every year have shown that complaints and violations in agriculture, in particular, aerial applications, have been relatively low compared to other industries in the State. Then we hear a lot of testimony. I've been here most of the day, and a lot of the testimony by well-intentioned people seems to state otherwise; that we're doing a terrible job.

SENATOR LESNIAK: Excuse me, Joe. Do you have any specific comments regarding the bill?

MR. SHOEMAKER: Yes, I do.

SENATOR LESNIAK: Can we hear them?

MR. SHOEMAKER: They're coming.

Okay. I contend that we're not engaging in wholesale poisoning of our customers, nor our farm labor force, nor our public, but are, in fact, providing the best quality food that you can find in the world at a ridiculously low price.

SENATOR LESNIAK: I think you're being a little too defensive. I didn't hear anybody here talk about wholesale prices. Maybe when I was gone, but I don't think so.

MR. SHOEMAKER: Well, it fit for me when I was writing this last night, about 2:00 in the morning.

But I think there is room for improvement and there's always room for improvement. And if there's a need to improve a farmworker's safety and right-to-know, I think we should work on sub-chapter 9 in the regulations, which is pesticide exposure management. If we need to improve operator training and qualifications, we need to modify sub-chapter 5, which is pesticide operators. If we need to modify application parameters, such as aerial application of broad-spectrum pesticides, let's use sub-chapter 10 in here, which is pesticide use. This thing covers a lot of territory.

Of course, on the point of the broad-spectrum use of pesticides by an aircraft, I think that that, as it stands in the existing regulation, is in direct conflict with Integrated Pest Management practices. We need to be able in Integrated Pest Management to allow the natural conditions to occur. In other words, we need to let possible disease vectors for natural biological controls take effect in a given pest population. Let that function give a chance and then if it does not function, if it does not wipe out the population, or control it to a sufficient level that we can live with, then we have to have a tool where we can come in and rapidly take care of that problem.

SENATOR LESNIAK: But this bill doesn't restrict--

MR. SHOEMAKER: Broad-spectrum--

SENATOR LESNIAK: --on agricultural land.

MR. SHOEMAKER: Not on agricultural, but remember, I'm also an aerial applicator, and it does restrict it. If you lived down in Cumberland County, where I am, there are a lot of large wooded areas that are residential areas.

SENATOR LESNIAK: Okay, but you're talking about the Integrated Pest Management Program as it applies to nonagriculture--

MR. SHOEMAKER: Certainly. Certainly it does. Hopefully, it will--

SENATOR LESNIAK: No, no. I know it does but it just seemed to me-- I thought your testimony was on agriculture--

MR. SHOEMAKER: Well, agriculture is my main interest, but this particular part is also my interest, and I think the Integrated Pest Management should be applied to your residential or urban areas as well as agriculture. If you cannot use these tools, if you cannot have the quick response to the aircraft and use a broad-spectrum pesticide which does effectively do the job, and I don't think there are viable statistics showing that these materials are particularly hazardous-- But I won't get into that because I don't have the technical ability to get into that, and I think a lot of people here who propose that we shouldn't be using broad-spectrum pesticides, I don't think they have the technical expertise to make that judgment, either.

SENATOR LESNIAK: Are you suggesting an exception for when Integrated Pest Management Programs are used? You're not suggesting an exception just in any case, just when it would encourage and help an Integrated Pest Management Program?

MR. SHOEMAKER: I am suggesting that if you take that tool away, you, in effect, have taken Integrated Pest Management out of that gypsy moth program.

SENATOR LESNIAK: So what you're saying is, if we were to change this proposal, we only ought to change it in instances where Integrated Pest Management Programs are actively being used.

MR. SHOEMAKER: If that suits the purpose.

SENATOR LESNIAK: Isn't that what you're saying?

MR. SHOEMAKER: What I'm saying is, if you leave it the way it is, you won't have the option to use Integrated Pest Management, which will mean that if you suspect you have a problem or you may have a problem, you're going to have to do something about it at an early date because the biological controls need to be used when the gypsy moth is very small. Whereas, you may not have to use anything if you have this other tool that you can come back with. So I'm not saying there is an Integrated Pest Management Program per se written down with "A,""B,""C,""D,""E," that applies to residential areas. Maybe there should be. Did that answer your question on that point?

SENATOR LESNIAK: I think so.

MR. SHOEMAKER: Okay, my argument is that the many good points of the bill could better be handled with modifications to existing regulations, with very little increased cost to the Department, and definitely very little increased cost to the regulated community, which I contend is very, very fragile, economically. As the bill stands, it would constitute an additional tax burden to the already struggling farm community, and I feel that agriculture is unique.

We have a great deal of difficulty passing on to the consumer or to our customers additional costs. If we have an additional cost-- If I have additional cost in my farm operation, it better lead to increased production or increased value of that crop, or somewhere along the line I'm going to go down the tubes. Some years it's great, but some years it's not so great. Some years it's downright lousy.

Some of my growers had a fantastic year this past year. They bought fertilizer ahead of time and they dumped on the lime, and within ten miles, another large group of growers that happened to specialize in fresh market vegetables had a terrible year. They had great crops, but there was no price, and they've got to sell them. They're fresh. They sell them

for what they can get for them. The processing growers in my area had a real good year, but it's not consistent. I believe that the costs that would be in this bill would be ongoing. I don't think it's a onetime "Let's get this education program done and be done with it." It would be every year, especially if you add licensing and that type of thing and fees for that if we get on the par with other industries that can boast every year a sizable profit or can know from year to year what their profit will be.

If we are on a fine and licensing fee and that type of assessment par with those industries, we can't afford it. A $25,000 fine or a $10,000 fine on a lot of the farms in my area would put them right out of business. And certainly, if they need to do something to clean up their act in a regulation or a law, or whatever it is, they need to do it, and there needs to be some recourse against them if they refuse to do it. But if somebody is trying hard to do what they should do and obey the law of regulation, they shouldn't have to have that fear of that $25,000 reminder staring them in the face because many growers wouldn't face that. They would say, "I'm going to go across to Delaware and buy a farm and not have to live with the pressures that I have in the State of New Jersey."

Everybody's farmworkers are their bread and butter. If they're not healthy, they can't do the job. We depend on them. I'm sure there are growers who may not treat them right, but for the most part, they are treated well.

SENATOR LESNIAK: I would just submit to you, that those farmers who treat the farmworkers well are not going to be fined.

MR. SHOEMAKER: I would contend that the DEP can go into anyone's organization, at any time, and probably find something wrong.

SENATOR LESNIAK: No doubt. No doubt, but has that been your experience?

MR. SHOEMAKER: We are not a sanitary industry. My experience with DEP has been excellent, and I wouldn't sit here and say I've had them be anything other than up-front with me and helpful.

SENATOR LESNIAK: I mean, they are not perfect either. We know that.

MR. SHOEMAKER: Right. But I hate to see it be left to the kindness of their heart. You know, you may have somebody that had a bad day, or you may have had a bad day and really messed up, but that's really not my point--

SENATOR LESNIAK: I don't want to belabor this point. DEP is not perfect. However, there are farmers out there who aren't perfect, either, and in those cases where it's deserved, we need to give them the authority to do it. That's what we're trying to do, and that's all we're trying to do.

MR. SHOEMAKER: But I really think that fine-wise and fee-wise they already have that authority to make somebody toe the line, and if they don't toe the line, they should be forced out. I agree with that.

I think that if the bill were to pass as it exists, it would serve the purpose to educate farmworkers to help guard their safety, and this would help all of us. There are a lot of other good things it would do, but I think the operation would be a success, but the patient would die. I would like to see everybody put their heads together, or all the concerned parties in this matter get their heads together and come up with a cost-effective -- which I think would be the regulatory route -- way to accomplish all these good points that the leadership of your Committees have come up with. I think it has a great deal of merit, but, please consider the economics.

SENATOR LESNIAK: Thank you very much. I appreciate your testimony, and I just want to say that I, too, am equally concerned as you in terms of the regulatory aspect of the implementation of this bill and that's really where the proof

of the pudding is going to be, if it becomes law. So, thank you.

MR. SHOEMAKER: Thank you.

SENATOR LESNIAK: Jane Nogaki for the New Jersey Environmental Federation.

MS. NOGAKI: Mr. Chairman, may I bring up to the table with me Wynne Falkowski, from Coalition Against Toxics and Paul Twerdowsky from New Jersey Environmental Federation? Wynne was signed up to testify earlier and just got here. Paul was instrumental in helping to write the legislation, and he's my backup on points that I forget to mention.

My name is Jane Nogaki. I represent the New Jersey Environmental Federation which is a coalition of 50 organizations and 60,000 individual members who are in strong support of the Pesticide Control amendment known as S-3079 and A-4171.

The Federation has worked for about five years on pesticide issues including helping to continue and maintain funding for the beneficial insect rearing laboratory and getting appropriations twice, for the DEP to support their enforcement programs.

As I've worked on this issue for over 10 years, it's come to my attention that DEP often has intentions of enforcing the law, but because of lack of personnel to respond to complaints in a timely way, has been unable to enforce the law because they couldn't get out to the complaints and verify them in a timely way. And every time I hear an argument that, "Just leave things the way they are, DEP's doing a good job", it signals to me that the industry -- the controlled and regulated industry -- wants to keep that response time slow, wants to keep only seven field inspectors for the entire State of New Jersey. It angers me because I know that if the regulations were truly enforced in a good way with adequate personnel, we probably wouldn't be here in the first place.

The DEP needs the basic support to maintain an adequate surveillance, you might say, of pesticide applications in New Jersey. As it stands now, with their current level of personnel, they might get to a pesticide applicator to inspect him once every five to ten years. Now that is not an adequate degree of inspection, and I do not think the public should bear the costs of regulating an industry. I think that that regulated industry should bear the cost of regulating it through its fees and permits, and this is a workable way to do this in the legislation. These are very minimal kinds of protection, but they're important.

When notification first became an issue-- We've come a long way. I can remember aerial applicators saying to me, "When the plane flies over your house, that's your notification"; you know, when you hear the roar of the engine, that's your notification. Well now aerial applicators understand that there needs to be pre-notification and there have been some regulations that address that.

We're not saying rewrite all the current notification regulations. We're satisfied with them to a large extent although they could have some refinement. For instance, Ms. Bahruth mentioned that office workers don't get pre-notification. They only get notified at the point of application which is too late to avoid exposure if you're pregnant or you're coming into work in the office that night and you're told the place has been fogged and you can't come in. You need pre-notification. So there are some refinements in the current system, but then there are these huge gaps that need to be filled; basically, a farmworker right-to-know and training, and also in right-of-way spraying, mosquito spraying, and agricultural spraying, and frankly, these will be addressed through regulation. We're not writing the means of notification into the law. We're saying that regulation should address these. We want that in the law because we don't want

it to go by the board again due to the Legislature's funding or lack of funding. We think these are basic rights which should be in the law. And yes, we agree, they should be addressed through regulation. The farmer will have input into the regulations, the applicators will have input into the regulations, and we'll come to a consensus on what they should be.

I also wanted to address the kind of strange reference to notification; that it was impossible to carry out written notification. The Department of Agriculture requires during gypsy moth spraying that everyone receive a letter of notification. So here's the largest department, the largest aerial spraying application in the State, over 100,000 acres a year of spraying, and there's written notification. Okay, I'm not saying for every kind of aerial application written notification is necessary, but I just wanted to shoot down that myth; that it can happen.

Also, there is present here a person who testified at the last public hearing from a utility company -- a railroad company -- that is agreeable to notifying customers who live along the right-of-way once a year, that applications will take place, and if you want further information contact so-and-so. This is a workable example of the kinds of regulations we're talking about and they'll be different for every form of application. We're willing to work them out so that they're doable and reasonable.

Regarding the gypsy moth spraying, I differ with Mr. Shoemaker in that we've experienced that: When you're spraying over residential areas, it's imperative that you use the least toxic material possible because there is generally going to be human exposure when you're spraying over homes where people live, work, play, drive, and ride. So we think it's really imperative that only the least toxic pesticide known to humans be used, and that currently is B.T. Twice it was mentioned

that the Audubon Society would object to this. The Audubon Society is in support of this law. True, they feel that B.T. is toxic to some forms of butterflies, but they're willing to see this as a compromise because they know that if B.T. is not the material used, a more toxic pesticide will be used that will be toxic to a much wider range of insects and mammals as well. So regards notification and aerial spraying, I just wanted to clarify those couple of points.

I think that I'll turn to Wynne Falkowski next, to talk a little bit about the experiences that, the Township where we live, Evesham Township, has had with B.T., and also her own personal exposure and the local group that she's from, Coalition Against Toxics.

W Y N N E F A L K O W S K I, R.N.: Good afternoon. I'm Wynne Falkowski. I'm the Chairman of the Coalition Against Toxics, which is a South Jersey group. In the years we've addressed many different toxics issues, but this is the one that brought us together, I guess about nine years ago.

Coalition Against Toxics is a grass roots citizens' group that works specifically to reduce pesticide exposure to people and the environment of New Jersey. We do recognize the right of the farmers and the pesticide industry to do business in New Jersey. We, nevertheless, uphold the right of citizens to live in a safe environment and be able to avoid pesticide exposure whenever possible. And this legislation will make that possible.

First I'll share my reasons for being here, and I'm just going to just summarize some of the unnecessary exposures that I've had to pesticides. This is only recently since I started actually being aware of it. Who knows what happened before that? And as you know, there are many people out there that don't focus on this issue and don't really realize how much they're being exposed.

We actually took one from every route: Aerial application for gypsy moth. Our neighborhood was conducting a program of aerial spraying for gypsy moths with carbaryl. We weren't slated to be sprayed by the township because we didn't meet the criteria set forth by the Department of Agriculture, and they decided that they wanted to be sprayed anyway so they got this program together. I specifically requested in writing, via registered letter, that I did not want to be included. And again, this was a number of years ago before the regulations were tightened up somewhat and I was told, "Well you just get it for free because you're not chipping in, and you're not being a team player, and being a good neighbor," and all the other things. And I did get sprayed against my wishes. There was no regulation at that time prohibiting that type of behavior.

Also I was exposed to a ground application. I was sitting in my yard during the first trimester of a pregnancy -- which came out okay, anyway -- and a neighbor had some aerial application going on right over the fence. I'm sitting there, and the applicator saw me sitting there and didn't even ask me to leave. Well as soon as I saw him spraying, I said, "Excuse me, what's going on?" and he said, "Oh don't worry, this is safe. No problem." And we all know you should try to avoid everything, even as much as coffee, alcohol, and cigarettes while you're pregnant.

Ground application, I was just driving down a road past a farm and nothing was posted, no flags, and they actually sprayed right inside my car as I was going by.

An aerial application of an unknown pesticide for mosquito control at Island Beach State Park happened when we were there with the kids on a nice day and they just went over and sprayed. They saw us there from the plane and sprayed directly over all the people that were there.

An indoor application of an unknown pesticide at a Haagen-Dazs ice cream store. You're standing there. They come in, and they're just spraying and don't even say, "Hey, we're going to do this. If you have an allergy, or whatever, can you leave?"

And repeated intrusions by a lawn service: Unfortunately, and this has been corrected, the lawn service couldn't tell where the neighbor's lawn ended and mine began, and they would continue all the way over to our driveway and spray our property. Since then we've removed the lawn and put railroad ties up, so hopefully that won't happen.

SENATOR LESNIAK: And they didn't even charge you for it, huh? (laughter)

MS. FALKOWSKI: Right. I got it for free. Good neighbor. Good neighbor. And these are the kinds of things you hear though. "You're getting it for free. Isn't that wonderful?"

Anyway, I'm also a medical professional. I'm a registered nurse specialized in intensive care/cardiac care, and currently I run my husband's family practice -- I run his office. And in this job at the moment, since we're a primary physician we are seeing a lot of increased incidents of allergies and sensitivities in people over 30. Now, I don't know how much you know about this, but if you remember way back, children would have allergies and many times outgrow them, and some wouldn't and would have allergies or chronic asthma or bronchitis. And in older people, you usually wouldn't see too much except in chronic smokers, or whatever.

SENATOR LESNIAK: Are you talking about those over 30?

MS. FALKOWSKI: Excuse me?

SENATOR LESNIAK: Are you referring to those people over 30?

MS. FALKOWSKI: Those people over 30. Right.

SENATOR LESNIAK: Those older people over 30?

MS. FALKOWSKI: (laughter) Usually this was something you didn't see, years ago, where people developed new allergies once they got over 30 or 35, or whatever. And I'm also starting to see when people come in -- new patients -- and they're filling out their forms and you ask, you know, any allergies? We're primarily looking for drug allergies, and more and more people are putting down chemicals, smoke, airborne, or environmental allergies, which you never saw 10 years ago. And patients are doing this without even being asked.

In fact, I, myself, am one of those people. That's the other reason that brought me here. I just drove up from the Cherry Hill area in between office hours. I'd rather be there, but I felt it was important enough to be here. After we started researching this problem, we're finding that it is believed that this cumulative chronic exposure to chemicals -- it's not just pesticides, it's chemicals all the way around -- are starting to cause these-- I don't know if it's a breakdown in the immune system, or what, and there's not a whole lot out there about it, but we are researching that.

The notification provision, therefore, section 8. in this legislation, is key to preventing this exposure and when this bill becomes law, it will be a great contribution towards helping eliminating exposure.

One immediate step that can be used to reduce exposure to broad-spectrum chemical pesticides is the restriction on aerial spraying. I'd like to focus on that for just a second. Aerial spraying of specifically toxic substances over residential areas -- and that's in section 7.a. of the proposed legislation-- This restriction would require the use of target specific pesticides, or as Jane mentioned, safer pesticides for gypsy moth control. And I guess also, this would go for anything else that comes along the line, the killer bees, or whatever else we might get infested with down the road.

There is precedence for these restrictions in the province of Ontario, Canada and the State of Connecticut. Right here, in New Jersey, there is a municipality, Evesham Township, which has had a ban on aerial spraying of broad-spectrum pesticides for gypsy moth control for several years now, and it's been most effective. It's been approved by DEP, and it's also a model ordinance for any other municipality in this State that would care to enact such an ordinance.

Right now there's not a single State or Federal program for gypsy moth control that uses Sevin. For the past five years, the Department of Agriculture and DEP have only offered B.T. in their aerial spray control programs for gypsy moth.

Every year there are cases of citizen complaints about exposure of children to sprays, especially while waiting for the school buses in the morning. Since exposure incidents are nearly impossible to prevent in residential areas, it is imperative that the least toxic alternative be used in aerial spray programs.

Okay, I'm going to skip by because some of this stuff you've heard already.

Okay, this legislation, basically, does reflect the policy that the DOH and DEP are already implementing in using the least toxic alternative; and secondly, only spray when necessary.

The gypsy moth permit system proposed in the bill, section 9., would ensure that unnecessary and/or duplicative aerial spraying would not occur. A similar permit program exists in DEP for aquatic pesticide applications, and we think that the aerial spray program over residential areas poses significant enough exposure that a permit program should be in place.

I have some statistics, but I'll just enter into the record. I won't read them out loud, now.

Okay, we do support the aerial ban of chemical pesticides over residential areas and the permit program, to summarize.

Coalition Against Toxics has been active on pesticide issues for nine years. We've testified at every public hearing on regulations and revisions. We answer calls from citizens who are upset by exposure incidents which could have been prevented with some foresight and communication.

Every section of the bill is in the proposal because of direct experience that our group members have had with the inadequacy of the present system to deal with pesticide exposure in a preventative way. While DEP has enacted some very good regulations and started the notification procedures for indoor and lawn and ornamental pesticide applications, the glaring gaps need to be filled, in order for pesticides to be used safely in New Jersey. So we, therefore, encourage you to support this bill.

I have copies of testimony here, and just for the record, attached are model ordinance from Evesham Township. There is a copy of the letter sent out regarding the safety of the gypsy moth program from the Burlington County Health Department, health advisories from EPA, and I also have several letters that I would encourage you to read from parents of children who have been-- Mothers who were exposed and doctors could find no other exposure, or the reasons for the birth defects their children have suffered. Again, they haven't been-- You know there's no way, when somebody has a birth defect or cancer, for the attending physician to sit down and exactly pinpoint this is it, this is it, but since the possibility does exist, we certainly encourage you to pass this ordinance. Those are all attached to my testimony.

Thank you.

ASSEMBLYMAN SMITH: Thank you.

SENATOR LESNIAK: Thank you.

Paul?

P A U L T W E R D O W S K Y: My name is Paul Twerdowsky and I'm a member of the board of the New Jersey Environmental Federation as well as National Clean Water Action.

I hadn't intended to present testimony today because I felt that the people presenting it presented quite a thorough evaluation of the bill and the good points of the bill. I did want to answer one point that was brought up during the testimony today, and I appreciate you giving me the time to do that. That is the question of who should be represented on the Pesticide Control Council.

First of all, I was quite surprised at the kind of wholesale attacks on organic farmers in reference to this. In fact, the organic farming industry is a rapidly growing industry. It's growing so fast in California that the certification organizations -- and there are four of them -- cannot even keep up with the number of farmers who want to be certified as organic farmers. In fact, the Federal government is now in the process of promulgating regulations that will define exactly what an organic farmer is, so that will take care of those problems.

One of the key words -- or buzzwords -- in environmental protection now, is "toxic use reduction," and with good reason. We've found that the regulatory process alone cannot accomplish the environmental aims we have, and certainly in today's environment of reduced spending and the efforts to reduce taxation, we just kept building on these bureaucracies to regulate chemicals.

Secondly, it just makes logical sense to reduce a known hazard at the source, rather than waiting till it's in the environment and then trying to regulate it. And the organic farming industry fits right in with that aim of toxic use reduction. In fact, here we have an industry that is

showing the way of how to reduce these toxic chemicals and is showing that it works.

We're not only talking about small farming, but there are a number of large farms across the country that are shifting now to organic farming methods. In fact, there was one study done in Pennsylvania, about five years ago, on a large farm which found that there was as great a yield -- or more of a yield -- over the years, as traditional pesticide using farms, at 10% reduced costs. So, organic farming can be and is, quite competitive.

Unfortunately, New Jersey has not kept up with many other states across the country. There are now about 30 states that have some sort of program to promote organic farming in their state; be it supporting education, research programs, organic farmers' markets, all sorts of programs. New Jersey has been lacking in this area. Here we have a perfect opportunity to promote this toxic use reduction through the use of organic farming, and this is one of the ideal forms to do it in -- as the Council that advises the DEP on these matters.

The second issue that was brought up, in regard to the Pesticide Control Council, is to have more representation in the pesticide industry. And as we heard, there were at least two specializations within the industry that asked to have their special representative on the PCC. We heard indoor wants one, turf wants one -- the Alliance asked for a lower number to 12. I don't know who they're eliminating in that.

I think we should also consider the other side, and certainly in the environmental community there's also specialization and divided opinion. As was brought up,Audubon was against any spraying. You have conservation interests who have their own concerns. You have those who are concerned with toxics. You have consumers who have specialized interests.

In putting together this proposal for the 16 members on the Control Council, I think all of these concerns were

taken into account, and the attempt was to get a broad-spectrum of representation on the Council, and to get all those concerns brought up into the Council without getting it unwieldy. We get to 20 and 25 people and it sort of becomes an ineffective body. The aim was to get as small a body as possible, so it would be a workable committee to advise the DEP, and at the same time, to have all the varied expertise and interests represented. The feeling was that that was achieved in those 16 members. So I would just request that before there is any attempt to change those numbers -- or add people or take way -- that there be careful consideration to those interests and expertise that, we feel, are now represented on that body at the number 16.

Thank you.

SENATOR LESNIAK: Thank you very much.

I want to thank you, Chairman Smith, Committee members, and everyone here who has testified today, again. You'll be afforded an opportunity, two weeks from today, to supplement the record with any testimony that you wish to add. We're looking forward to considering this legislation sometime in March.

Thank you very much. The hearing is over.

(HEARING CONCLUDED)

APPENDIX

Let's protect our earth

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN S. KEITH, P.E.

Assistant Commissioner
for Environmental Management and Control
CN 402
Trenton, NJ 08625-0402
(609) 292-8058
Fax # (609) 633-1166

February 8, 1991

Honorable Raymond J. Lesniak
Senator, District 20
24-52 Rahway Avenue
Elizabeth, NJ 07202

Honorable Robert G. Smith
Assemblyman, District 17
44 Stelton Avenue, Room 250
Piscataway, NJ 08854

Reference: Joint Assembly Energy and Environment/Labor, Industry and Professions Committees' public meeting on S-3079/A-4171

Dear Senator Lesniak and Assemblyman Smith:

As you requested during the referenced public meeting, enclosed are the Department of Environmental Protection's proposed amendments to the referenced legislation. The Department has also reviewed, at your request, the Pest Control Association's and the New Jersey Farm Bureau's comments on these bills.

The Department supports S-3079/A-4171 as a strengthening of the Pesticide Control Act which will enhance the effectiveness of pesticide control efforts. Though the current law is broad in scope and provides great regulatory latitude, S-3079/A-4171 will provide greater clarification of legislative intent, and will allow the Department to further protect human health, welfare, and the environment.

The Farm Bureau has suggested that the Department fund programs within the Department of Agriculture and Rutgers University to help minimize the use of pesticides. The Department has proposed amendments to this legislation which would provide the necessary flexibility for the allocation of funds to agencies assisting in the completion of its mandates.

The Farm Bureau has suggested that this legislation be amended at Section 11 to use the word "information" as opposed to "pamphlets". The Department believes this to be a semantic issue. The Department is not concerned which word is used, as long as the required written information is made available to all farmworkers as reference material. In addition, Section 12 will also require the Department to promulgate regulations which outline specific information and training requirements. As in the past, the Department will consult with the Department of Agriculture, Rutgers University, and any other interested group in the promulgation of these regulations.

The Farm Bureau has requested that Section 12 be amended to use the terminology "based on potential exposure" and the term "may" instead of "shall" when addressing the farmworker training requirements of this legislation. As noted above, these issues will be addressed in the administrative rules which must be promulgated to implement this legislation.

The Farm Bureau has also expressed its concern over the ban of aerial spraying in residential areas, as outlined in Section 7 of this legislation. The underlying issue is that a complete ban of aerial spraying by certified applicators may promote an increase in ground level application by homeowners and other non-certified applicators. In response, S-3079/A-4171 has exemption provisions which would allow aerial spraying over residential areas in emergency situations. Likewise, the Department will monitor compliance with this section very closely along with any negative environmental impacts to ensure that all concerns are addressed.

The Pest Control Association requested a clarification that registered and certified pesticide applicators may inspect for pest infestation without further registration. In response, the Department wants pest inspectors who inspect homes to be trained and certified to conduct this work. While many applicators know how to inspect a building for pests, there are no questions on the certification examination in this area. Thus, whether the applicators are tested separately as home inspectors or whether there is an addendum to the current applicator exam, this issue can be addressed through administrative rule.

The Pest Control Association has also expressed its concern that the administrative penalty provisions of S-3079/A-4171 are excessive. This legislation authorizes the Department to assess up to $25,000 per day, per violation of the Act. The Department has proposed amendments to this legislation which would require the promulgation of rules which fully outline the assessment of penalties, and the conditions in which a minimum or maximum penalty should be assessed. The Department has also proposed amendments to Section 10 which fully outline the civil and administrative remedies available to both the Department and the violator. These provisions are consistent with other environmental statutes including the Air Pollution Control Act and the Clean Water Enforcement Act.

Upon reviewing the Department's proposed amendments to this legislation, I think you will agree that many of the concerns expressed by those who testified at the public hearing have been addressed. If you have any further questions regarding this matter, please contact Nancy Wittenberg, Director of the Department's Division of Environmental Quality at (609) 292-5383.

Sincerely,

Original Signed by
JOHN S. KEITH

John S. Keith, P.E.
Assistant Commissioner

Enclosures
c. Norman Miller, Assistant Commissioner
Nancy Wittenberg, Director
Ray Ferrarin, Assistant Director
Joseph Manger, Legislative Coordinator
Diane Russell, Governor's Office
Dale Davis, Committee Aide
Leonard Colner, Committee Aide

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OFFICE OF LEGISLATION LIAISON

EXECUTIVE DEPARTMENT LEGISLATIVE COMMENT SHEET

BILL NO: S-3079
A-4171

SPONSOR: Lesniak
Smith

DATE INTRODUCED:

LEGISLATIVE HISTORY:

CORE ISSUES: Revisions to the Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.) to strengthen and add new provisions.

PROVISIONS OF THE BILL: This bill provides major revisions to the Pesticide Control Act. These revisions include medical education, incident reporting, a home inspection program, increased penalties, and farmworker protection.

CURRENT PRACTICE: The Department maintains an effective Pesticide Control Program. This bill will strengthen the current provisions of the Act to provide improved environmental protection to the residents of the state.

FISCAL IMPACT: A fiscal note worksheet is attached.

INTERESTED PARTIES:

DEP Office of Legal Affairs
Department of Agriculture
Department of Health
New Jersey Farm Bureau

4X

TECHNICAL CORRECTIONS:

Pesticide Control Council Membership

The Department requests amendments to the makeup of the Pesticide Control Council to provide for greater flexibility in expertise. Ground water is an important media to examine, but the impacts of pesticides on surface water via pesticide runoff are also important. It would be better to designate the member as a hydrogeologist who could deal with both types of issues.

Page 1, Section 6
;one from persons with training or experience in [groundwater hydrology] hydrogeology;

Secondly, there is no mention of someone with knowledge about biotechnology. This is a field which is likely to become extremely important in the future. It might be possible to find someone who is experienced in both Integrated Pest Management and biotechnology.

Page 2, Section 6
;one from persons with training or experience in integrated pest management and/or biotechnology recommended by recognized organizations of farmers;

Pesticide Control Council Report

This legislation will require the Pesticide Control Council to submit an annual report to the Governor and the Legislature. As the Council is an advisory body to the DEP, the Department recommends that this bill be amended to require the Council to submit its annual report directly to the Commissioner. The following amendment will achieve this:

Page 4, Section 3
3. The Council shall prepare and submit to the [Governor and the Legislature] commissioner an annual report summarizing its activities..."

Pesticide Technical Advisory Committee

S-3079 would also establish a Pesticide Technical Advisory Committee. The Department recommends the following additions to clarify the function of this group:

Page 4, Section 4b
b. The committee shall:

1. Formulate criteria for triggering technical reviews of pesticide[s] registrations and develop a priority scheme for [scientific evaluations] such reviews based on, but not limited to, carcinogenicity, teratogenicity, mutagenicity, neurotoxicity, exposure and environmental and ecological effects.

5X

2. Provide recommendations regarding budget needs to fund pesticide technical reviews, [and studies] monitoring studies, and research.

[3. Oversee the progress of pesticide assessments and pesticide related research]

[4] 3. Review the progress and the findings of the technical studies, reviews, and research, and make appropriate recommendations.

Training

The Department is supportive of the increased training requirements established in S-3079. These requirements will upgrade training standards for the industry. The following amendment will require the DEP to conduct the training while allowing the option for industry experts to conduct it if the program is approved and monitored by the Department.

Page 4, Section 5

"5. The department shall conduct a training program or monitor a department-approved training program for persons working..."

Aerial Application

The ban of aerial application of broad spectrum chemical pesticides over non-agricultural and horticultural areas is an issue which must be addressed with caution. A complete ban of these applications may promote an increase in ground level applications by homeowners and commercial tree sprayers to address heavy pest infestations. The Department offers the following amendment to clarify the legislative intent to limit aerial pesticide applications over residential areas:

Page 5, Section 7

"7a No person may aerially apply any broad-spectrum chemical pesticide [on land not actively devoted to agriculture or horticultural] in residential areas, except....."

Notification

The Department currently enforces notification requirements to limit public exposure to pesticide applications under Subchapter 9 of the Pesticide Control Code (N.J.A.C 7:30-9 et seq.). To date, the Department has developed notification regulations to limit exposure to many applications, including indoor applications, aerial applications, and lawn care applications. As the department has already developed notification regulations in many areas, this bill should be amended to remove the one year rulemaking deadline. As

6X

instances arise in which additional regulations are required, the department will amend current regulations to address notification issues.

Page 5, Section 8

"8. [Within one year of the effective date of this amendatory and supplementary act,] As required, the Department of Environmental Protection, in consultation with..."

Farmworker Protection

The Department supports the farmworker protection provisions of S-3079, which will further enhance legal authority in this area. The Department currently regulates worker reentry times, protective clothing, and posting and notification procedures. Such requirements are outlined in subchapter 9 of Pesticide Control Code (N.J.A.C. 7:30-9 et seq.). However, the Department would like to note one area that would be difficult to address through the farmworker protection provisions outlined in this bill.

Many farm owners employ workers known as "dayhaulers". These individuals are recruited in downtown areas, such as Camden, and bussed to work on a farm. While the Department will make every attempt to ensure that the proper farmworker protection provisions be promulgated, there is still some concern that the logistics of proper training for dayhaulers may be difficult. The Department requires the flexibility of the regulatory development process to address this type of scenario. On the federal level, the Environmental Protection Agency is currently formulating comprehensive agricultural worker protection standards which will be proposed in the near future.

The Department suggest a minor amendment which will more accurately make the record of application forms available to farmowners who employ farmworkers.

Page 6, Section 10

"10. The department shall [prepare and provide to all farm owners] make available to all farm owners who employ farmworkers, record of application forms..."

The Department requests the following amendment to allow for flexibility in the contents and requirements of training programs.

Section 12, Page 6

The training shall be conducted by a person certified as a trainer by the department. Other instructional methods and procedures approved by the department may be implemented as necessary, in lieu of formal presentations by a certified trainer.

7X

The Department suggest a minor amendment to require the farm owner to make department prepared pamphlets available to farmworkers. This change will also make this section consistent with Section 11.

Page 7, Section 13c

c. Every farm owner shall [provide] make available the pamphlets prepared by the department...

The Department also suggests a minor amendment indicating that fact sheets should be prepared on each pesticide active ingredient used on crops rather than on each pesticide product. Different products with the same active ingredients would have the same fact sheet. Also, there is an addition identifying the Department as the agency creating the fact sheets.

Page 8, Section 13d

"13d The farm owner shall maintain a Material Safety Data Sheet for each product and a department prepared fact sheet on each pesticide [product] active ingredient used on crops...."

Civil Suits

Currently, any party may bring a civil action against the department. Since this is already a statutory right, Page 9, Section 19 should be deleted.

CEHA

The Department suggests the following amendment to clarify its authority to enter agreements with certified local health agencies pursuant to the County Environmental Health Act.

Page 11, Section 9j

j. Cooperate with, and enter into agreement with, any other agency or government entity of this State, or the United States, and any other state of agency thereof for the purpose...

Fees

The Department suggests the following amendment to clarify the allowable uses of service fees:

Page 11, Section 21

"21k ...The criteria for registration, certification, or permit fees shall reflect the actual or projected expenses incurred by the department in regulating and monitoring the distribution, use, application, handling, transportation and disposal of pesticides, less the amount of other program service fees collected hereunder by the department. Program costs may include the costs to the

department of planning, developing rules and regulations, reviewing, issuing and administering registrations, certifications of permits, and monitoring compliance with this act departmental rules and regulations, technical studies, research and educational programs adopted pursuant thereto... The fee schedule, as adopted by regulation by the department, shall also provide for costs incurred by the Department of Health [to implement its responsibilities delineated in] or any agency or government entity assisting in the implementation of the mandates of P.L. c (C.)(now before the Legislature as this bill)."

Enforcement

The Department supports amendments upgrading enforcement procedures which provide additional incentive for compliance with the statute. The following amendments should replace the current section 10, which outlines the enforcement provisions of the Act. These amendments will make the Act consistent with the enforcement provisions of other environmental statutes and regulations.

Page 12, Section 22
(New Section 10)

a. Whenever the commissioner has cause to believe that any person is violating or has violated any provision of this act or any code rule, regulation, or order promulgated or issued thereto, the commissioner shall cause a prompt investigation to be made in connection therewith.

b. If upon investigation or inspection the commissioner discovers a condition which is in violation of the provisions of this act or any code, rule, regulation or order promulgated or issued thereto, the commissioner shall order the violation to cease and take such steps necessary to enforce the order. The order to cease the violation issued by the commissioner and sent to the violator by certified mail or personal service shall include a reference to the section of the statute, rule, regulation, order, or permit condition violated; the amount of the civil administrative penalty which shall be imposed; a concise statement of the facts alleged to constitute the violation; and a statement of the right of the violator to a hearing.

1. Any person aggrieved by an order or notice of civil administrative penalty assessment of the commissioner has 20 calendar days from receipt of the order or notice of civil administrative penalty assessment within which to deliver to the commissioner a written request for a hearing.

2. An order issued pursuant to this subsection shall be effective immediately upon receipt of the order and any person to whom such order is directed shall comply with the order immediately. A request for a hearing on the order shall not automatically stay the effect of the order.

3. Upon application and pending a determination by the commissioner, therefore, the commissioner may stay the operation of an order upon such terms and conditions as the commissioner may deem proper.

4. A notice of civil administrative penalty assessment becomes a final order upon the expiration of the 20 calendar day period if no hearing is requested. Subsequent to a hearing, if requested, the commissioner may issue a final order assessing and fixing the amount of penalty therefore.

5. Payment of the penalty is due when a final order is issued assessing the civil administrative penalty assessment or when the notice of civil administrative penalty assessment becomes a final order after the expiration of the 20 calendar day period.

6. The person requesting a hearing on an order or notice of civil administrative penalty assessment shall comply with all procedures for requesting a hearing as set forth by the department. Failure to comply with such procedures for requesting a hearing shall constitute grounds for denial of the hearing request.

7. The hearing shall be held in accordance with the requirements for contested cases in the "Administrative Procedures Act", P.L. 1968, c. 410, (C.52:14B-1 et seq.).

(New Section 11)

a. Whenever on the basis of information available to him, the commissioner finds that any person is, or may be, in violation of any provision of this act, the commissioner may;

(1) Issue, in accordance with section 10, an order to cease or refrain from committing the violation;

(2) Bring a civil action in accordance with section 12 or issue a civil administrative order in accordance with sections 10;

(3) Levy a civil administrative penalty in accordance with section 10; and

(4) Bring an action for a civil penalty in accordance with section 12 of this section.

10 X

b. Recourse to any of the remedies specified herein shall not bar recourse to any other remedy available hereunder, and any remedy may be pursued either singly or in combination with any other remedy provided in this section.

c. In addition to the remedies available in section 10 and 11 above, the commissioner may institute a civil action in Superior Court for:

(1) A temporary or permanent injunction;

(2) Assessment of the violator for the costs of any inspection or investigations that led to the establishment of the violation, and for the reasonable costs for preparing and litigating the case under this subsection;

(3) Assessment of the violator for any cost incurred by the state in removing, correcting or terminating the adverse effects upon the environment resulting from any violation of this act; and

(4) Assessments against the violator of compensatory damages for any actual damages, including any loss or destruction of wildlife or degredation of the environment caused by the violator.

(New Section 12)

a. The commissioner is authorized to assess a civil administrative penalty of not more than $25,000 for any violation of the provisions of this act. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. In determining the amount of the civil administrative penalty, the commissioner shall take into account the circumstances of the violation, the nature, seriousness, and extent of the harm to the public health or welfare, or to the environment, resulting therefrom, the previous compliance record of the violator, or any other factor that the commissioner deems relevant in measuring the seriousness or frequency of the violation of the conduct of the violator. A person is liable for the acts of his employees acting in the scope of their employment.

b. Assessments made pursuant to section 10 shall be payable to the department and deposited in the Environmental Services Fund created pursuant to P.L.1975, c.232 and kept in a separate subaccount from other receipts deposited therein, and shall be appropriated for the support of the Pesticide Control Program in the Department of Environmental Protection.

11 X

c. An assessment made pursuant to section 11 may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq. The commissioner, by administrative order, may assess a violator for costs authorized pursuant to sections 10 and 11 above, and may recover any costs incurred by the department in making and collecting an assessment, including any administrative hearing costs.

d. If a civil administrative penalty imposed hereunder is not paid within 30 days of the date that the penalty is due and owing and the person against whom the penalty is assessed does not contest the penalty within the time prescribed therefor, or payment is not made when due and owing pursuant to a payment schedule entered into with the department, an interest charge shall accrue on the amount of the penalty, or the outstanding balance thereon, as of the date payment was due and owing. The interest charge shall be based on the rate if the interest on judgments established by the New Jersey Supreme Court in accordance with the Rules Governing the Courts of the State of New Jersey. The department may also recover any costs incurred in imposing and collecting a penalty pursuant to this subsection, including any administrative hearing costs.

e. No civil administrative penalty shall be levied except upon an administrative order issued pursuant to section 10 and subject to the notice and hearing provisions of that section. Payment of a civil administrative penalty shall not be deemed to affect the availability of any other remedy in connection with the violation for which the penalty was assessed.

f. The commissioner is authorized to compromise and settle any penalty assesses under this section in such amount as he deems appropriate and equitable under all of the circumstances, subject to such terms and conditions as the commissioner may establish by rule or regulation

g. A civil administrative penalty imposed, and costs recoverable pursuant to a final order:

(1) may be collected or enforced by summary proceedings on Superior Court in accordance with "the penalty enforcement law," N.J.S.2A:58-1 et seq.;or

(2) shall constitute a debt of the violator, and may be docketed with the clerk of the Superior Court, whereon it shall have the same standing as any other judgement docketed pursuant to N.J.S.2A:16-1, except that no lien shall attach to the real property of a public entity.

(New Section 13)

a. Any person who violates the provisions of this Act, or any code, rule regulation, or order promulgates or issued thereto or fails to pay a civil administrative penalty in full, or to make a payment in accordance with a schedule of payment of penalty entered with the department, is subject, upon order of the court, to a civil penalty of not more than $25,000 for each offense. If the violation is of a continuing nature, each day during which it continues ., or each day in which the civil administrative penalty is not paid in full constitutes an additional, separate and distinct offense. Any penalty imposed under this subsection may be recovered with costs in a summary proceeding in the Superior Court pursuant to the "penalty enforcement law" (N.J.S.2A:58-1 et seq.).

NOTE: The existing Sections 11 through 13 would need to be renumbered in accordance with the amendments noted above.

BILL PRIORITY: HIGH: X MODERATE: LOW:

OPTIONS FOR RECOMMENDED POSITION:

Support:

Oppose:

No Action:

POSITION— Support: Support w/amends: X No Position:

Oppose: Oppose unless Amended: Defer to:

RATIONALE:

The Department strongly supports this legislation with the amendments noted above. This bill, with the Department's proposed amendments, will strengthen and improve the Pesticide Control Act to better protect human health, welfare, and the environment.

13X

RELEVANT PUBLICATIONS OR STUDIES: Please attach copies or summaries.

PREPARED BY: _____ **DATE:** _____

Director, Office of Legislation

SUBMITTED BY: _____ **DATE:** _____

Commissioner, NJDEP

RECEIVED BY: **DATE:**

APPROVED BY: **DATE:**

168 West State St., Trenton, New Jersey, 08608 tel.(609) 393-7163

January 23, 1991

TESTIMONY ON PROPOSED

AMENDMENTS TO THE PESTICIDE CONTROL ACT OF 1971

(S-3079, A-4171)

New Jersey Farm Bureau is the largest private organization of farmers and farm families in the state of New Jersey, representing over 5,400 members throughout 20 counties of the state. We are organized and function as the spokesgroup for agriculture in the state, and offer comments on behalf of our members on legislative, regulatory, and other public policy issues. Pesticide use and control ranks among other topics like land use, water supply and management, labor, marketing, taxation and others that are of major importance to us.

I have organized my remarks on this bill into three categories: general comments about agriculture today in New Jersey and agricultural labor management; general comments about the bill; and specific comments about the bill.

I. AGRICULTURE IN NEW JERSEY TODAY

- New Jersey agriculture is in the midst of major changes. These are largely driven by changes in the marketing of farm commodities produced here. Producers of fresh market crops have suffered from a string of bad years due to poor weather conditions, leaving many highly leveraged and questioning their future. Regulatory pressures from many sources are frequently cited as a factor in undermining a farmer's view of the future in New Jersey.

- while acreage base shrinks, dollar value of production continues to increase each year. Some of that may be due to expanded production to off-set lower returns per unit of production.

- in recent years, there has been a pronounced shift away from wholesale market agriculture (i.e. large scale production of fruits, vegetables, and nursery crops) to a retail market orientation which requires less land and total number of workers.

- ag labor management: traditional reliance on large numbers of migrant and seasonal workers is changing; contract workers through clearance orders from Puerto Rico decreasing; self-contracting crews from local towns increasing; availability of crew chiefs on the decline; high school/senior citizens workers in packing house; legalized Mexicans abound.

Agriculture Keeps New Jersey Green

- we estimate that our unit cost of labor is twice that of other major U.S. production areas due to number of regulations; relatively high level of enforcement and competition from other sectors in New Jersey economy (casino, construction, etc.); cost comparison with Mexico and central America is at least 4-5 times higher.

- labor management for agriculture in New Jersey is costly and difficult.

- the vast majority of farm employees in New Jersey agriculture do not work directly with pesticides. This is a function that is normally done by the farmer, his sons, or a foreman-level employee. It is a violation of both federal and state law to expose workers to wet spray and to allow re-entry into a treated area prior to federally-regulated time intervals. The state pesticide code several years ago was amended to incorporate a separate section on farmworker safety, which among other things instituted a bulletin board notice system for workers who were interested to learn more about pesticides used on the farm. We also endorsed at that time the addition of bi-lingual enforcement personnel to ensure better access for workers who had questions about pesticide safety. The record of safety on farms, measured by either number of complaints or of violations is very low compared to the number of applications made in agriculture.

II. GENERAL COMMENTS ABOUT THE BILL

- this bill, as written, has the potential of imposing some significant additional restrictions on farmers throughout the state.

- we are not aware of any analysis of the bill that reviews its terms from the standpoint of putting farmers at a competitive disadvantage. In the absence of that and the knowledge that the New Jersey pesticide code ranks with California and Texas among the most restrictive in the nation, we are concerned that the bill as written would add to the regulatory burden which makes farming in New Jersey difficult and contributes to the loss of New Jersey farmland.

- the bill needs an economic assessment, to determine what the costs are and who will bear these new costs. Fees like taxes are difficult to assimilate during a recession in the economy, particularly for agriculture and ag-related businesses that have seen marginal returns in recent years. We understand that the Departments of Health and Environmental Protection estimate the cost of implementing this bill to be in excess of $1 million.

- we believe that New Jersey should have an effective, scientifically-based, and well-enforced pesticide control program. However, we suspect that there is an anti-pesticide undercurrent in the bill which will eventually result in being at cross-purposes with the pursuit of farming in New Jersey. We accept the role of advocacy and think it has its place, but we should be very careful when it affects legitimate business pursuits.

- the trend in pesticide usage in New Jersey agriculture is toward safer products that break down faster, making applications on a less frequent basis, and moving toward more biological controls just as fast as the research and extension service at Rutgers can lead farmers in that direction. We believe that the Bureau of Pesticide Control in the DEP has been fair and balanced in its administration of pesticide rules and the need for legislative mandates is limited.

- the core of the bill seems to be centered on the training and education mandates for farm employees. This is an issue that we have a keen interest in and have been discussing with our farmer members for the past two years. We realize that every farm employer bears a responsibility in informing his or her employees about the potential risks of exposure to chemicals in the workplace. The question is not whether such should be done but rather how it should be done. A practical, effective program in fact should be part of a farm employer's worker training program. With or without this bill we were already developing recommendations for adoption by farmers in association with a Rutgers/NIOSH program.

- we strongly believe that any set of mandatory requirements for a worker training/education program should be related to a worker's potential level of exposure to chemicals in the workplace.

- since the introduction of the original version of this bill several years ago, there have been other changes in pesticide control management that address some of the same concerns, which may preclude the need for parts of this bill. For example, the "FIFRA-Lite" bill enacted by Congress in 1988 mandates the re-testing and re-registration of all pesticide products registered before 1984. The cost of this re-registration is so expensive that one of our biggest problems is manufacturers deciding to discontinue certain products because the cost of re-registration exceeds the return on the sales. Senator Bradley has attempted to assist New Jersey farmers by seeking federal appropriations for the independent testing of these "minor use" pesticides at the IR-4 project at Rutgers. OSHA is now very active in farm employee exposure issues, and the EPA is finally nearing the release and final review of its farmworker standards.

- we support the move toward reduced pesticide use, which will in turn reduce potential exposure to pesticides. The Legislature could make a substantial contribution to reducing the use of pesticides in agriculture by expanding its appropriation to the Integrated Pest Management Program at Rutgers/Cook College and the Department of Agriculture's Beneficial Insect Lab. The director of the Ag Experiment Station commented just yesterday that a cut of about 30% in the pesticide use in New Jersey agriculture could be achieved with additional funding support. We would much prefer that the Legislature take this approach to reducing potential exposure to pesticides.

- we have already taken action on our own with regard to worker education and training on pesticide safety. We formally communicated our support last year to the DEP Bureau of Pesticide Control for them to prepare a program for incorporation into the state pesticide code. Each spring, we conduct pre-season farm employment management seminars in several locations throughout the state. We have been stressing the importance of pesticide safety at these informational meetings. Perhaps most significantly, we have been developing a bi-lingual video program on worker pesticide safety for use by growers in labor camps. We think with our endorsement growers will feel confident in the educational value of this and will welcome its use.

III. SPECIFIC COMMENTS ON S-3079 (& A-4171)

1. Sections 10-15 deal with farmworker safety. As previously stated, we support a worker training/education program that should be practical and effective for both the farmer and his employees. We suggest the following:

- Section 10: this requirement seems to duplicate the existing state pesticide code. We would like to see the bill incorporate the DEP suggestions for this.

- Section 11: We suggest that the word "information" be substituted for "pamphlets" to allow for an alternate and perhaps more effective means of education/training. Also, we suggest that the following sentence be added after the first sentence in the paragraph: "The level of information shall be determined by the department based on the employee's job responsibility and potential exposure to pesticides." The Department of Agriculture and Rutgers/Cook College should be party to the preparation process.

- Section 12: add the term "based on potential exposure" at the end of the first sentence. The second sentence should be revised to read: "The training shall consist of approved training materials adopted by the department." We would like to see the NJDA and Rutgers/Cook College added here also. The DEP must have some flexibility in adopting the training criteria, and therefore the term "shall include" before a-f should be changed to "may include."

- Section 13: subsection "c" should be revised to change "shall provide the pamphlets" to "make available information". Such a change would be consistent with the change suggested in Section 11 and give the DEP the flexibility to make the program work. That subsection should also add the following to apply to the unique situation of day-contract employees, who in fact may be employees not of the farm owner but rather of a sub-contractor: "In instances of day-contract employees, a posted notice placed in the vehicle of transport shall suffice."

In subsection "d", we suggest that an MSDS sheet or a fact sheet be required, rather than both. We assume that the DEP will be responsible for the preparation of these fact sheets.

- Section 14: we think this section is duplicative of sections 11-13 and should be eliminated.

2. Sections 19 and 20 allow for law suits due to violations of this act. Inasmuch as there are penalty sections elsewhere in the bill and since most of the new requirements deal with education and training, we think these two sections may encourage frivolous law suits. They may inhibit the establishment of the cooperation needed to implement the education/training program for farm employees and therefore should be deleted from the bill.

- Section 7: the proposed ban on the aerial application of broad spectrum chemical pesticides should be reconsidered. While we recognize the ban does not affect agricultural uses and grants a reprieve under certain circumstances for mosquito control and health emergencies, we are not convinced this ban is a good idea.

Such a ban would undercut the aerial applicator businesses, which provide a vital support service to New Jersey farmers. The loss of business could force some of these operators to close, and that hurts the farming industry the same way as when a vegetable processor closes, a farm equipment dealer closes, or a grain elevator leaves the state.

From a health standpoint, we are concerned what this ban might do. In gypsy moth control, using air blast sprayers instead of aerial applications will lead to more not less pesticide use. The control of lyme disease may be inhibited as well, since the tick which transmits the disease is located in wooded environments that could be sprayed to prevent eventual human contact with this easily transmitted disease - New Jersey has a serious lyme disease problem.

From an aesthetic standpoint, we think the foliage loss to trees by gypsy moths that is best controlled by aerial application contradicts the purpose of open space programs. New Jersey state and local government agencies put considerable time into protecting open space. Forest land not controlled by BT could be damaged by the gypsy moth and then suffer a reduced recreational value.

- Section 1 and Section 3: we support the DEP's position regarding proposed changes to the Pesticide Control Council. As proposed in the bill, we think 16 members is too large and unwieldy. There should also be a balance of viewpoints represented in the composition of the council's members, and a statement to that effect should be added to the bill to give guidance to the Governor. The Council should not be a platform for philosophical debate or advancing ideology. The report to the Legislature in Section 3 could put the Council into a political context and that should be avoided. It should serve as a resource to the DEP in maintaining a fair and effective set of rules for controlling all pesticide use in the state.

- Section 8: we recognize that the notification section now calls for DEP to develop rules in this regard, rather than proposing criteria as the original bill did. The DEP probably has this authority now. We will repeat our concerns about the practical limits for this if and when it becomes necessary. The committee should be reminded that any off-site drift of wet spray is already a violation of federal and state regulations. Any residential neighbor who suspects that he or she is being illegally exposed to such can file a complaint, have swab samples taken, and analyzed by highly sensitive lab equipment. Most applicators know this and exercise appropriate caution. Insurance underwriting is perhaps another significant safeguard.

PRINCETON PUBLIC AFFAIRS GROUP, INC.
PUBLIC AND GOVERNMENT AFFAIRS COUNSEL

THE PRINCETON HOUSE
160 WEST STATE STREET
TRENTON, NEW JERSEY 08608
(609) 396-6838

SUITE 210
3333 K STREET, N.W.
WASHINGTON, D.C. 20007
(202) 785-2203

BRADLEY S. BREWSTER
DALE J. FLORIO
PETER J. McDONOUGH, JR.

FACSIMIL
(609) 989-

MEMORANDUM

TO: Senator Ray Lesniak

FROM: Brad Brewster

DATE: December 7, 1990

RE: Senate Bill 3079 - Pesticide legislation

The Pest Control Association would like you to consider the following changes to Senate Bill 3079:

1. Provide for an additional industry member on the Pesticide Council.

(Section 1)

The bill currently allows for only one council member from the "recognized organizations of pesticide applicators." In fact, however, there are two distinct types of applicators both having different functions and organizations. The Pest Control Association represents the indoor commercial and residential pest control applicators, while the outdoor turf and ornamental industry is separately organized. Inclusion of each group will allow for proper and knowledgeable representation of these different activities.

2. Permit DEP approval of industry training programs

(Section 5)

The bill authorizes only the DEP to conduct pest application training programs. The pest control industry, however, has conducted training programs for many years. From the standpoint of cost and efficiency, industry training programs which meet DEP standards should be permitted to conduct programs to satisfy training requirements.

20X

3. Clarify that registered and certified pesticide applicators may inspect for pest infestation without further registration.

The bill correctly requires a certification and registration procedure for pest inspectors, such as, home building inspectors or termite inspectors. Inadvertently it may also require pesticide applicators or registered operators (7b certification) who are already competent to conduct inspections as a part of their pesticide applicator certification to submit to an additional and unnecessary registration procedure.

4. Clarify the type of pesticide incidents to be reported to the DCH.

(Section 15)

The bill requires that the Department of Health maintain a record of pesticide exposure incidents reported by physicians or veterinarians. In order to better define what type of matters should be reported and to avoid a misleading indication of pesticide danger, the bill should specify the reporting of incidents where there is "clinically determined evidence of an adverse health effect as a result of pesticide exposure."

5. Specify that a civil action may be brought under the act where damage to a person or property occurs.

(Section 20)

The bill allows for a civil suit solely on the basis of "exposure" to a pesticide. Therefore, mere "exposure" to a pesticide resulting from even a technical violation of the act could trigger a civil action. The allegation of some personal or property damage should be necessary to bring suit.

6. Clarify DEP's authority in assessing fines for violation of the act.

The DEP is given wide discretion of up to $25,000 per violation in assessing fines under the Act.

In determining appropriate penalties for violations of the act the extent of the fine should reflect the nature of the violation. Only where conduct in violation of the act is willful, wanton, reckless or habitual should the full penalty may be imposed. Where this type conduct has not occurred a limit of $10,000 fine per violation may be imposed.

1/22/91

TESTIMONY ON S-3079
AMENDING AND SUPPLEMENTING THE PESTICIDE CONTROL ACT OF 1971

Good morning, my name is Edward Neafsey, and I am the Special Assistant to Department of Environmental Protection Commissioner Judith Yaskin. With me I have Mr. Ray Ferrarin, Assistant Director of the Department's Pesticide Control Element. On behalf of the Department, I would like to thank you for the opportunity to present testimony on S-3079/A-4171, which will amend and strengthen the Pesticide Control Act of 1971.

The DEP is the lead agency regulating pesticides in New Jersey. We are proud to be one of the leading states in this area. Farmworker protection standards, public notification prior to spraying, aerial restrictions and termiticide requirements are examples of our progressive regulatory initiatives. In addition, New Jersey has other programs that are nationally acclaimed, such as the Bio-Control Laboratory and the organic certification program within the Department of Agriculture, and the Integrated Pest Management Program at Cook College, Rutgers University, which helps minimize the use of pesticides in controlling a variety of pests.

In general, the Department supports the passage of S-3079/A-4171, with comments this agency will be forwarding to you. The regulated community, including farmers, has been responsive in carrying out their responsibilities under the current comprehensive regulatory mandates. This legislation would help improve and reinforce the current regulatory programs and address areas which require attention. I would like to particularly note some of the provisions of S-3079/A-4171 which will strengthen the Department's regulatory authority and will significantly contribute to the achievement of the Department's legislative mandate to protect human health, welfare, and the environment.

S-3079 provides for a-

Home Inspection Program.

The Department supports the provisions of S-3079 which will provide the authority to regulate home inspection businesses who are responsible for structural inspections for wood destroying insects, such as termites. These inspections are performed as part of nearly every real estate transaction in New Jersey.

Currently, there is no regulation or control over these businesses--businesses which have major responsibilities in providing the public with recommendations regarding the presence of pests, and the treatment of infected areas. A certification program will ensure that inspectors are competent individuals providing a service to the residents of the state.

S-3079 also provides-

Farm Worker Protection Provisions.

The Department supports these provisions, with the amendments provided. These provisions will provide farm workers with access to information and training on the uses of pesticides in the areas in which they are employed.

This bill provides-

Medical Education and Reporting requirements.

These provisions will require the education of medical providers and physicians, and the reporting of pesticide exposure incidents. The Department strongly supports these provisions to benefit both the farmworker, and the health care provider.

S-3079 amends the Pesticide Control Act to provide-

Refusal of Entry provisions.

Currently, the Department's regulations specify reentry times and mandates that farmworkers not be permitted to enter a field prior to the reentry time. The Department supports the right of the farmworker not to enter a field prior to termination of the minimum pesticide application reentry time. The passage of S-3079 will provide this additional right to the farmworker.

This legislation also provides

Job Protection for Farmworkers.

The passage of S-3079 will protect a farmworker from being discharged from employment for exercising his or her rights, as outlined in the bill. The Department stands in favor of this provision to provide improved job protection to the farmworker.

In summary, though the current law is broad in scope and provides regulatory latitude, the revisions provided by S-3079 will strengthen the Pesticide Control Act's provisions, and will assist the department in meeting its goals and objectives over the next decade.

Again, I want to thank you for the opportunity to provide comment on this bill. If you have any questions, either Mr. Ferrarin or I will be happy to answer them.

STATEMENT OF

THE DEPARTMENT OF THE PUBLIC ADVOCATE

BEFORE THE SENATE LABOR, INDUSTRY

AND PROFESSIONS COMMITTEE

AND THE ASSEMBLY COMMITTEE ON ENERGY

AND THE ENVIRONMENT

ON

SENATE BILL 3079

AND

ASSEMBLY BILL 4171

January 23, 1991

John P. Thurber
Division of Public
Interest Advocacy

25X

CHAIRMAN LESNIAK, CHAIRMAN SMITH, MEMBERS OF THE SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE AND MEMBERS OF THE ASSEMBLY COMMITTEE ON ENERGY AND THE ENVIRONMENT:

ON BEHALF OF WILFREDO CARABALLO, THE PUBLIC ADVOCATE OF THE STATE OF NEW JERSEY, I AM APPEARING TO PRESENT OUR DEPARTMENT'S VIEWS ON THE CRITICAL ISSUE OF PESTICIDE CONTROL. SENATE BILL NO. 3079, SPONSORED BY SENATOR LESNIAK, AND ASSEMBLY BILL NO. 4171, SPONSORED BY ASSEMBLYMAN SMITH, WOULD PROVIDE THE STATUTORY MECHANISM TO REDUCE ENVIRONMENTAL, RESIDENTIAL AND AGRICULTURAL WORKPLACE EXPOSURE TO PESTICIDES. THESE BILLS WOULD ALSO MANDATE APPROPRIATE NOTIFICATION, TRAINING, REPORTING AND OTHER CRITICAL SAFEGUARDS IN THIS AREA. THESE BILLS PROVIDE APPROPRIATE PROTECTIONS FOR THE PUBLIC AND, IN PARTICULAR, FARMWORKERS FROM PESTICIDE EXPOSURE. THEREFORE, THE PUBLIC ADVOCATE STRONGLY URGES YOUR COMMITTEES TO ACT FAVORABLY ON THESE BILLS.

IN RESPONSE TO COMPLAINTS DURING THE PAST SEVERAL YEARS FROM CITIZENS AND COMMUNITY GROUPS ABOUT THE IMPROPER USE OF PESTICIDES AND THE INADEQUATE ENFORCEMENT AND PROTECTION OF EXISTING LAWS, THE PUBLIC ADVOCATE HAS PARTICIPATED IN A VARIETY OF PESTICIDE CONTROL EFFORTS. THESE HAVE INCLUDED A CHALLENGE TO PESTICIDE CONTROL REGULATIONS PROMULGATED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP), COMMENTS AND SUGGESTIONS TO DEP TO IMPROVE ITS REGULATORY AND ENFORCEMENT EFFORTS IN THIS AREA,

AND WORK WITH A VARIETY OF STATE AND NATIONAL ORGANIZATIONS TO DEVELOP MODEL PESTICIDE PROTECTIONS. BECAUSE THE PROPER REGULATION OF PESTICIDES IS A MATTER OF STATEWIDE CONCERN, THE PUBLIC ADVOCATE HAS SOUGHT TO REPRESENT THE BROAD PUBLIC INTEREST OF ALL NEW JERSEY CITIZENS WHOSE HEALTH AND WELFARE COULD BE ENDANGERED BY THE IMPROPER APPLICATION OF PESTICIDES.

WHILE WIDELY RELIED UPON IN OUR STATE, THE USE OF PESTICIDES POSES A SUBSTANTIAL THREAT TO FARMWORKERS, THE GENERAL PUBLIC AND OUR ENVIRONMENT. NUMEROUS STUDIES HAVE CONFIRMED THAT PESTICIDES HAVE POLLUTED OUR WATERWAYS AND GROUNDWATER, CONTAMINATED MUCH OF OUR FOOD SUPPLY, CAUSED HEALTH DAMAGE TO AGRICULTURAL WORKERS AND APPLICATORS, AND RESULTED IN SERIOUS HARM TO THOSE WHO LIVE OR WORK IN AREAS IN WHICH PESTICIDES HAVE BEEN APPLIED.

THE ADVERSE EFFECTS OF EXPOSURE TO PESTICIDES ARE PARTICULARLY ACUTE IN NEW JERSEY. THOUSANDS OF POUNDS OF HIGHLY TOXIC PESTICIDES ARE USED THROUGHOUT THE STATE EVERY YEAR. INDEED, THE DEPARTMENT OF THE PUBLIC ADVOCATE FREQUENTLY RECEIVES COMPLAINTS FROM A WIDE RANGE OF CITIZENS WHO HAVE BEEN EXPOSED TO PESTICIDES. YOUNG CHILDREN HAVE BEEN SPRAYED WITH PESTICIDES WHILE PLAYING OUTSIDE, FAMILIES HAVE BEEN EXPOSED TO PESTICIDES WHILE ENJOYING A BACKYARD BARBECUE, AND THE ILL AND ELDERLY HAVE BEEN INADVERTENTLY EXPOSED. WE HAVE ALSO INVESTIGATED THE PARTICULARLY ADVERSE EFFECTS OF PESTICIDES ON FARMWORKERS.

OVER THE PAST FEW YEARS, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION HAS REVISED ITS PESTICIDE CONTROL CODE IN SEVERAL WAYS TO BETTER PROTECT THE PUBLIC AND THE ENVIRONMENT FROM TOXIC PESTICIDES. THESE STEPS BY DEP REPRESENT SIGNIFICANT PROGRESS IN ADDRESSING CRITICALLY IMPORTANT NEEDS. NEVERTHELESS, IN OUR VIEW, COMPREHENSIVE LEGISLATIVE ACTION IS ESSENTIAL TO ENSURE THAT FARMWORKERS, THE GENERAL PUBLIC, AND OUR ENVIRONMENT ARE SUFFICIENTLY PROTECTED FROM TOXIC PESTICIDES.

THE TWO BILLS BEFORE YOUR COMMITTEES TODAY PROVIDE A COMPREHENSIVE RESPONSE TO THESE URGENT PROBLEMS. THESE BILLS INCLUDE MANY OF THE SPECIFIC PROTECTIONS THAT ARE VITAL TO PROTECT OUR COMMUNITIES AND RESIDENTS. FIRST, THE BILLS PROHIBIT THE AERIAL APPLICATION OF BROAD SPECTRUM CHEMICAL PESTICIDES ON NON-AGRICULTURAL LANDS EXCEPT UNDER EMERGENCY CONDITIONS AS CERTIFIED BY APPROPRIATE STATE AGENCIES. SECOND, THE BILLS ESTABLISH NOTIFICATION PROCEDURES WHICH ARE DESIGNED TO AFFORD ALL PEOPLE WHO COULD BE EXPOSED TO PESTICIDES THE OPPORTUNITY TO AVOID SUCH EXPOSURE. THIRD, THE BILLS REQUIRE STRICT CERTIFICATION FOR ALL COMMERCIAL PESTICIDE APPLICATORS. FOURTH, THE BILLS PROVIDE FOR SPECIAL TRAINING FOR HEALTH WORKERS IN THE RECOGNITION, EVALUATION AND TREATMENT OF PESTICIDE EXPOSURE. FIFTH, THE BILLS ESTABLISH A COMPREHENSIVE REPORTING SYSTEM FOR ALL INCIDENTS OF PESTICIDE EXPOSURE.

THE AGRICULTURAL USE OF PESTICIDES PRESENTS SEVERAL ADDITIONAL ISSUES. THESE BILLS ADDRESS THE COMPELLING NEED TO

REQUIRE DISCLOSURE BY FARM OWNERS TO THEIR EMPLOYEES REGARDING ALL APPLICATIONS OF PESTICIDES, INCLUDING THE TYPE OF PESTICIDES APPLIED AND THE TIME WHEN IT IS SAFE TO REENTER THE FIELDS. UNDER THESE BILLS, FARM OWNERS WILL ALSO BE PROHIBITED FROM REQUIRING FARMWORKERS TO REENTER THE FIELDS BEFORE THIS MINIMUM SAFE REENTRY PERIOD HAS ELAPSED, AND THE RIGHT OF FARMWORKERS TO REFUSE SUCH UNSAFE REENTRY WITHOUT FEAR OF RETRIBUTION WILL BE PROTECTED. MOREOVER, APPROPRIATE PESTICIDE TRAINING FOR ALL FARMWORKERS WILL BE MANDATED, WITH UNDERSTANDABLE INSTRUCTIONAL MATERIALS BEING PROVIDED IN BOTH SPANISH AND ENGLISH.

ANOTHER VITALLY IMPORTANT FEATURE OF THESE BILLS IS THEIR EXPRESS AUTHORIZATION OF CITIZEN SUITS TO ENFORCE THE PROVISIONS OF THE LEGISLATION AGAINST BOTH THE APPLICATORS OF PESTICIDES FOR THEIR VIOLATIONS, AS WELL AS AGAINST THE RESPONSIBLE STATE AGENCIES IF THEY FAIL TO CARRY OUT THEIR OBLIGATIONS UNDER THE STATUTE. THE INCLUSION OF A PRIVATE RIGHT OF ACTION TO ENFORCE THE PROTECTIONS ESTABLISHED BY THESE BILLS RECOGNIZES THE PUBLIC'S SPECIAL INTEREST IN ENFORCEMENT OF ENVIRONMENTAL LAWS. THE LEGISLATURE AND THE COURTS HAVE FREQUENTLY ACKNOWLEDGED THE COMPELLING PUBLIC INTEREST IN GIVING CITIZENS THE POWER TO REMEDY ENVIRONMENTAL HARMS. PROVIDING THIS ACCESS TO THE COURTS IS PARTICULARLY IMPORTANT IN THE AREA OF PESTICIDE EXPOSURE, BECAUSE TORT LAW AND EXISTING STATUTES FAIL TO PROVIDE ADEQUATE REMEDIES TO ADDRESS IMPROPER CONDUCT BY APPLICATORS AND OTHERS.

CITIZEN SUIT PROVISIONS HAVE PROVEN TO BE EXTREMELY EFFECTIVE IN ADDRESSING ENVIRONMENTAL CONCERNS. NUMEROUS STUDIES HAVE CONFIRMED THAT THESE PROVISIONS HELP TO COMPLEMENT THE ENFORCEMENT EFFORTS BY GOVERNMENT AGENCIES. PERHAPS EVEN MORE IMPORTANTLY, THESE PROVISIONS GIVE AVERAGE CITIZENS A REMEDY AGAINST THOSE WHO VIOLATE THIS ACT AND HELP THEM TO HOLD GOVERNMENT AGENCIES ACCOUNTABLE.

CITIZENS NEED TO BE EMPOWERED TO ENFORCE THE NEW STANDARDS OF CONDUCT CREATED BY THESE BILLS. CLEARLY, THE DEP AND OTHER GOVERNMENT ENFORCEMENT AGENCIES WILL HAVE INSUFFICIENT RESOURCES TO MONITOR AND ENFORCE THESE STANDARDS. THE ASSISTANCE OF "PRIVATE ATTORNEYS GENERAL" WILL BE VITAL TO PROTECT THE PUBLIC FROM DANGEROUS EXPOSURES TO PESTICIDES.

AS CURRENTLY DRAFTED, THE CITIZEN SUIT PROVISION IN THESE BILLS MAY PROVE INADEQUATE TO EMPOWER AVERAGE CITIZENS TO PROTECT THEMSELVES. IN PARTICULAR, SECTION 20 OF THESE BILLS FAILS TO AUTHORIZE AN AWARD OF ATTORNEYS FEES AND EXPERT WITNESS FEES TO PREVAILING PARTIES. WITHOUT THE ABILITY TO RECOVER THESE FEES, AVERAGE CITIZENS WILL CERTAINLY NOT BE ABLE TO AFFORD THE HIGH COST OF LITIGATION TO ENFORCE THE ACT AGAINST THOSE WHO VIOLATE IT. RECOVERY OF ATTORNEYS FEES AND EXPERT WITNESS FEES IS HOWEVER, AUTHORIZED BY SECTION 19 FOR CITIZEN SUITS AGAINST THE DEPARTMENT OF HEALTH AND THE DEPARTMENT OF ENVIRONMENTAL PROTECTION. JUST AS PREVAILING PLAINTIFFS MAY RECOVER THESE LITIGATION COSTS AGAINST GOVERNMENT AGENCIES UNDER SECTION 19 OF

THESE BILLS, SO TOO SHOULD THEY BE ABLE TO RECOVER THEM FROM PRIVATE PARTIES UNDER SECTION 20.

IT IS IMPORTANT TO NOTE THAT NEW JERSEY IS NOT ALONE IN ATTEMPTING TO REASONABLY CONTROL THE USE OF PESTICIDES IN THIS MANNER. MANY OTHER STATES ARE ALSO TAKING SIMILAR STEPS TO PROVIDE THIS VITAL PROTECTION FOR THEIR CITIZENS. RHODE ISLAND, CONNECTICUT, MASSACHUSETTS AND MARYLAND, TO NAME A FEW, HAVE ALL ACTED TO CONTROL THE APPLICATION AND USE OF PESTICIDES.

IN CONCLUSION, I WANT TO EMPHASIZE THE PUBLIC ADVOCATE'S VIEW THAT THERE IS A COMPELLING NEED FOR COMPREHENSIVE LEGISLATIVE ACTION TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC AND THE INTEGRITY OF OUR ENVIRONMENT FROM THE ADVERSE EFFECTS OF PESTICIDES. BECAUSE SENATE BILL NO. 3079 AND ASSEMBLY BILL NO. 4171 WOULD ADDRESS THIS VITAL NEED, THE PUBLIC ADVOCATE URGES THE COMMITTEES TO ACT FAVORABLY ON THESE BILLS.

THANK YOU.

TESTIMONY ON PESTICIDE SAFETY AND RIGHT TO KNOW BILL

Jessica Herzstein, MD, MPH
Assistant Professor of Medicine
Medical College of Pennsylvania

My name is Jessica Herzstein. I am a physician, board certified in Internal Medicine and in Occupational Medicine. I currently hold the position of Assistant Professor of Medicine in the Division of Occupational and Environmental Health at the Medical College of Pennsylvania. I am appearing today as an expert in the field of occupational health and pesticides to offer testimony regarding farmworkers and pesticide health hazards.

For the past several years I have evaluated patients with health problems related to pesticide exposures in the states of California, Connecticut, and Pennsylvania. I have designed surveillance programs for workers exposed to pesticides in order to monitor employee health and detect early adverse health effects related to pesticides. I have worked with fieldworkers poisoned by pesticides and have published a case report describing a poisoning incident in Connecticut in which workers were poisoned while working in a field long after a fumigant had been applied. I have also given educational talks to workers who mix and apply pesticides or work in areas where pesticides have been applied.

I will discuss the issues of how fieldworkers are exposed to pesticides and to what extent these exposures cause health problems. All workers at risk for pesticide-related health effects should receive training. Education of farmworkers will promote prevention of poisoning through the use of proper work clothes and safe practices such as handwashing before eating. However, even with knowledge about preventive measures, some cases of poisoning will still occur. When exposures do occur, worker awareness of possible pesticide-related symptoms will enable early medical attention and corrective measures to avoid further incidents.

I. Who Gets Poisoned?

In New Jersey, farmworkers who mix, load, and apply pesticides are already required under state law to receive documented training and have access to labelling information. The question arises of whether it also necessary for fieldworkers (who do neither mixing, loading, nor applying) to receive basic training concerning pesticides, access to the names of the pesticides they work with, and written information about those pesticides, as required by the proposed amendments to the state pesticide law.

32X

Pesticides are inherently toxic chemicals. Serious adverse health effects including long-term health problems, have been attributed to chronic low level exposures to many pesticides. For example, pesticides have been associated with cancer, birth defects, neurological effects, blood disorders, sterility, menstrual dysfunctions, and abnormalities in liver and kidney function. For these reasons, all pesticide exposures should be kept to an absolute minimum. All persons with even intermittent, low level pesticide exposures should be educated about pesticides and first aid in order to diminish the occurrence of both acute poisonings and long-term health effects.

Studies which describe reported pesticide poisonings focus on acute illnesses. Unfortunately, most studies do not include data on chronic toxic effects which may not become evident for months or years after exposure. Nonetheless, information on acute pesticide-related toxicity can help determine which farmworkers should be priority groups for training in this area.

Farmworkers may be exposed to pesticides in many ways:

1. Direct spraying, through aerial or ground application.
2. By drift, when a field adjacent to the field in which farmworkers are working is sprayed, and wind carries the pesticide to their field.
3. Contact with pesticide residues on the leaves and crops of the plants.
4. Eating, drinking, or smoking in the fields without washing hands after exposure to residues.
5. Eating the fruits and vegetables which are harvested without washing them.
6. Drinking, bathing or cooking with water contaminated with residues (eg. irrigation ditches).
7. Contaminating the genital area after elimination, because hands have not been washed.

There are three major categories of farmworkers in New Jersey, classified in terms of the type of work they do:

1. Those who mix and load pesticides.

2. Those who apply pesticides by tractor rig or handrig (often the same people who mix and load), and assistants such as flaggers who direct planes for aerial spraying.

3. Fieldworkers who prune, thin, weed, and harvest crops.

In New Jersey, about 95% of hired farmworkers perform only the duties of fieldworkers.

In order to decide who should be trained, it is important to understand what types of work put farmworkers at risk of poisoning, and how most poisonings occur. This information can be found in studies of physician-diagnosed pesticide-induced illness and surveys of farmworkers done in New Jersey and other agricultural states.

1. "Development of a Voluntary Reporting System for Agricultural Worker Health Incidents in Southern New Jersey", NJ Department of Health, 1989. As part of a pilot project to set up a voluntary pesticide incident reporting system, the NJDOH documented farmworker pesticide poisonings which were identified in two migrant health clinics and eight emergency rooms. Thirty-six poisonings were identified and in twenty cases the type of exposure was known:

40% became ill due to exposure to residues after the re-entry time had expired.

10% were exposed through premature re-entry.

10% were exposed through ingestion of pesticides.

30% were sprayed directly by airplanes.

5% were sprayed directly by ground spray rigs.

5% were exposed by applying pesticides.

0% were exposed by mixing pesticides.

This study reported other important findings relevant to the discussion of the Right to Know Law:

1. "Lack of physician awareness in diagnosis and management of pesticide-related problems". Pesticide-induced illnesses closely resemble other common health problems. If farmworkers know which chemicals have been applied in the fields and can recognize the symptoms of toxicity, then they are more likely to seek medical care and raise the issue of pesticide-related illness with their physicians.

2. "Worker lack of knowledge regarding symptoms of exposure, necessary clothing, re-entry time, etc...it became apparent that a number of the pesticide-related cases could be attributed to the worker's improper clothing, lack of hand washing, eating or drinking in the field, etc."

2. "Summary Report of Preliminary Results of Farmworker Survey, 1984", Sa-Lantic Health Services, Inc. Sa-Lantic is a federally funded migrant health center, with locations in two areas of S. New Jersey. In 1983 and 1984, interview surveys of 121 migrant farmworkers were done, in cooperation with Camden Regional Legal Services. The 1983 results were almost identical to the 1984 results, which are reported here.

1. 39% of workers reported having been sprayed with pesticides.

2. 35% reported having to pick crops in fields which had been sprayed recently, or were still wet with pesticides. "...there is a problem associated with re-entry. Many of the workers (35% of those in the survey) have been directed to return to the field immediately after spraying has been completed and have reported to us that the plants have still been wet from the spray. In some cases...workers have simply moved out of the way when the tractor has passed to spray, returning to the same spot to work immediately after the application of spray has been made."

3. 8% reported they had mixed or applied pesticides.

3. The California Department of Food and Agriculture (CDFA) "Summary of Illnesses and Injuries Reported by California Physicians as Potentially Related to Pesticides". This is probably the most comprehensive source of information concerning farmworker pesticide poisoning. Since 1970, there has been a mandatory physician reporting program of all confirmed or suspected pesticide-related illness related to the job, which is administered through the Division of Pest Management, Environmental Protection and Worker Safety of the CDFA. Annual pesticide illness reports have been released since 1972.

35X

The most recent report describes reports received in 1988. A total of 874 cases of definite, probable, or possible pesticide poisoning in agriculture.

Exposures to residues in the field caused at least 371 cases. Thus 371/874, or 42% of farmworkers with reported toxicity were fieldworkers who were poisoned as a result of exposure to residues on the crops. The other 58% were mixers, loaders, and applicators.

The average annual number of fieldworkers with poisoning over the six-year period of 1982-1987 was 345.

4. "Pesticide Exposure and Health: a Study of Washington Farmworkers", M. Mentzer and B. Villalba, 1988, Farmworker Division of Evergreen Legal Services. This study is notable for the fact that the crops are similar to those found in New Jersey: tree fruit, row-crop vegetables and berries. Also the climatic conditions (temperature and humidity) are closer to those of New Jersey than are the valleys of California (which are much drier). In this study 460 farmworkers randomly selected from around the state were surveyed in person with a detailed questionnaire. Important results of this study include:

1. 43% had been sprayed or drifted upon by pesticides; on the average this occurred ten times.

2. 39% had been sent to work in a field before a liquid pesticide had dried, without special protective equipment; 20% had worked in fields before a powder had settled.

3. 23% were exposed to pesticides while mixing, applying, or flagging.

5. Other Resources: Results similar to those of the above studies were also documented in studies in Texas (1980), Florida (1980), British Columbia (1982), and Indiana (1983). These studies provide further evidence of the high rates of contact with pesticides through direct spraying of farmworkers, pesticide drift, and premature re-entry.

SUMMARY OF THE ABOVE INFORMATION:

The above studies, which include physician diagnosed pesticide-related illness and farmworker surveys from three major agricultural states, including New Jersey, point out that pesticide mixers and applicators are not the only farmworkers at risk of

exposure to harmful levels of pesticides. In California, 42% of physician-reported pesticide poisonings were the result of exposure to pesticide residues after the re-entry time had expired, and a smaller study in New Jersey revealed that 40% of pesticide poisonings were caused by contact with residues after the re-entry time had expired. In all of the studies, a high number of fieldworkers reported being sprayed directly or indirectly by exposure to drift. Mixers and applicators need appropriate training; but the above studies demonstrate that fieldworkers are also frequently exposed to toxic levels of pesticides and that many documented poisonings occur among fieldworkers and not only mixers and applicators. Thus, fieldworkers also need to know the names of the pesticides they work with and receive training concerning the hazards and symptoms of poisoning, protective clothing, appropriate protective hygiene such as handwashing, the importance of pesticide residues, and first aid.

II. Are fieldworkers exposed to pesticide residues after the re-entry time has expired?

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires the EPA to set re-entry intervals for each pesticide in order to prohibit the return of workers into treated fields until it is safe. A small percentage of the total number of commercially available pesticides have established re-entry times. However, a number of field studies done by the CDFA have shown that unsafe levels of residues remain on leaves after the EPA-approved re-entry times have elapsed. In some cases there is not enough scientific data on which to base calculations of re-entry times. In other cases, climatic conditions may extend the degradation process and lengthen the time for potential residue exposure.

Re-entry intervals have reduced the number of severe acute poisonings, when long enough and firmly enforced. However, many cases of acute poisoning are still reported each year among farmworkers.

1. Studies showing that pesticide residue exposures after the re-entry time interval can result in poisoning: As discussed above, in the CDFA and NJDOH studies of physician-reported pesticide poisonings, post re-entry time exposures caused 42% and 40% of the illnesses, respectively.

Highly foliar (leafy) crops such as fruit trees, blueberries, and many vegetables collect the most residues. These are the types of crops grown in New Jersey. Field studies of pesticide foliar

37X

residues by the CDFA have shown that residues exist-- in quantities far greater than those defined as safe by the CDFA-- after EPA re-entry intervals have elapsed.

Direct biologic measurements of farmworker exposures to pesticides also provide evidence of widespread contact with residues. One example is a study of New Jersey migrant farmworkers (Quinones, 1976) which showed significant cholinesterase inhibition (a blood measurement indicating exposure) as compared to non-agricultural and Puerto Rican controls. No other potential sources of exposure (such as drift or spills) were identified.

2. EPA statements about residue exposure in "re-entry" workers.

In 1988 EPA proposed rule changes in the FIFRA law, and under "Reasons for This Proposal" in the Federal Register discussed farmworker exposure to residues: "The Agency has examined information on health effects in re-entry situations gathered since 1974 from various sources [which] indicate that ...the problem [of re-entry poisoning] exists throughout the country...[and] activities taking place after the "minimum" re-entry interval can present significant hazards to workers" (p. 25973). In addition to the acute affects of post- re-entry time exposure to residues ..."the Agency is concerned with the potentially debilitating effects of repeated exposures to lower levels of pesticides from field residues" (p. 25974).

Conclusion:

Fieldworkers are exposed to pesticides, predominantly through contact with residues, direct spraying, or drift. Some of these workers become ill due to their exposures. A number of studies have documented acute pesticide poisoning even when the prescribed re-entry times are followed.

All farmworkers need to be educated about the toxic nature of pesticides, about labels and material safety data sheets and posting practices, and especially about decontamination and the importance of recognizing the early signs of poisoning and seeking early medical treatment. This worker training will aid in the prevention of pesticide poisoning in addition to promoting prompt recognition and treatment of pesticide-related illness.

Testimony in support of (A-4171/S-3079)

My name is Angel Dominguez, trustee of the Board of Directors of the Farmworkers Support Committee, (CATA). CATA is a farmworkers organization with membership in New Jersey, Pennsylvania and Puerto Rico. Since 1984, CATA members have been very active on the issues of health and safety at the workplace. CATA members and staff have developed training programs related to farmworkers health issues especially on exposure to pesticides since 1986.

This morning I would like to talk about three things: incidents of farmworkers exposure in N.J., a survey conducted by CATA staff to determine if growers were providing farmworkers sanitary facilities in the fields and CATA's experience doing pesticides education in New Jersey.

I will not mention the names of the farms where incidents of pesticide exposure have been reported, but if members of this joint committee want them, I can provide them with the names.

Farm # 1. Six farmworkers were sprayed on three occasions with pesticides from a tractor. The farmer told the workers that the pesticide was harmless, and ordered them not to move out of the way of the spray. Three of the workers became ill and called CATA for help. After requesting a DEP inspection, it was determined that the harmless pesticide were GUTHION and ENDOSULFAN, two pesticides in the highest toxicity range, which have a re-entry time of 48 hours. The workers were fired for filing a complaint.

Farm # 2. Forty workers who were sprayed on three different occasions, developed rashes, eye irritation, and respiratory problems. No washing facilities were provided in the field, and the person doing the spraying was not trained. Fourteen workers signed a complaint requesting a DEP inspection. Two farmworkers, who were leaders in signing the complaint, were fired.

There are more incidents which I could provide you, but due to time limitations I will limit my testimony to these two.

With regard to a survey which was conducted by CATA during the 1990 growing season, we surveyed 51 farms in five counties in South Jersey and we found:

Only 16% of the farms were in complete compliance with state and federal law that mandates that all farms provide drinking water with disposable cups, handwashing and toilet facilities.(if the field the farmworkers work in is less than 1/4 mile away from the camp, the farmer does not have to provide toilet or handwashing facilities)

20% provided handwashing facilities, when required to.

TESTIMONY OF ADALBERTO ALISEA, January 23, 1991

My name is Adalberto Alisea, and I have worked for four years on different farms in New Jersey. Also I have worked all of my life in the canefields of Puerto Rico. I would like to give testimony about what happened to me on a farm in New Jersey last Summer.

I and 40 other farmworkers were working in a peach orchard when we were sprayed by a tractor which was spraying pesticides on apples in a nearby field. The owner's son was driving the tractor and when he turned at the end of the field he continued spraying the pesticides, which fell on top of us. Most of the 40 workers were sprayed. I quickly felt burning in my eyes. I and other workers got water from the drinking container, to wash our eyes. We had to do this several times during the day, because the burning did not stop. We spoke with the foreman, who told us that the end of the day, when we left work, we should go to the cook who had some eye drops. We were sprayed at nine in the morning, and we were not able to get those drops until five in the afternoon.

The following day we went to prune the apple trees in the same field that been sprayed the day before. The leaves were covered with a white powder, which again caused the same burning in our eyes.

One week later, we were working in a different apple orchard and the other son was spraying from a tractor a nearby peach orchard. The wind blew the pesticide over us, which caused us the same problem with our vision.

Ogain, the next day, we went to prune the new field which had been sprayed the day before. And again we were exposed to the pesticide residuals. And again we had the same problem with our eyes, especially me.

This is to say that within a two week period I and 40 other workers were exposed to pesticides four times: once by being sprayed directly, once by drift, and two times by contact with residues. We never knew the name of the pesticides, nor received training about how to protect ourselves from the pesticides.

At the end of the harvest I obtained a contract on a farm in New York, rebuilding boxes in a packing house. Now my sight was getting worse, and the labor department up there told me that I had to stop working voluntarily, because I was not able to see well enough. I returned here and had an examination by an opthalmologist, who told me I had very poor vision. The doctor was not able to determine if the problem with my sight was caused by the pesticides. We still do not know the names of the pesticides which were used.

We farmworkers work 10-14 hours daily, six days a week in the fields, and are exposed to some of the most toxic chemicals in the world: pesticides. But we have no right to know even the name of these pesticides, nor have rights to have training about how to protect ourselves. We are only asking this state that we also enjoy the same rights which all the other workers of New Jersey enjoy.

Thank you.

(NOTE: this is an English translation of the original written text, which was given in Spanish. 20 copies of the English version and two copies of the Spanish version of the text are provided.)

AEC

The Alliance For Environmental Concerns, Inc.

P.O. Box 3692
Wayne, New Jersey 07474-3692

Ilona Gray
Executive Director
(201) 595-7172

Senate Committee on Labor, Industry, and Professions
and Assembly Committee Energy and Environment
Comments for Public Hearing on SB 3079 and AB 4171

The Alliance for Environmental Concerns, Inc. is a not for profit organization representing through its association members a majority of the professional pesticide applicators in New Jersey as well as those whose livelihood is dependent upon the appropriate use of pesticides in New Jersey. A list of these association members is attached to these comments. As part of its mission the Alliance issues newsletters updating its members on regulations, legislation and educational information affecting pesticide use. The Alliance for Environmental Concerns was founded in 1981 to help address the complicated issues regarding pesticides in our state.

Pge. 1,Section 6.a. EXPANDED SCIENTIFIC MEMBERSHIP:
The current mission of this nine member council is to advise the department of environmental protection in matters relating to the control, regulation and use of pesticides. The council is presently composed of scientists, a farmer, a professional applicator, and and others serving as Governor appointees. Since its mission is to advise on technical matters, we support the broadening of the technical members of the council, but wish to strengthen the credential requirements.

Redefine Toxicologist.The bill would substitute a toxicologist with an individual with "training and experience in toxicology". We recommend that the council have a board certified toxicologist.

Redefine Ecologist For the "ecologist" the bill would have an individual with training or experience in ecology. There are no boards of certification for an ecologist, therefore we recommend that the bill specify an individual with a Ph.D. in Ecology and at least three years of professional experience in New Jersey.

Support MD , Integrated Pest Management Expert and Hydrologist. We believe that expanding the board to include a medical doctor and an groundwater hydrologist are constructive additions to the council.

NON SCIENTIST/ NON-USER: Several of the proposed additions will hinder the efficiency of the council by the addition members whose mission is not consistent with the mission of the council. Included among these is the "organic farmer" appointee. Since organic farmers are by definition opposed to the use of pesticides without regard to safety or benefit, they hold views that are diametrically opposed to the mission of the Pesticide Control Council.

43x

ORGANIC FARMER-OPPOSED. (1).The "organic" farmer represents less than 1 percent of the farming community. (2)."Organic Farmers" often hold unscientific opinions concerning pesticides. For example a number of the "biological" or "natural" pesticides advocated by "organic" farmers are not registered in New Jersey. Many of these "organic" farmers believe that these products are relatively harmless. Several of these natural products are more toxic than many commonly used synthetic pesticides. For example, nicotine, contains a "DANGER" label and Rotenone is extremely toxic fish killer. (3) The bill does not specify or define what an "organic" farmer really is and to defer to "recognized organizations of organic farmers" is an abnegation of responsibility. (4). Organic farmers by definition have little or no experience with pesticides.

PUBLIC INTEREST ORGANIZATION and FARM WORKER:
(1) A committee with 16 members becomes a bureaucracy unto itself. We recommend that the bill expand the council to **no more than 12 members** to keep it operating efficiently. This can be done without sacrificing the diversity of opinion that the bill is seeking. (2) The public at large is already adequately represented with the designates from the Commissioner of Health, Dean of Cook College and the Secretary of Agriculture. (3). **The farm worker as well as other workers who may be occupationally involved as non-applicators to pesticides are best represented by the occupational safety and health expert who holds a Medical degree rather than a "farm worker" per se.**

FARMER and PESTICIDE APPLICATOR: These individuals can provide valuable input to the council and to the DEP on how pesticides are used and the impact on their use of proposed regulations. Their presence on the council will help insure that regulatory activities take into account actual practices.

Pge.4, Section 3 (New Section)
The Council is advisory to the Commissioner of the DEP and should not go outside the normal chain of command by reporting to the Governor and the Legislature with recommendations for administrative actions without the approval of the DEP.

Pge.4, Section 5. (New Section)
We suggest that changes to the wording be made as follows: The department shall conduct a training program for persons working under the direct supervision of a certified pesticide applicator registered with the Department pursuant to the Pesticide Control Act of 1971 or may approve a training program conducted by applicator industries.

Pge.5, Section 7.(New Section) Prohibition of Aerial applications of broad spectrum pesticides to non-agricultural lands:
This limits by law the options available to control pests in a safe, economical, and effective manner. The decision to use one product over another in a local situation should not be made by the state law. These choices are best made based on local conditions and situations. There are areas of the state that cannot be reached by land which include insect breeding areas. The procedures proposed in the Section 7B for dealing with aerial applications on an emergency basis only would be difficult and expensive to address and could not be done so in a timely manner. In utilizing integrated pest management principles, the timeliness of the application is one of the most important factors in minimizing the use of pesticides and maximizing their benefit.

This provision of the act effectively bars all aerial applications to protect trees since, strictly speaking, Bacillus thuringiensis is not a narrow spectrum pesticide. There may be no narrow spectrum chemical pesticides. The Audubon Society is opposed to the use of Bt because it kills a wide range of lepidopterous insects, and therefore it adversely affects the bird population.
The bill should not take on the challenge of legislating pesticide application techniques.

Pge. 5, Section 8.(New Section) Establishment of notification zones and procedures for avoiding pesticide exposure:
Regulations that address this issue are already in place. They were the result of over two years of public meetings and were carefully drafted by the DEP. The proposed bill would create the need to redevelop the notification procedures and would consume resources that are sorely needed elsewhere within the DEP.

The concept of notification by mail, phone or personal service was addressed in the public hearings held during 1987 and 1988. It was rejected after being duly considered because it is totally unworkable. The proposal to notify by mail, telephone or personal service should be limited to those individuals who so desire that notification. These individuals can register with the DEP and or the DOH. This list could be available as public record to inform applicators of persons requiring such notification.

Area wide spraying for mosquito control would require providing notification to thousands of people, often within the time frame of less than six hours. Providing personalized service envisioned in this bill would mean one of two things: either astronomical costs to provide notification or doing without adulticiding when mosquito populations require treatment. Such spraying may be done under emergency conditions. Since the state has already eliminated the early warning system that monitors mosquito borne diseases, however, such emergencies will only be realized when someone is either seriously ill or dead from a mosquito

borne disease. Our tourist industry is very dependent upon a pleasant outdoor experience, and this bill as proposed would make this difficult to impossible to achieve.

The notification requirements for municipal, highway, utility rights of way and other government agency pesticide applications would be cost prohibitive. For example railroad right of way treatment would become an extremely expensive operation given the numbers of individuals who live within a notification zone of railroad yards, terminals, and track. Railroad labor regulations often require for safety and fire prevention weed control. These costs would be passed on to our mass transit system at a time when mass transit is needed to help solve some very serious environmental problems.

Posting of pesticide applied areas was started in 1989. We urge that this approach be given enough time to determine its value as well as the best mechanism to achieve the desired results.

Pge. 8, Section 15. (New Section) Reporting of Incidents:
The bill requires that physicians and veterinarians report incidents of pesticide exposure to the Department of Health. The approach is too broad and if enforced with the language proposed would dilute valuable information with the unsubstantiated reports.

We suggest that the phrase"incidents of pesticide exposure" be substituted by " **clinically determined evidence of adverse effects from pesticide exposure"** , and that the DEP in cooperation with the Department Health devise a standard reporting format so that information gathered can be best put to use. We further suggest that the Department of Health advise or report to the DEP on all reports filed by physicians and veterinarians.

In incidents where pesticides have caused adverse effects an investigation by the DEP should be required to determine if the pesticide exposure was caused by improper application, mixing or loading of the pesticide.

Pge.10, Section 20 (New Section) Civil Action for violation of the Act:
The right to sue for damages already exists under current law. The bill proposes that any violation, even those that have no substantiated damage related to it, would be subject to compensatory damages. The bill would permit any individual who has been exposed to pesticides resulting from a violation of this act the ability to sue for damages. Exposure does not equate to damage. Simple exposure without damage provides no basis for a just claim of damages. Actual damage has to be shown in order to determine what compensatory award is to be made.

Violations should be dealt with through a system of fines and cancellation of applicator certification or business licenses.

Pge. 11,Section 21 (K). DEP fees will reflect actual or projected expenses incurred by the department for registration, certification and permit fees:

Current funding sources for the DEP include fees, EPA grants, and State Treasury appropriations. These funding sources should remain in place. To permit the DEP to cover state short falls in funding is abnegation of legislative responsibility. It permits a regulatory agency to "tax" its constituents for its actual or projected costs. The bill leaves no checks and balances and permits an easy abuse of power by the DEP. This approach to regulatory funding is unprecedented in any state for pesticide regulations.

The purpose of the DEP in pesticide regulations is serve the public benefit. Funding on an actual or projected basis is contrary to this purpose. (1) Actual costs for registration of minor use pesticides often critical for quality integrated pest management would be the first victim of this funding approach. Product registrations for these products would be dropped and their benefits lost to NJ farmers, pesticide applicators, and the public.
(2). Certification training provides long term benefit to the public. If fewer applicators become certified because of the expense which is very likely to occur, their service fees will increase without additional benefit to the public. Fewer applicators means delays in pesticide application especially during emergencies and this is contrary to the principles of integrated pest management. Fewer applicators means less service to the public and increased risk of poor pest control in hospitals, casinos, restaurants and other industries critical to the economy of our state including urban landscapes, golf and other amenity areas.

Page 12, No. 22. Section 10 (B) Fines and Penalties:

The fines and penalties proposed represent similar amounts covered under Federal environmental laws. The proposed bill should take into account that these fines would be confiscatory to most small businesses. Some relief from having to pay both Federal and State fines for the same offense should be allowed.

The Alliance welcomes the opportunity to discuss any of the above concerns in detail with the members of the Senate Labor, Industry and Professions Committee, and the General Assembly Energy and Environment Committee. We look forward to continuing working with these committees to enact the best possible bill.

Thank you for the opportunity to present our Association's concerns.

AEC

The Alliance For Environmental Concerns, Inc.

P.O. Box 3692
Wayne, New Jersey 07474-3692

Ilona Gray
Executive Director
(201) 595-7172

THE ALLIANCE FOR ENVIRONMENTAL CONCERNS MEMBER ASSOCIATIONS

NJ ARBORIST ASSOCIATION

NJ NURSERY AND LANDSCAPE ASSOCIATION, INC.

NJ TURFGRASS ASSOCIATION

NJ CHRISTMAS TREE GROWERS ASSOCIATION

NJ CEMETERY ASSOCIATION

GOLF COURSE SUPERINTENDENTS ASSOCIATION OF NJ

NJ CHAPTER OF INTERNATIONAL SOCIETY OF ARBORICULTURE

NJ STATE FLORISTS' ASSOCIATION/NJ PLANT & FLOWER GROWERS ASSOCIATION

NJ PEST CONTROL ASSOCIATION

BERGEN COUNTY LANDSCAPE CONTRACTORS ASSOCIATION

COUNTY BOARDS OF AGRICULTURE FOR ATLANTIC, MONMOUTH, PASSAIC, AND MORRIS COUNTIES

NJ FARM BUREAU

CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION

CHEMICAL INDUSTRY COUNCIL

PESTICIDE ASSOCIATION OF NEW JERSEY

NORTH JERSEY LANDSCAPE ASSOCIATION

NEW JERSEY COALITION FOR ALTERNATIVES TO PESTICIDES
P.O. BOX 627
BOONTON, NEW JERSEY 07005
(201) 334-7975

SUMMARY OF SENATE BILL NO. 3079

EXPANSION OF PESTICIDE CONTROL COUNCIL (Pages 1, 2, 3)

The Pesticide Control Council, an advisory body to the NJ Department of Environmental Protection, would be expanded to 13 members representing the general public. Their training and/or experience must be in the following areas: toxicology, ecology, occupational safety and health, groundwater hydrology, farming, organic farming, fish, game and wildlife issues, integrated pest management, farmworker issues, pesticide applicator issues, public interest issues as well as one person employed by a local or county health agency and one employed in pesticide manufacturing.

The bill gives the Pesticide Control Council the power to study issues relating to the use, application, disposal and regulation of pesticides.

The bill empowers the Pesticide Control Council to hold public hearings and to review the findings of the Pesticide Technical Advisory Committee and provide recommendations to the commissioner.

The bill requires the council to submit to the Governor, commissioner and Legislature an annual report detailing its activities and recommendations for legislative or administrative action.

CREATION OF A PESTICIDE TECHNICAL ADVISORY COMMITTEE (Page 3)

The committee shall consist of two members representing the Department of Environmental Protection and two members representing the NJ Department of Health as well as not more than five members with scientific expertise to evaluate pesticides.

The committee is to advise the Pesticide Control Council and the Department of Environmental Protection and must review and make recommendations concerning technical studies on pesticides; assess pesticides and develop criteria for the scientific evaluation of pesticides as well as a priority system for such evaluations. The committee must meet at least quarterly and must submit an annual report of its activities to the Pesticica Control Council.

REQUIRES DEP TO CONDUCT A TRAINING PROGRAM FOR PERSONS WORKING UNDER THE DIRECT SUPERVISION OF PESTICIDE APPLICATORS (Page 4)

ALLOWS THE DEP TO REQUIRE THE REGISTRATION OF STRUCTURAL PEST INSPECTORS AND MANDATES SUCH REGISTRATION TO BE BASED ON A COMPETENCY STANDARD (Page 4)

BAN ON AERIAL APPLICATION OF BROAD-SPECTRUM PESTICIDES FOR NON-AGRICULTURAL USE WITH EXEMPTIONS PROVIDED (Page 4)

This ban does not apply to mosquito control if the DEP determines that no practical alternative exists or to other environmental, health or agricultural emergencies as defined by DEP regulation. In the case of such emergencies necessitating an exemption from the ban, the DEP must attempt to notify the affected public and interested people prior to aerial application. The DEP must provide a written report on the type of emergency requiring immediate action.

REQUIRES THE DEP IN CONSULTATION WITH THE DEPARTMENT OF HEALTH AND DEPARTMENT OF AGRICULTURE TO ADOPT REGULATIONS ESTABLISHING NOTIFICATION REQUIREMENTS THAT WOULD ALLOW ALL PEOPLE WHO MAY BE EXPOSED TO PESTICIDES THE OPPORTUNITY TO MINIMIZE THEIR EXPOSURE (Page 4)

REQUIRES DEP TO ESTABLISH A PERMIT PROGRAM FOR MUNICIPAL GYPSY MOTH CONTROL NOT UNDER THE JURISDICTION OF THE DEPARTMENT OF AGRICULTURE SPRAY PROGRAM (Page 5)

ALERT PHYSICIANS CONCERNING SYMPTOMS OF PESTICIDE POISONING (Pages 6, 7)

The bill requires the Commissioner of Health to establish a mechanism for the reporting by physicians and veterinarians of incidents of pesticide exposure to the Department of Health but a mechanism is required to be developed by which DEP and DOH will both be kept informed.

The Department of Health must develop a program to alert physicians and other health care professionals to the symptoms, diagnosis, treatment and reporting of the short-term and long-term health effects of pesticides. The DOH must train those who provide health services to farmworkers in this area.

PROTECTION FOR FARMWORKERS (Pages 5, 6)

The DEP must provide to all farm owners pesticide use forms which the farm owners must complete concerning the crop grown, pesticide/s applied to the crop, re-entry time for treated fields and exact date and location of application. These forms must be posted for the benefit of farmworkers.

DEP in consultation with DOH must prepare pamphlets for farm owners to provide to farmworker employees. The pamphlets must include general pesticide health and safety as well as a list of health providers trained in the area of pesticides.

The DEP must develop a training program for farmworker employees that must include the health hazards of pesticides; methods to avoid exposure; education concerning symptoms and treatment; methods to determine what pesticides are applied; and laws pertaining to farmworker rights. The farmworker employee has the right to request from the farm owner the Material Safety Data sheets on each pesticide applied or stored.

The farm owner is responsible for training his farmworker employees.

Farmworkers have the right to refuse to re-enter an area before minimum re-entry time has elapsed or if they did not receive information which they were required to be given.

AN EMPLOYEE MAY NOT BE DISCHARGED OR PENALIZED FOR HAVING EXERCISED HIS LEGAL RIGHTS (Page 7)

An employee has the right to file a complaint with the Department of Labor alleging violation of these rights.

ANY PERSON MAY BRING A CIVIL ACTION AGAINST DEP OR DOH FOR FAILURE TO ENFORCE THE PROVISIONS OUTLINED IN THIS BILL OR REGULATIONS (Pages 7, 8)

The person bringing civil action does not have to prove personal loss or damage.

ANY PERSON WHOSE PROPERTY OR PERSON IS EXPOSED TO A PESTICIDE RESULTING FROM VIOLATION OF THE LAW MAY BRING CIVIL ACTION AGAINST ANY PERSON. COMPENSATORY AND/OR PUNITIVE DAMAGES MAY BE AWARDED FOR VIOLATIONS WHICH ARE WANTON, RECKLESS OR MALICIOUS (PAGE 8).

THE BILL GIVES DEP THE POWER TO CONDUCT RESEARCH TO DETERMINE THE HAZARDS OF PESTICIDES; CONDUCT PESTICIDE CONTROL EDUCATION PROGRAMS; INSPECT PLACES OTHER THAN PRIVATE RESIDENCES TO INVESTIGATE VIOLATIONS; INSTITUTE LEGAL PROCEEDINGS FOR PREVENTION OF VIOLATIONS; AND RECEIVE MONEY FROM FEDERAL, STATE, COUNTY OR LOCAL GOVERNMENTS FOR THE STUDY OF PESTICIDES.

GIVES DEP THE POWER TO CHARGE FEES AND TO HAVE FEES DEPOSITED IN THE ENVIRONMENTAL SERVICES FUND FOR THE OPERATION OF THEIR PESTICIDE CONTROL PROGRAM (Page 9).

ANY PERSON WHO VIOLATES THIS ACT OR A RELATED ADMINISTRATIVE ORDER OR A COURT ORDER OR WHO FAILS TO PAY A CIVIL ADMINISTRATIVE PENALTY IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED $25,000 PER DAY OF THE VIOLATION. EACH DAY THE VIOLATION CONTINUES WILL CONSTITUTE A SEPARATE AND DISTINCT VIOLATION (Pages 10, 11).

ALL FINES COLLECTED WILL BE DEPOSITED IN THE ENVIRONMENTAL SERVICES FUND AND USED TO SUPPORT PESTICIDE CONTROL PROGRAMS IN THE DEP (Page 11).

A PERSON IS LIABLE FOR THE ACTS OF HIS EMPLOYEES ACTING IN THE SCOPE OF THEIR EMPLOYMENT (Page 10).

FOR FURTHER INFORMATION, CONTACT NEW JERSEY COALITION FOR ALTERNATIVES TO PESTICIDES (201-334-7975).

New Jersey Turfgrass Association

P.O. Box 231 • New Brunswick, New Jersey 08903 • [redacted]

NEW JERSEY TURF GRASS ASSOCIATION
1991 DIRECTORY OF OFFICERS AND EXECUTIVE COMMITTEE

DR. RICHARD HURLEY, PRESIDENT
LOFTS SEED COMPANY
BOUND BROOK, N.J.

MR. ROBERT DOBSON, VICE PRESIDENT
MIDDLETOWN SPRINKLER COMPANY
PORT MONMOUTH, N.J.

DR. RALPH ENGLE, SECRETARY
MILLTOWN, N.J.

MR. ROBERT DICKISON, PAST PRESIDENT
UPPER MONTCLAIR COUNTRY CLUB
CLIFTON, N.J.

MR. JOSEPH BIANCO, TREASURER
GREEN THUMB SERVICES
NORTH BRUNSWICK, N.J.

DR. RICHARD CATON
TURFCON
WOODBURY, N.J.

DR. BRUCE CLARKE
DEPT. OF PLANT PATHOLOGY
RUTGERS
NEW BRUNSWICK, N.J.

MR. SAM LEON
LEON'S SOD FARM
FRENCHTOWN, N.J.

MR. ARMAND LE SAGE
WHITE BEECHES GOLF AND COUNTRY CLUB
HAWORTH, N.J.

MR. PETER MC CORMICK
STORR TRACTOR CO.
SOMERVILLE, N.J.

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New Jersey Turfgrass Association

P.O. Box 231 • New Brunswick, New Jersey 08903 • [redacted]

MR. LOUIS MCKAMEY JR.
[illegible]
TRENTON, N.J.

MR. JOSEPH MANNING, JR.
[illegible]
[illegible]

MR. EDMUND MILEWSKI
[illegible]
MORRISTOWN, N.J.

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609

ECONOMIC VALUE OF THE NEW JERSEY TURFGRASS INDUSTRY

A SUMMARY REPORT

COOPERATIVE EXTENSION SERVICE
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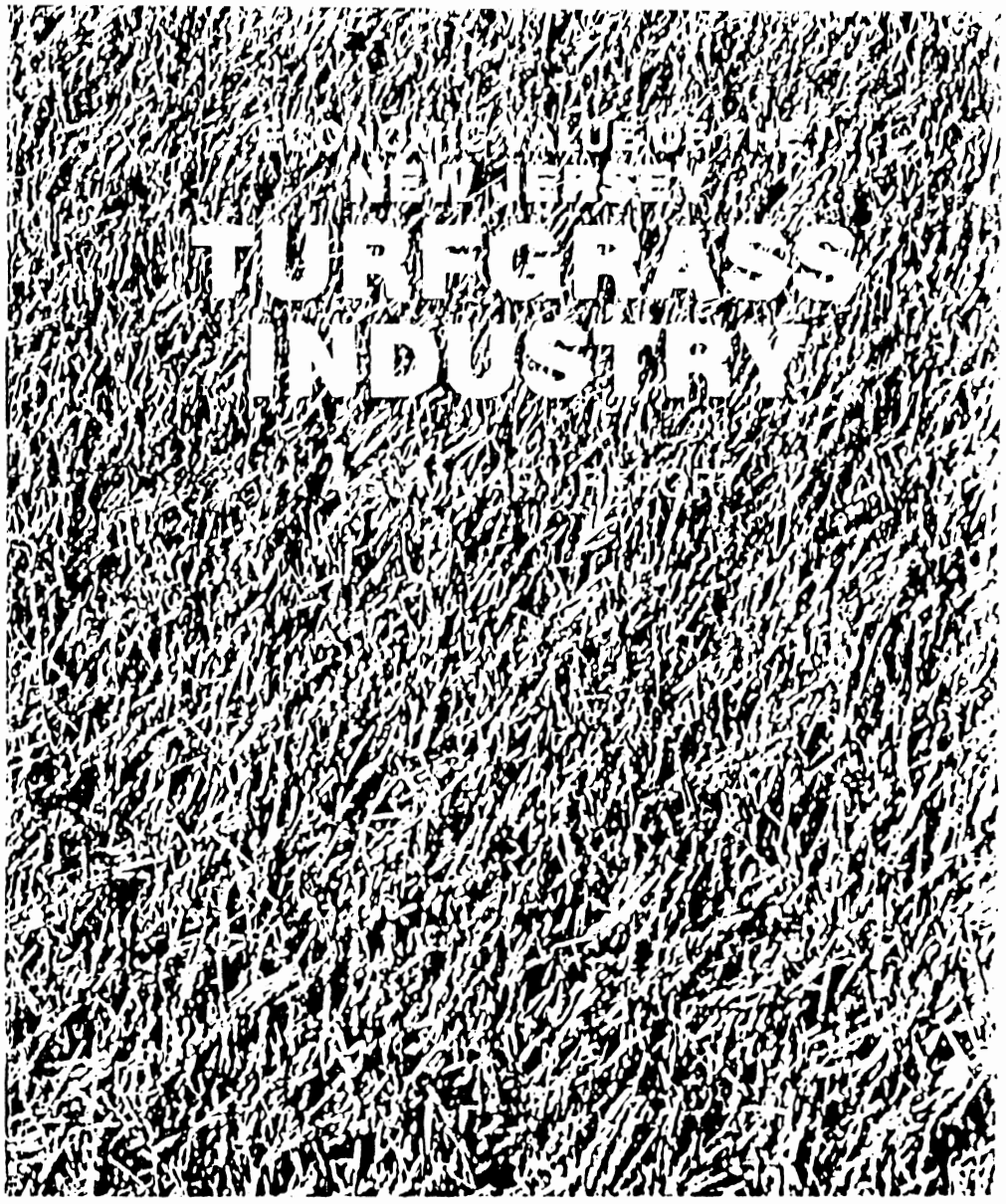
NEW BRUNSWICK



THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
NEW JERSEY COOPERATIVE EXTENSION SERVICE

EC-70

ECONOMIC VALUE OF THE NEW JERSEY TURFGRASS INDUSTRY

A SUMMARY REPORT

Dr. Henry Indyk
Extension Specialist in Turfgrass Management,
Cook College, Rutgers University

Dr. Daniel Bonsi
Asst. Professor, Department of Agricultural Economics
and Marketing, Cook College, Rutgers University

Dr. Pritam Dhillon
Assoc. Professor, Department of Agricultural Economics
and Marketing, Cook College, Rutgers University

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Acknowledgements

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The authors are grateful to Steve Turgeon, Director, for his encouragement and contributions to the original proposal which led to this report. The authors also express their appreciation to all those who participated in the survey, and hope that this report will serve the industry.

The publication of this report was made possible without charge through funds provided by the New Jersey Turfgrass Association.

COOPERATIVE EXTENSION SERVICE
COOK COLLEGE
RUTGERS—THE STATE UNIVERSITY OF NEW JERSEY
NEW BRUNSWICK

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table of contents

	Page
Acknowledgments	2
Introduction	4
State Estimates	8
Airports	6
Cemeteries	6
Commercial-Industrial	7
Golf Courses	11
Highways	15
Home Lawns	10
Houses of Worship	14
Institutions	13
Multifamily Dwellings	13
Parks	5
Public Schools	15
Sod Farms	13

ECONOMIC VALUE OF THE NEW JERSEY **TURFGRASS INDUSTRY** A SUMMARY REPORT

introduction

This report summarizes the findings of a one year study of New Jersey's turfgrass industry.[1] The purpose of the study was to determine the economic importance of the turfgrass industry and to provide a data base for research and education planning to meet the needs of the various segments of the industry. More specifically, the objectives were to estimate the area under turfgrass and the annual turf maintenance costs in the state for 1983.

Data for the study were collected through mail and telephone surveys conducted between May and November of 1984. Both list frames and stratified random samples were employed in sample selection. Separate questionnaires were developed for each of the following 11 segments of the turfgrass industry:

- **Airports**
- **Golf courses**
- **Home lawns**
- **Institutions**
- **Parks**
- **Sod farms**
- **Cemeteries**
- **Highways**
- **Houses of worship**
- **Multifamily dwellings**
- **Public schools**

Another segment, the commercial-industrial sector, was not surveyed because no sampling technique compatible with project resources could be devised. The survey questionnaires were designed to collect data on:

Area of turf maintained
Turf maintenance expenditures on:
- Lawn care services
- Paid labor
- Fertilizer
- Lime
- Herbicides
- Fungicides and Insecticides
- Seed
- Sod
- Equipment repairs and parts
- Fuel

Turf maintenance equipment inventories
Unpaid labor used in lawn care

Annual maintenance costs were calculated as the sum of expenditures on labor, supplies and services and estimates of the value of equipment depreciation. Because of lack of information on actual investments in equipment, replacement value was used as a basis for depreciation. The total replacement value of equipment was divided by the estimated useful life to derive annual depreciation cost. No account was made for the interest cost of capital associated with the equipment. Estimates of labor used were converted into full time worker equivalents (FTW = 2,000 hours per year). Unpaid labor was valued at the minimum wage of $3.35 per hour.

Survey data were supplemented with secondary data for sectors with incomplete listings, such as cemeteries, houses of worship and multifamily dwellings. Final estimates of acreages and costs were developed through expansion of the survey results, multiplying sample totals by the population-to-sample ratios.

[1] The complete findings of the study are reported in "An Economic Survey of New Jersey Turfgrass 1983", New Jersey Agricultural Experiment Station Publication P-02530-1-85, available from the Department of Agricultural Economics and Marketing, Cook College, New Brunswick, NJ 08903 at a charge of $5.00 per copy.



All county park administrators, state park rangers, historical site curators and the directors of 175 municipal park and recreation administrations were surveyed through mailed questionnaires. While the response rate on county and municipal systems was somewhat limited, sufficient numbers of individual parks were represented to permit expansion. Seventy percent of the state parks and historical sites responded and demonstrated significant differences in size and usage so as to suggest a separate analysis from county and municipal parks.

Selected results are as follows:

Item	Total	Average per Park	Average per Acre
County and Municipal Parks			
Number of parks	3,062	—	—
Acreage (acres)	42,750	14.0	—
Annual maintenance cost ($)	23,901,325	7,806	559
Replacement value of equipment ($)	21,729,000	7,096	—
State Parks			
Number of parks	30	—	—
Acreage (acres)	2,453	81.8	—
Annual maintenance cost ($)	809,567	26,986	330
Replacement value of equipment ($)	1,203,200	40,107	—
All Parks			
Number of parks	3,092	—	—
Acreage (acres)	45,203	14.6	—
Annual maintenance cost ($)	24,710,892	7,992	547
Replacement value of equipment ($)	22,932,200	7,417	--
Labor employed	825	—	--

airports

All public and restricted access airports excluding military airports, seaplane ports, fire control airstrips and Newark International Airport were surveyed. While most had some turf areas and over half had turf runways, maintained turf acreage for this sector represented less than 1 percent of the state total. In addition, airport turfgrass was generally not well maintained. Mowing alone was the extent of turf management at most airfields.

Selected results are as follows:

Item	Total	Average per Airport	Average per Acre
Number of airports	76	—	—
Acreage (acres)	3,854	50.7	—
Annual Maintenance cost ($)	1,874,065	24,659	486
Replacement value of equipment ($)	2,720,650	35,798	—
Labor employes (FTW)	135	1.8	—

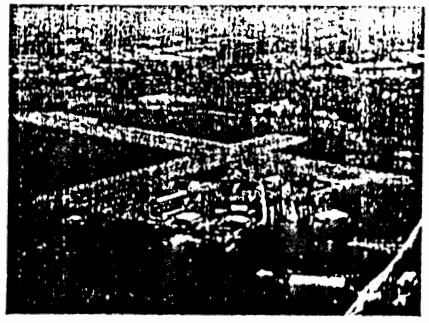
63X

cemeteries

Three sources of information were available on cemeteries in New Jersey: a list of members of the New Jersey Cemetery Association, a list of endowed cemeteries regulated by the New Jersey Cemetery Board, and a list of cemeteries provided by local tax assessors to the office of the state attorney general. There was substantial variation in the size and level of intensity of turfgrass maintenance in the sample. On average, however, cemetery turf maintenance was found to be costly and labor intensive.

Selected results are as follows:

Item	Total	Average per Cemetery	Average per Acre
Number of cemeteries	1,100	—	—
Acreage (acres)	16,500	15.0	—
Annual maintenance cost ($)	19,775,613	17,978	1,199
Replacement value of equipment ($)	21,339,350	19,399	—
Labor employed (FTW)	1,320	1.2	—







commercial/industrial

Included in this sector are corporate headquarters, major industrial complexities, larger shopping malls and office complexes, and areas of commercial strip development. Given the diversity in types, size, and location of the individual firms in this sector, sample survey methodologies such as list frames and area frames were ruled out. A survey of lawn care service companies focusing on their commercial accounts and secondary data sources were used to generate estimates of maintained turf acreage and maintenance costs. While one cannot place high levels of confidence in specific estimate calculated in this fashion, the general orders of magnitude of the results seem reasonable.

Selected results are as follows:

Item	Total	Average per Acre
Acreage (acres)	40,000	—
Annual maintenance cost (dollars)	70,000,000	1,750
Replacement value of equipment (dollars)	40,000,000	—
Labor employed (FTW)	4,000	—

state estimates

Summary Tables

Tables 1 through 4 provide an overall summary of the New Jersey turfgrass survey. Total area under turf was estimated at [illegible] acres with an annual maintenance cost of $452 million. Replacement value of the lawn care equipment was estimated at $1.4 billion. Over 1,100 [illegible] of labor were employed in lawn care, 30% of which was [illegible] unpaid family labor.

The largest area of turf was found on the most significant sector in terms of area, value of equipment, and maintenance costs was home lawns. Home lawns accounted for over three-quarters of all maintained lawn area and the value of lawn maintenance equipment in New Jersey. And under half of all turf maintenance costs were incurred by the home lawns sector. The home lawns sector employed over one fifth of the paid labor associated with turf maintenance in New Jersey. In addition, a substantial amount of unpaid labor was utilized in the home lawns. The related multifamily dwelling sector was much smaller in size but when considered with home lawns served to further increase the importance of turf [illegible]. The other prominent sectors in terms of [illegible] and maintenance costs were industrial [illegible] and golf courses.

Table 1 Total Maintained Turfgrass Acreage.

Sector	Acreage	Percent of Total
Airports	3,854	0.4
Cemeteries	16,500	1.9
Commercial-Industrial	40,000	4.6
Golf Courses	25,717	3.0
Highways	19,650	2.3
Home Lawns	660,000	76.4
Houses of Worship	7,770	0.9
Institutions	8,135	0.9
Multifamily Dwellings	9,850	1.1
Parks	45,203	5.2
Public Schools	23,200	2.7
Sod Farms	5,500	0.6
Total	865,379	100.0

Table 2 Annual Turfgrass Maintenance Costs.

Sector	Dollars	Percent of Total
Airports	1,874,065	0.4
Cemeteries	19,775,613	4.4
Commercial-Industrial	70,000,000	15.5
Golf Courses	49,416,808	10.9
Highways	4,805,192	1.1
Home Lawns	215,898,530[a]	47.7
Houses of Worship	11,066,239[a]	2.4
Institutions	7,943,966	1.8
Multifamily Dwellings	20,397,400	4.5
Parks	24,710,892	5.5
Public Schools	20,943,296	4.6
Sod Farms	5,615,832[b]	1.2
Total	452,447,833	100.0

[a]Does not include value of unpaid labor [b]Annual production costs

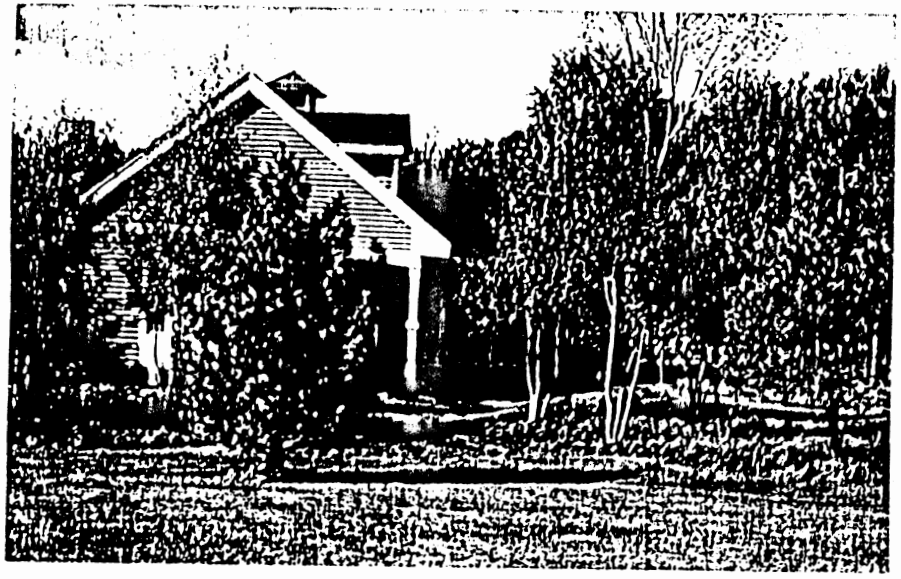
Table 3 Replacement Value of Turfgrass Maintenance Equipment.

Sector	Dollars	Percent of Total
Airports	2,720,650	0.2
Cemeteries	21,339,350	1.5
Commercial-Industrial	40,000,000	2.8
Golf Courses	114,038,868	8.0
Highway	10,524,000	0.7
Home Lawns	1,129,781,300	78.9
Houses of Worship	16,888,200	1.2
Institutions	4,027,150	0.3
Multifamily Dwellings	20,000,000	1.4
Parks	22,932,200	1.6
Public Schools	30,208,650	2.1
Sod Farms	18,066,600	1.3
Total	1,430,526,968	100.0

Table 4 Labor Employed in Turfgrass Maintenance.

Sector	Workers[a]	Percent of Total
Airports	135	1.0
Cemeteries	1,320	9.3
Commercial-Industrial	4,000	28.3
Golf Courses	1,920	13.6
Highways	130	0.9
Home Lawns[b]	3,075	21.8
Houses of Worship	280	2.0
Institutions[b]	530	3.8
Multifamily Dwellings[b]	640	4.5
Parks	825	5.8
Public Schools	1,100	7.8
Sod Farms	175	1.2
Total	14,130	100.0

[a]Paid full-time worker equivalents [b]Includes lawn-service company employees



home lawns

Home lawns are the most important sector of the turfgrass industry, both in acreage and total expenditure. Therefore, a large portion of the project's resources was devoted to data collection for this sector. New Jerey's 567 municipalities were stratified by housing density and median household income. Individual municipalities representative of each stratum were selected in proportion to the fraction of all homes occurring in the stratum. Households were selected by random generation of telephone numbers using exchanges keyed to target municipalities. Telephone interviews were completed for 484 homes of which 375 (79 percent) had lawns.

Selected results are as follows:

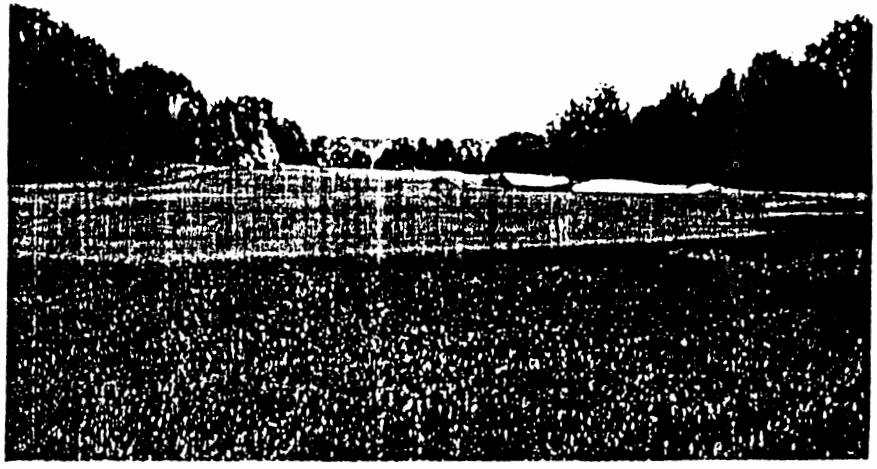
Item	Total	Average per Lawn	Average per Acre
Number of home lawns	2,200,000	—	—
Acreage (acres)	660,000	0.3	—
Annual maintenance cost ($)	215,898,530	98	327
Annual maintenance cost with family labor ($)	475,021,130	216	720
Replacement value of equipment ($)	1,129,781,300	514	—
Labor employed (FTW)	3,075	—	—
Unpaid labor (FTW)	38,675	—	—

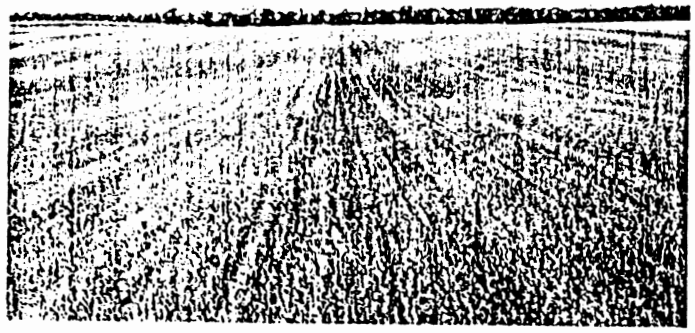
golf courses

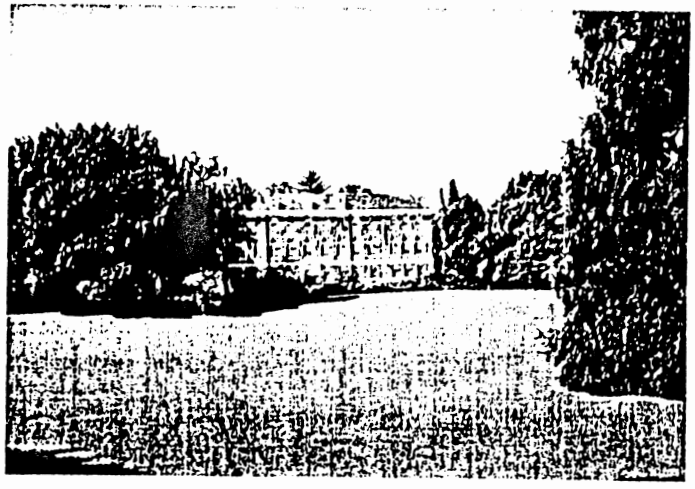
A list of all public and private golf courses was compiled from information provided by the New Jersey Golf Course Superintendents Association and the State Division of Community Affairs. Of the 75 responding superintendents, 56 percent were associated with private, 15 percent public, 9 percent semiprivate and 19 percent municipal- or county-operated courses. Most courses (72 percent) had 18 holes, 11 percent had 9 holes, and 9 percent had 27 or 36 holes. Responses to most of the survey questions were very complete, with the exception of irrigation costs. No estimate could be made for water costs or pumping costs.

Selected results are as follows:

Item	Total	Average per Course	Average per Acre
Number of courses	227	—	—
Acreage (acres)	25,717	113	—
Annual maintenance cost ($)	49,416,808	216,115	1,922
Replacement value of equipment ($)	114,038,868	502,374	—
Labor employed (FTW)	1,920	8.5	—









Because of their small number, all commercial sod producers in New Jersey were surveyed. The size of commercial sod farms ranged from 4 acres to over 1,000 acres. The New Jersey Department of Agriculture reported that 1,900 acres of sod were lifted in 1983. Sod production costs were calculated on a per acre lifted bases.

Selected results are as follows:

Item	Total	Average per Farm	Average per Acre
Number of sod farms	27	—	—
Acreage (acres)	5,500	203.7	—
Acreage lifted (acres)	1,900	70.4	—
Annual production cost ($)	5,615,832	207,994	2,956
Replacement value of equipment ($)	18,066,600	669,133	—
Labor employed (FTW)	175	6.5	—

All private and public institutions including colleges, universities, large private schools, correctional facilities, and mental health and veterans hospitals were grouped into this sector. While very diverse in size and nature, all but a few urban institutions had substantial lawn and athletic field areas. A low response rate to the mail survey for county colleges and prep schools which have extensive athletic fields probably results in conservative estimates for this sector.

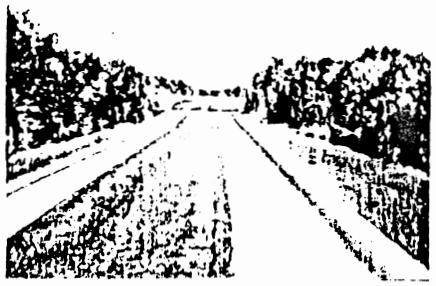
Selected results are as follows:

Item	Total	Average per Institutions	Average per Acre
Number of institutions	80	—	—
Acreage (acres)	8,135	102	—
Annual maintenance cost ($)	7,943,966	99,300	977
Replacement value of equipment ($)	4,027,150	50,339	—
Labor employed (FTW)	530	6.6	—

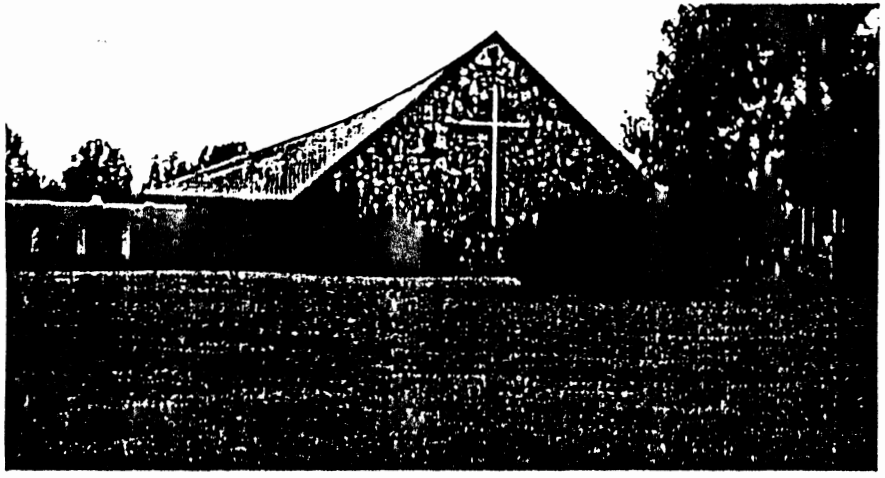
An important change in the housing stock in New Jersey in recent years has been the construction of multifamily dwellings including garden apartments, condominiums and townhouses in suburban areas. A survey of a stratified random sample of garden apartment and condominium managers showed substantial differences between the two groups with respect to lawn care expenditures. The condominium and townhouse complexes spent much more per acre than garden apartments. Garden apartment owners were also less likely to use a lawn care service and to irrigate.

Selected results are as follows:

Item	Total	Average per Unit	Average per Acre
Number of housing units	200,000	—	—
Acreage (acres)	9,850	0.05	—
Annual maintenance cost ($)	20,397,400	102	2,071
Replacement value of equipment ($)	20,000,000	100	—
Labor employed (FTW)	640	—	—







houses of worship

Since most houses of worship outside urban areas have lawns that are generally well maintained, it was hypothesized that they represent an important sector in the turfgrass industry. However, no list of houses of worship was available for New Jersey. Secondary data were used to generate estimates of the number of houses of worship in the state, and a random sample of 155 houses of worship was generated using the *Yellow Pages* of telephone books. A very poor response rate and the poor quality of data reported permitted only rough estimates of turf area and maintenance costs for the sector.

Selected results are as follows:

Item	Total	Average per House	Average per Acre
Number of houses of worship	5,000	—	—
Acreage (acres)	7,770	1.6	—
Annual maintenance cost ($)	14,671,519	2,934	1,888
Replacement value of equipment ($)	16,888,200	3,378	—
Labor employed (FTW)	280	—	—
Unpaid labor (FTW)	470	—	—

highways

Turf area and cost estimates for the highway sector represent roadside turf acreage for the following major highway systems: Garden State Parkway, New Jersey Turnpike, Palisades Interstate Parkway, Atlantic City Expressway and that under the control of the New Jersey Department of Transportation. It was felt that these systems account for most of the roadride turf maintenance in New Jersey. Although many municipalities do mow roadsides, the activity is more often "weed cutting" than real turf maintenance. In addition, a very poor response from county road departments prevented accounting for roadside acreage associated with those systems. The estimated per acre turf maintenance cost was the lowest for any sector.

Selected results are as follows:

Item	Total	Average per Acre
Acreage (acres)	19,650	—
Annual maintenance cost (dollars)	4,805,192	245
Replacement value of equipment (dollars)	10,524,000	—
Labor employed (FTW)	130	—

public schools

A list of 592 public school districts was obtained from the New Jersey Department of Education. A sample of 100 school districts was selected, with a proportion of the sample drawn from each county in relation to the proportion of all New Jersey school districts in each county. Survey responses showed that school systems had extremely varied amounts of maintained lawn areas and expenditures on lawn care. Some districts had almost no turf maintenance budget, while others supported extensive lawn care programs. On average, per acre turf maintenance costs were in the midrange for the sectors examined in this study.

Selected results are as follows:

Item	Total	Average per School	Average per Acre
Number of public schools	2,288	—	—
Acreage (acres)	23,200	10.1	—
Annual maintenance cost ($)	20,943,296	9,154	903
Replacement value of equipment ($)	30,208,650	13,203	—
Labor employed (FTW)	1,100	0.5	—

DELSEA
SANITATION SERVICES INC.
24 S. 41st STREET, CAMDEN, NEW JERSEY 08105

PHONE: CAMDEN (609) 966-3355
WOODBURY (609) 845-3355
BLACKWOOD (609) 227-3355

January 22, 1991

MISTER CHAIRMAN,

RE: BILLS SB 3079 & AB 4171

Allow me to introduce myself.

I am a professional earning my living through environmental pursuits, licensed in the States of New Jersey, Pennsylvania and Delaware, as well as Federally accepted.

I promote the quality of life through my profession for many years before the advent of the Federal EPA or the New Jersey DEP. In the beginning PCO manufactured our own pesticides using dangerous chemicals to control disease carrying insects and rodents. We tried until we found the material that would affect the insect we were attempting to control. I graduated from the school of hard knocks.

Chief Justice of the united States Supreme Court, Oliver Wendall Holmes, so eloquently stated, "THE LIFE OF THE LAW IS NOT LOGIC, BUT EXPERIENCE." My credentials are such.

I am recognized as a Conservationist and Environmentalist and have numerous awards for such, one being the Rothrock Award from Pennsylvania for my efforts in conservation.

My company has added to the endless battle to preserve life by the elimination of disease carrying insects and rodents. At this time we have in place all the necessary laws to do just that and they are working. In the last 65 years we have added 25 years to life through Sanitation, Medicine and Pest Control. This State has some of the strongest Environmental Laws in place, which has already made companeis leave our State. This bill would only add to the exiting and would stop new companies from entering. Your constituents would not have the opportunity for employment and it would reduce their rights to happiness, because of environmental over kill. There is a path that we must take and we are already there, California Constituents recently voted for Pesticides. They realize that without them it would be chaos. Your constituents may be seeing the same thing. To vote for these bills would be a backward step. It will set back the forward motion of this States ability to attract new business, therefore cutting back on employment for your constituents. I believe your vote against these bills is a vote for New Jersey, we need a balance but not an over kill because of Ecological Paranoia.

cc: Senator Jackman
Senator O'Connor, Jr.
Senator Cardinale
Senator DiFrancesco

Sincerely Yours,

Robert Cryan
President

68X

January 23, 1991

Mister Chairman,

I am concerned with the lack of respect this committee has for the law: More specifically with the disregard for the State Constitution.

When I attended School, we were taught CIVICS. The State Constitution stated that ALL MONIES SHALL BE DEPOSITED INTO THE GENERAL FUND. I am under the impression that you took an oath to uphold that constitution. In your bill, page 11, lines 22 through 27, you deposit all fines collected in a slush fund for the DEP, without any controls, such as outside auditing, that allows this department a wide latitude of possible irregularities, and/or, illegalities.

More importantly, your bill permits the DEP to continue harassing your constituents with alledged accusations that may or may not have credibility, depending on the DEP needs for extra money to pay for overtime, unneeded equipment, et alt., that they may collect by accusing some businessman, citing him, holding a hearing, and fining him such exhorbitant funds that he may have to go out of business.

In the event he is not guilty, he cannot afford to go to court, as DEP will have infinite resources from our taxes to pay for attorneys, etc., that he cannot match, and will be obliged to pay the fine. The DEP is the Policeman, the Judge, the Jury, and the Executioner without any checks or balances on their actions that is required by our system of justice.

Respectfully Yours,

Raymond V.S. Miller

Reference to S3079 and A4171 hearing this date.

cc: Raymond LESNIAK, C.J. JACKMAN, E.T. O'CONNOR, Gerald CARDINALE, D.T. DiFRANCESCO, Robert G. SMITH, Neil M. COHEN, Thomas J. DUCH, Arthur R. ALBOHN, Jack COLLINS, Lee LASKIN, Walter RAND, Wayne R. BRYANT, Joseph J. ROBERTS, JR., et alt.

1519 Greenwood Avenue,
Camden, N.J., 08103

January 30, 1991

Mister Chairman,

This is to comply with your request that I submit in writing within fourteen days, the presentation that I made. I attended with Robert Cryan from DELSEA Sanitation Services, Inc., the hearing on S3079 held January 23, 1991.

During the hearing, you alledged that it was consitutional for DEP to place funds in escrow for their Department use without depositing the fees and fines collected in the General Fund.

I would appreciate it if you will enlighten me as to when and under what constitutional enactment the Department was granted exemption from the constitutional requirement. I believe that the State Constitution dictates that the voters must pass the change in the Constitution for this deviation.

When I raise the question with you or others, everyone offers precedence that it has been going on for some period of time. This does not change the circumstances; it will not be a right if two or more wrongs are followed. There must be a routine as is spelled out according to the New Jersey Constitution. You took an oath to uphold that constitution when you were voted in office. Please abide by your oath.

Please afford me a timely response so that I may determine the course for further action against those who vote pro this constitutional violation of your oath.

Please inform me of any Constitutional exemption we may have voted that I am unaware of, if I am wrong.

Respectfully Yours,

Raymond V.S. MILLER

70X

ASSOCIATED EXECUTIVES OF MOSQUITO CONTROL WORK IN NEW JERSEY

STATEMENT TO THE SENATE LABOR, INDUSTRY & PROFESSIONS COMMITTE

and

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

January 23, 1991

COMMENTS ON S3079 and A4171

Presented by Judy A. Hansen,Superintendent
Cape May County Mosquito Commission
P.O. Box 66
Cape May Court House,New Jersey 08210
Telephone: 609-465-9038

ASSOCIATED EXECUTIVES OF MOSQUITO CONTROL WORK IN NEW JERSEY
P.O. Box 66
Cape May Court House, New Jersey 08210

My name is Judy Hansen and I am Superintendent of the Cape May County Mosquito Commission in New Jersey. I am also immediate Past - President of the American Mosquito Control Association, representing professional and scientific agencies throughout the 50 states and over 100 countries. I speak to you today representing the mosquito control community in New Jersey through the Associated Executives of Mosquito Control Work in New Jersey. We wish to comment on Senate Bill 3079 and an identical bill ,Assembly Bill 4171.

First, a bit of background information. Mosquito control began in America and in New Jersey around the turn of the century for reasons of disease prevention and to increase the comfort and well-being of our citizens and their domestic animals. Today, the reasons have not changed, but the methodologies have become sophisticated, scientific and even high tech. Control is based on surveillance, research data and need. Modern mosquito control programs are designed to benefit or to have minimal adverse effect on people, wildlife and the environment.

Specific programs include source reduction using larvicides and water management techniques. Our primary methods of control are aimed at reducing mosquito larvae concentrated in areas where they breed. Our efforts here are aimed at preventing large numbers of adult mosquitoes from emerging and dispersing. Continued efforts through the season to keep the adult mosquito populations at a low level is not only for nuisance control but it is also our primary defense against disease. Water management, larviciding and localized adulticiding are done to prevent the need for large scale widespread adulticiding.

Along the East Coast, Eastern Equine Encephalitis(EEE) is a threat to swelling coastal populations. The disease is 70% fatal to humans with serious residual brain damage to survivors. Last summer the Centers for Disease Control issued warnings in five states for EEE and the state of Florida had a St. Louis Encephalitis(SLE) outbreak. These are all mosquito-borne diseases. Mosquitoes from wetlands may disperse from 5 to 50 miles and invade, annoy and transmit disease to nearby communities.

With this background in mind, I would like to ask for changes in these proposed bills so that mosquito control so vital to the health and well-being of citizens and visitors to New Jersey can be continued using the most environmentally acceptable and economically sound methods available to us. Timeliness in mosquito control is the key to its success.

1. We recommend the number of members on the Pesticide Council not be increased with the rationale that the larger the Council becomes, the more cumbersome and unworkable it is. If the decision is made to increase the Council, we respectfully request a member of the mosquito control community be appointed.

2. Under Section 7 a(New Section) we suggest the language read "No person may aerially apply any broad-spectrum chemical pesticide on land not actively devoted to agriculture or horticultural use, except in the case of professional mosquito control provided by County and State Government Agencies(pursuant to State Statutes 26: 9-1 et. seq.), or where the department determines that no practical alternative is available.

The reason: Mosquito Control is already regulated by the Department of Environmental Protection, Bureau of Pesticide Control, with regards to pesticides, their use and only specific materials may be used according to the recommendations of Rutgers University, Agricultural Experiment Station, where research on pesticides is ongoing. We feel the proposed language is ambiguous and subject to interpretation. The purpose of our chemical applications are preventative in nature. We prefer to avoid an emergency that would entail widespread adulticiding applications, such as the one Massachusetts had this past summer, when small localized adult applications would solve the problem.

3. Section 8c. Notification. We request the last paragraph in this section read as follows." To the greatest extent practicable, notification shall be made directly by mail, telephone or personal service to affected persons prior to a pesticide application except for notificati given by a State or County Mosquito Control agency or commission operating under the provisions of NJSA 26:9-1 et seq. and Federal FAA Regulation 137

The State and County Mosquito Control commissions and agencies fulfill notification procedures in compliance with NJAC 7:30-9.8 and FAA Part 137.51. When we conduct aerial adulticiding applications we noti local police departments, local municipal halls, two local radio stations approximately 12 hours in advance. We telephone any person who had requested we call them in advance and we comply with the monthly legal notice in two local newspapers. These procedures we can live with but we cannot live with direct mail notification and personal contact. It is no possible with regards to mosquito control because mosquitoes are migratory They move anywhere from one-half to fifty miles and they must be tracked and treated in a certain area. We rarely know more than 12 hours in advance of the application. Timing is of the utmost importance so we may

adulticide smaller areas and not have to conduct widespread adult applications. Please do not tie our hands in this most efficient and efficacious method. In Cape May County , we have a summer transient population. It would be impossible for us to notify all affected people by mail because some people are only in town for a day, a week-end and there is no possible way we could ever know who to contact and where. This would, in effect, stop our pesticide application which supposedly is not the intent of this legislation.

4. We would like to object to Sections 19 and 20 in their entirety as promoting unneeded, unwarranted lawsuits that would result in a huge number of undefendable court cases and cost the taxpayers of New Jersey untold amounts of money.

5. Section 21a. The proposed language in this section deletes Rutgers, The State University and the Agricultural Experiment Station as the primary research source. May we ask why? The Mosquito Research and Control unit in the Department of Entomology at the Agricultural Experiment Station is a valuable research arm to mosquito control in New Jersey and has been since the early 1900's. They began mosquito control and research in New Jersey and now we find that they are arbitrarily being eliminated. This is most detrimental to our research and vector surveillance methods. We request you keep Rutgers as a primary research source; not eliminate them. The Department of Environmental Protection is a Regulatory Agency and in our opinion should not be a prime candidate for research funds. A State University is most capable and funded for this purpose.

6. Finally, under Section 22 b.we request the language read "No civil administrative penalty shall be levied except subsequent to the notification of the violator by certified mail or personal service. Notification must take place within 90 days of the occurrence of the alleged event."

It is only fair that a violator be notified when the violation or alleged violation is reasonably new in his/her mind and facts and information gathered effectively for defense. This basic American right should not be eliminated.

In closing, we would urge you to remember that mosquito control Commissions and agencies in New Jersey work under the Public Health Statutes and we have a mandate to control mosquitoes. We feel it is of the utmost importance to protect human health and well-being in the form of public protection from insects and vector-borne disease. The New Jersey mosquito control community has always tried to abide by all laws and regulations governing its activities. This bill seeks to protect public

health and we urge you not to forget that mosquitoes are deadly as well as a nuisance and the economy and health of the citizens and visitors to the state may well hang in the balance.

We use all pesticides sparingly and conservatively in our programs but they cannot be eliminated or timliness of applications suppressed for effective control. When the State budget for Fiscal 1991 was presented minus a State Mosquito Control program, the public outcry resulted in this budget being restored in its entirety. We ask you, please do not tie our hands by eliminating or overregulating a most important tool in this program.

I would like to thank the members of the Senate Labor, Industry and Professions Committee and the Assembly Energy and Environment Committee for allowing us to comment publicly on this issue that is of major importance to we who work in mosquito control in New Jersey.

NEW JERSEY STATE MOSQUITO CONTROL COMMISSION

STATEMENT TO THE SENATE

LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

AND THE

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

JANUARY 23, 1991

Presented by Ralph E. Evans, Commissioner
N.J. State Mosquito Control Commission

STATEMENT TO THE SENATE LABOR, INDUSTRY AND PROFESSION COMMITTEE AND ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

JANUARY 23, 1991

SUBJECT: COMMENTS ON S3079 AND A4171

TESTIMONY BY: RALPH E. EVANS
COMMISSIONER, NEW JERSEY STATE
MOSQUITO CONTROL COMMISSION
235 99TH STREET
STONE HARBOR, NJ 08247
(609) 368-5411

My name is Ralph E. Evans, and I represent the N.J. State Mosquito Control Commission. I would like to thank Chairmen Lesniak and Smith and the members of the Senate Labor, Industry and Professions Committee and the Assembly Energy and Environment Committee for allowing me the opportunity to comment on the legislation being heard today (S3079; A4171). The statutory obligation of the State Mosquito Control Commission, as specified in title 26:Chapter 9, is to make recommendations to the Governor and to the Legislature with regard to any and all matters pertaining to mosquito control. The Commission appreciates the opportunity to fulfill its legislative mandate.

As an appointed body, comprised of both public members and members ex- officio from the Departments of Environmental Protection, Health, and Agriculture, and from the N.J. Agricultural Experiment Station, the Commission would like to go on the record as being in support of the intent of this legislation; to strengthen the State's programs to ensure the safe use of pesticides. Surely safety, when it comes to the use and application of pesticides, is of particular interest and importance to the Commission and to the general public.

We do, however, have several reservations with regard to several sections of the bills, as they would make it difficult, if not impossible, for the State and county mosquito control agencies to effectively and economically carry on their mosquito abatement programs. There are, in addition, several new sections in this legislation which are repetitive in light of existing pesticide regulations now in place within the Department of Environmental Protection. I would like to review these aspects in general terms, and then offer some insight with regard to how the mosquito

control community, and the public, would be impacted. Perhaps, then, some alternative language may be considered.

First I refer to proposed restrictions on the application of pesticides in general. The Commission questions the motivation to further restrict aerial applications of pesticides, which, though an activity high in profile and visibility, certainly does not appear to be a cause of routine D.E.P. enforcement activity. The Department of Environmental Protection, via the Pesticide Control Element and the Pesticide Control Council, annually reviews, records, and reports violations and enforcement actions. Year in and year out, these reports reveal the documented fact that such violations, as they relate to aerial pesticide application, are routinely the lowest in number of all categories of pesticide applications as established by D.E.P. As an aside, mosquito control violations are so insignificant, that a category to record them does not even exist.

Second, regarding changes in the notification procedures, there are modifications in this legislation on which we would like to offer some comment and resolution regarding feasibility and practicality.

The State Mosquito Control Commission is administratively part of the Department of Environmental Protection. One of our operations is the State Mosquito Airspray Program; an essential program whether in D.E.P. or elsewhere. This program, like other mosquito control operations in the state, works within the existing rules and regulations of both the state and federal government that apply to pesticides, whether applied by air or from the ground. Such rules include adherence to guidelines published annually by the N.J. Agricultural Experiment Station, which bases its recommendations for insecticides used in mosquito control on research which has been ongoing since 1912. With this in mind, we feel an obligation to comment on how the state and local governments relate to this proposed legislation. We believe that the mosquito control community safely and effectively operates within the existing pesticide regulations and, in fact, extends itself beyond that which is required in both aerial applications and public notification.

To be specific, let us examine Section 7 of the legislation. References to "emergencies"; consultation with the Departments of Health, and Agriculture; and "broad-spectrum" insecticides are all either repetitive of existing laws, unnecessary, or just short of impossible. You may know that mosquito control is proactive, not reactive. That is to say, that when properly done, most mosquito work is performed in order to prevent such "emergencies". The biological, and physical need to function responsibly within

the mosquitoes life cycle, would be impossible under the terms of this legislation. Additionally, I have already reminded you that the State Commission has representatives from the aforementioned state departments, the New Jersey Agricultural Experiment Station, and from the public who are thoroughly involved before, during, and after any such "emergencies".

Therefore, it is our recommendation that the first sentence in section 7 be amended to read as follows: "No person may aerially apply any broad-spectrum chemical pesticide on land not actively devoted to agricultural use, except in the case of mosquito control ***as conducted by state and county mosquito control agencies as described in Title 26, chapter 9 of the public statutes of New Jersey, or*** where the department determines that no practical alternative is available, or other environmental, health or agricultural emergencies, as defined by regulation adopted by the department."

The second recommendation is directed specifically at section 8. As the proposed legislation suggests, there are situations which arise where some desired notification procedures are not practicable or feasible. Direct mailing, telephoning, or personal service is such an impracticality. Due to the widespread habitat, and therefore involved areas associated with mosquito mating, feeding, resting, development, and flight, it is economically and practically impossible to consider direct mailing.

Therefore, we recommend that existing regulations which deal with notification ***(N.J.A.C. Tile 7:30-9.8)*** be kept in place in order to maintain a consistent method of notification. With regard to aerial applications, it should be noted that ***F.A.A. Regulations Part 137.51*** requires such radio, television, newspaper, or door-to-door notification already, when pesticides are to be applied over congested areas. Rest assured, our constituency rely on our personal contact and/or contact via municipal governments prior to and during such applications (usually followed by a request for even more service for mosquito control).

Finally, with regard to Sections 19 and 20, the definition of how and when legal action may take place as related to pesticide applications is inappropriate for pesticide control legislation (such matters should be dealt with via the judicial system, with a legal format as its basis). Common sense dictates that the bringing forth of legal action based on simple "exposure" to a pesticide, with out having to "prove that (one) has suffered", would result in a mass of undefendable court cases of indefinite volume.

We believe that the opportunity for civil action should be available, but sections 19 and 20 should be deleted, or amended in order to reflect a responsible consideration of those criteria involved in initiating court action.

Thank you for the opportunity to testify at these proceedings. We, the members of the State Mosquito Control Commission stand at your service to assist in this matter and all others pertaining to mosquito control in New Jersey.

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NEW JERSEY MOSQUITO CONTROL ASSOCIATION, INC.

Post Office Box 162, Eatontown, New Jersey 07724
201-542-3630

When I called the Office of Legislative Services to advise them that I wished to testify on this proposed legislation the woman on the other end of the line asked me if I wanted to speak in favor of or in opposition to this bill. Without much thought I indicated that I was opposed to the bill.

But, after giving the matter some additional thought I know that that is not my position.

I am for protecting the environment.

I am for protecting the economy of the State of New Jersey.

I am for State and Local governments being able to function without imposing outrageous additional taxation upon our residents.

I am for Rutgers, the State University of New Jersey being able to serve as the primary research institution for State sponsored programs.

But first and foremost I am for being able to fulfill my obligation to protect the public health of the residents of New Jersey.

I submit to you that passage of this proposed legislation will help change **NEW JERSEY** from the **GARDEN STATE** to the **DESERT STATE.**

In his State of the State message to the Legislature and the people of New Jersey Governor Florio coined the phase "New Jersey Works". If you adopt this proposed legislation

81X

you will quickly change that phrase to **NEW JERSEY USED TO WORK.** The **GARDEN STATE** will become **"THE UNEMPLOYMENT STATE".**

You're sitting there about now thinking that this guy's a wacko. Well.....Not Quite!

NEW JERSEY NEEDS MOSQUITO CONTROL.

From year to year the mosquito control community plods along never taking the road of high visibility in its efforts to control an insect that has the ability to transmit disease, infirmity and yes even death if left to its own devices.

We provide this service in virtual obscurity except during those times when emergencies occur.

Let me paint a picture for you.

Its the July 4th weekend. Our resort areas have been mobbed. Your family begins its trip home from the shore. On the way your ten year old son complains of a headache. You figure that it was the sun. Upon arrival at home you feel his head and it feels like he's burning up. You take his temperature and that confirms a fever of 103 degrees. He's now disoriented and his body has begun to tremor. You rush him to the hospital and he lapses into a coma. For three days you sit at his bedside while the medical staff works on trying to bring him out of the coma. Finally on the fourth day he wakes up, the symptoms have subsided. He's one of the

fortunate ones that survive a case of Eastern Equine Encephalitis, a mosquito transmitted disease that has been often overlooked by laboratories doing viral studies.

It turns out that the laboratory tests confirm that it was a EEE case and that there was another confirmed case in a child who was visiting only eight miles away but in the next County. Unfortunately that child died. The newspaper wire services pickup the laboratory information at six p.m. at night. They can't contact any officials in either of the two counties so a smart reporter calls a medical doctor whom he knows and the doctor looks up the disease and tells the reporter that its a disease transmitted by certain mosquitos and has a relatively high incidence of mortality.

Tomorrows headlines "ENCEPHALITIS OUTBREAK AT JERSEY SHORE - ONE DEAD"

Now the radio and TV and newspaper crews begin arriving at the mosquito control agencies and all hell starts to break loose.

Next they're down at Rutgers talking to Drs. Sutherland and Crans. (The two university experts on mosquito research and control) The phones at the State Mosquito Control Commission and the Office of Mosquito Control Coordination are ringing off the hook. Dr. Bruder and Bob Kent (the entire staff of the Office of Mosquito Control Coordination and the State Mosquito Control Commission) are being interviewed by every newspaper and TV station in the State.

That evening every station and newspaper is sensationalizing the story and our constituency is starting to become fearful about returning to the shore.

The State airspray program begins daily airsprays over the affected areas. People start staying in at night. The number of visitors to the entire shore area declines dramatically. The summer has become a nightmare for the resort industry.

County mosquito control agencies that prior to the outbreak were reluctant to conduct adulticiding activities are now working around the clock using foggers, ULV apparatus and anything else they can get their hands on in an effort to prevent an escalation of the outbreak and attempt to salvage the season.

FORGET IT !! The summer is over.

The year end financial recap of business activity has a small paragraph that says "Resort activities were off 40% this year. Analysts attribute this to a midsummer outbreak of a disease carried by mosquitos".

Five campgrounds, fourteen motels and more than fifty retail stores have been forced out of business. Our constituents have to find another place to vacation. New Jersey loses.

That's an outrageous scenario you say, and there's virtually no chance of such an occurrence here in New Jersey.

Well with the exception of the year end statistics, I'm

sorry to say you're **wrong, dead wrong!** The data from the case history I just cited were not the actual events surrounding a case where the child lived. No, my friends, unfortunately the case I'm talking about occurred in 1989 and the child died.

For the benefit of the Committees I am attaching a copy of a presentation made by the father of that child before the New Jersey Mosquito Control Association and contained a letter that was sent by him to Governor Florio urging the continuation and expansion of mosquito control activities in New Jersey.

A wild scenario you say. That's what they thought in Massachusetts last summer, and that's what they thought in Florida this past fall. The disease is real and the lives that are lost are those of human beings.

The ingredients are all here and we are the only ones standing ready to meet the challenge. But this proposed bill will take us out of that position.

Call Walt Disney and ask them about the impact of encephalitis.

Let me restate the job of Mosquito Control Agencies in New Jersey:

"PROTECT THE PUBLIC HEALTH OF THE RESIDENTS OF NEW JERSEY"

One of the methods we use to accomplish our mission is

the use of pesticides. Primarily we attempt to prevent the transmission of mosquito borne diseases by applying larvicides to affected areas. This along with source reduction ie: water management techniques (which have also been severely limited due to State regulations) most frequently produces satisfactory results.

Many mosquito control agencies have also added predatory fish to their array of mosquito control methodologies giving us a natural control capability. The bottom line is that no one control method can do the job by itself. We must continue to have a broad based Integrated Pest Management capability without undue restrictions.

The need still exists for adulticiding activities and by the time the Department agrees that an emergency exists the damage would be done and our response would be a case of too little, too late.

I would be remiss if I didn't take a moment to point out the unique structure of Mosquito control in New Jersey. Perhaps it is this sometimes precariously fragile structure (and I mean fragile only in a financial way) that separates us from our sister States.

There is a three tiered approach to mosquito control work in New Jersey.

Rutgers University and the State Agricultural Experiment Station are the research and technological part of the process. Or at least they should be. Your bill appears

to take Rutgers out of the picture.

This bill originally included a provision for Rutgers to be a primary source of research assistance and now that section has been bracketed out of the bill. Is there something wrong with Rutgers? Shouldn't a goal of a Department of State Government be to enhance Rutgers research capability and prominence? Please have someone answer this question because if something is wrong it should be fixed not eliminated.

The second tier is the State Mosquito Control Commission and the Office of Mosquito Control Coordination.

The third tier is the County Mosquito control agencies. The system works, its been working for seventy-eight years, its not broken! Please don't fix it for the sake of fixing it.

The person who said I have seen the enemy and he is us, must have been a former Commissioner of DEP. Because never in the history of this state have so many accomplished so little with the expenditure of so much money.

There is a preconceived departmental wide attitude that DEP is only a regulatory agency. One exception has been the educational element of pesticide control. They have worked with us and participated in our training program for pesticide applicators. We don't need additional laws that

strengthen these programs and create additional costs to already overtaxed counties and municipalities.

A greater spirit of cooperation should be established between the state and local governments that could result in cost savings to all.

If you pick up a newspaper you invariably read about court calendars with lengthy delays. We read about insurance companies not renewing liability insurance policies for government agencies or doubling or tripling the premiums on their government policies. This proposed legislation is an open invitation for anyone to file a frivolous suit for any reason. What can we look forward to.

If this bill passes and is signed into law it will insure that every lawyer in New Jersey will have full employment for the next century. Can New Jersey afford this legislation? I think not!

Thank you for your patience and consideration.

A PROBABLE HUMAN CASE OF EEE: A PARENT'S PERSPECTIVE

RUSSELL B. WARING

Cherry Hill, NJ

EEE

My name is Russ Waring. My wife Laurie, son Justin, and daughter Stacy were one happy family until our lives were shattered when Stacy died from what we have every reason to believe was eastern equine encephalitis. Who would believe that our beautiful child could be taken from us by being bitten by one mosquito? But that is exactly what appears to have happened.

We were driving home to Cherry Hill after spending a week on vacation in Ocean City, NJ. It was a good week. Mostly sunny days on the beach, taking the kids on the rides in the evening, ice cream and caramel popcorn on the boardwalk at night. All the things families go to the Shore for every year . . . as we had done, too, since 1983.

I had never heard of eastern equine encephalitis. I never heard of any public health warnings regarding record levels of disease-carrying mosquitoes thriving in the marshes near the Shore. Oh, I knew it had been a rainier-than-usual spring. I knew there were more insects flying around than usual. But deadly ones? No way.

Driving back from Ocean City that Saturday, August 5, 1989, Stacy had sniffles and a low-grade fever. It seemed like a cold, stomach virus, or any of the relatively minor ailments kids contract.

Our concern grew that evening, however, when Stacy walked into our bedroom and complained that she was thirsty, her head hurt, and she felt very warm.

By midnight, we became extremely concerned because we could not bring down her fever of 104.5° axillary and she was not holding down any fluids or medication. We took her directly to the local hospital Emergency Room. When we arrived, Stacy walked

in and sat on her Mom's lap as we went through the admitting process. Forty-five minutes later, after Stacy had fallen asleep, she woke up thrashing about and unaware of her surroundings. She did not respond to our attempts to reach her. She was flailing and seizuring when she was first seen by a hospital physician. He couldn't believe she had walked in the door just one hour earlier. They worked on her until 7:00 AM when an ambulance arrived to take her to Children's Hospital of Philadelphia. She was on a respirator to help her breathing, but we were told she was able to breathe on her own. We were not permitted to ride in the ambulance to Children's Hospital.

When we arrived at Children's at 9:00, we were told she had been taken for a CAT scan. Later that morning, we were told that an EEG showed no brain activity. Her heart was beating only because the respirator was breathing for her. On Monday, a second EEG confirmed the continued absence of any brain activity. She was declared legally dead. The doctor removed the respirator and her heart stopped in our arms at 6:05 PM Monday August 7, 1989 -- two days before her 5th birthday.

We were stunned. In the midst of our grief, I started to search for answers: What kind of catastrophic illness kills its victims in a matter of hours? How, where, and when did she get it? Soon, EEE emerged as the likely cause of her death. My research on this subject led me to contact several doctors who had written journal articles on EEE. One of these doctors suggested I contact Dr. Wayne Crans of NJ Mosquito Research & Control. I wrote Dr. Crans in January and met with him personally in New Brunswick in early March. After our meeting, I wrote a letter to NJ Governor Jim Florio. I would like to read you excerpts from this letter:

"Dear Governor Florio,

> My daughter Stacy died on August 7, 1989. Her death certificate says "Cause of Death: Meningo-Encephalitis" but all indications point toward

Eastern Equine Encephalitis (EEE) -- a nearly always fatal disease transmitted by virus-carrying mosquitoes. She died two days before her 5th birthday.

I am writing to express to you my strong interest in ensuring that:

1) A high priority be given to appropriating sufficient funds for mosquito surveillance and control activities in New Jersey.
2) Public health warnings be issued when significantly high levels of disease-carrying mosquitoes are confirmed to exist.

More importantly, I am writing to you as a personal victim of a tragedy that was directly affected by 1) decreasing mosquito-control funding levels in recent years, and 2) the absence of any public health warning being issued last summer."

At this point in the letter, I went over the details you have already heard. The letter then resumes:

"I believe New Jersey residents have a right to know of the danger to public health posed by disease-carrying mosquitoes, despite the potential negative effect this public awareness may have on the state's tourism industry. In a 1959 outbreak, over 30 people suffered from EEE. No one wants to see this epidemic occur again.

I know that you and your family would want to be warned of a potentially serious health hazard as much as I or any other New Jersey family would.

Please know that it is not my intent to cause a panic or threaten the New Jersey economy; but -- as a parent yourself -- I know you'll agree with me that the interest in safeguarding the public health outweighs any economic considerations.

My wife and I are trying to put back together the pieces of our lives. But we know the ache will never go away.

If my writing this letter prompts you to take actions that lead to the saving of just one child's life, then it will comfort me to know that Stacy's death was not purposeless."

So, this is where we stand 7 months later. We know we'll never get answers to all of our questions. But I felt it was important for Stacy's story to be known . . . to be publicized . . . not shoved under the rug because it could hurt Shore tourism.

A public menace exists. A menace that threatens to become potentially worse in the summers ahead. We have the technology and the know-how to control it -- all that's needed now is enough money.

Knowing what happened to Stacy, how can anyone turn his or her back and say this threat is not important enough for increased funding? Don't say "it couldn't happen to my child," because it can and did happen to mine.

Stacy was our baby, our only daughter.

She was beautiful.

She held our future.

She had her whole life ahead of her.

And she died for no earthly reason.

Talking to you today . . . seeking the media's attention . . . these are all steps I've decided to take because Stacy lived. She mattered. Now that she's gone, she will not be forgotten. Never.

In closing, let me return to the letter I wrote to Governor Florio. This is the last paragraph:

> "No parent should have to suffer a tragedy as great as the one we have suffered. I hope that as a result of your intervention, no parent ever again will."

Thank you very much.

Testimony
Senate Labor, Industry and Professions Committee
and Assembly Committee on Energy and Environment
January 23, 1991

Good morning. My name is Joan Diefenbach. I am Director of IMPACT for the New Jersey Council of Churches, (NJCC), an ecumenical organization comprised of sixteen member Protestant denominations.

The NJCC is here today to express its wholehearted support for S-3079-A-4171. This springs from our long history of committment to issues involving both the safeguarding of N.J.'s environment and legislative protections for our state's farmworkers.

In New Jersey approximately four million pounds of pesticides are applied to crops annually. The list includes both known and suspected carcinogens whose use has been linked to various forms of cancer, birth defects, brain and nerve damage, respiratory and eye illnesses and more. Farmworkers are exposed to them on a daily basis. In addition, farmers and their families are not immune to these same risks.

Despite efforts at both the state and national level to protect farmworkers from physical abuse and economic exploitation, it is apparent that they are still suffering deprivations. Eventhough farmworkers are currently exposed to some of our most dangerous chemicals in the form of pesticides, they none the less do

not enjoy the protections afforded other workers under our state Right to Know law. This bill will cure this inequity by giving farmworkers the basic rights to know the chemical being applied, the safe reentry time and what vehicles to use to deal with contamination.

Farmworkers have been sprayed directly while working in the fields, they have been sprayed by airplanes and ordered into fields literally dripping with pesticides. We must afford protections to this extremely vulnerable segment of our population.

In addition much of the farm labor in New Jersey is done by people for whom English is a second language. This legislation addresses this concern by requiring that postings and information be printed in both Spanish and English.

Perhaps most importantly, the bill prevents recrimination to the farmworker for refusing to enter the field before minimum reentry time or exercising other rights under the act.

According to the National Safety Council, farm work is now ranked as the most dangerous U.S. occupation, ahead of both mining and construction. Surely the evidence compels us to act to protect both our own health and the health of farmworkers and farmers.

Finally, we support the inclusion of farmworkers on the expanded Pesticide

Control Council. If the Council has representation from both farmers and the pesticide industry we believe farmworker representation is a necessary component to the full functioning of this body.

While unarguably there are laws on the books designed to protect the rights of our farmworkers, we feel many are not stringent enough, not sufficiently defined, and inadequately enforced. We believe this legislation will be a significant step in curing these inequities.

Senate Committee on Labor, Industry and Professions. Assembly Committee and Environment Comments for Public Hearing on SB 3079 and AB 4171.

January 23, 1991

My name is John Buechner, I am Director of Technical Services for Lawn Doctor, Inc. . Lawn Doctor currently has sixty-three (63) lawn care franchises operating in the State of New Jersey. As business partners, Lawn Doctor, Inc. works with its franchisees, updating them on regulations, legislation and educational information affecting pesticide use. On behalf of Lawn Doctor, Inc. and its sixty-three (63) franchises, in the State of New Jersey, I would like to comment on Senate Bill 3079.

PAGE 1, SECTION 6.a. - Pesticide Control Council Expansion:

Under the proposed legislation it would expand the Pesticide Control Council from its present nine (9) members to sixteen (16) members, which creates a bureaucracy unto itself. Although there may be a need to expand the council, by one or two members, the mission of the council is to advise on technical matters, I question these additions:

ORGANIC FARMER - (1) The "organic" farmer represents less than 1% of the farming community. (2) "Organic farmers" often have unscientific opinions concerning pesticides. (3) The bill does not define what "organic" farming is or the group which had credibility in organic farming. (4) Organic farmers also have little or no experience with pesticides.

PUBLIC INTEREST ORGANIZATION AND FARM WORKER -

(1) The public at large is already adequately represented with designates from the Commissioner of Health, Dean of Cook College and the Secretary of Agriculture.

(2) The farm worker, as well as other workers not involved in actual pesticide applications, are best represented by the occupational safety and health expert who holds a medical degree.

FARMER AND PESTICIDE APPLICATOR - I support the addition of these individuals. They can provide valuable input to the council and DEP on the use of pesticides and impact of proposed regulations on their business practices. Their presence insures reality into regulatory activities.

PAGE 4, SECTION, 5 - (NEW SECTION)
If the intent of this section is to ensure the proper training of pesticide operators I feel this places an undo hardship on the DEP. I would like to see this section include approved industry training programs as a means to provide operator training. This would not only relieve the DEP of the total responsibility and expense of training, but be more convenient for the pesticide appl ication industry, in the light that we are constantly hiring new people which must be trained.

PAGE 4, SECTION, 8 - (NEW SECTION) Notification:
Notification regulations are already in place which addresses the concern of exposure. DEP regulations in place were carefully draf after two years of public meetings. This bill would create the ne for re-development of notification procedures and consume resource sorely needed elsewhere, within the DEP.

Public hearings held during 1987 and 1988 addressed the concept of notification by mail, phone or personal visit. They were re-jected after consideration was given as being unworkable and unenforceable.

PAGE 8, SECTION, 20 - (NEW SECTION) Civil Action for Violation of the Act:

The right to sue for damages exists under current law. The bill proposes that any violation of pesticide application laws, even though no damage may have occured, would be entitled to compen-satory damages.

Violations should be dealt with through a system of fines and cancellation of applicator certification or business licenses.

New Jersey
Environmental Lobby

Contact (609) 396-3774

Respond to:

Testimony before Senate Labor, Industry and Professions Committee

January 23, 1991

Re: S.3079

My name is Marie A. Curtis, legislative representative for the New Jersey Environmental Lobby. The Lobby represents roughly 1400 members, both individuals and organizations, who share a concern for our natural resources and environment. We are here today in strong support of Senator Lesniak's bill to amend the Pesticide Control Act of 1971.

The education of farmworkers in the use and protection from pesticides is long overdue. NJEL supported extension of the right-to-know to farmworkers when that legislation was first introduced. The regular exposure to pesticide residue is probably more common in agriculture than in any other area of employment. However, those employed in extermination services should also know, and be trained, in protective measures.

The procedures for posting application notices, as delineated in the bill, certainly present a minimal burden on the farm owner and would provide vital information to the farm employees. The pamphlets described for distribution to farm workers also provide essential information at minimal cost and effort. These measures would be a giant step forward in protection of workers accidentally exposed to pesticides.

And exposure to pesticides is a very serious concern. According to the Illinois Hazardous Waste Research and Information Center, only pesticides and herbicides (also used on farms) qualify for their highest toxicity rating of "6" when viewed among all the hazardous chemicals that can be encountered in homes or agriculture. This rating is based on a scale of one to six with the "6" designation listed as "super toxic."

With the above adverse effect on human health this well known, a ban on the aerial application of these chemicals seems long overdue. If the emergency procedures outlined in the act must be employed, and an aerial spraying takes place, certainly notification of all those affected prior to such spraying is a requisite. Residential areas where children may be present should be avoided if at all possible.

The Pesticide Control Council as designated in the bill would certainly provide the necessary expertise to advise DEP on the safest and most effective methods to deal with these problems.

Having such ongoing consideration of new methodologies and advising the department of same can only be a benefit.

Indeed, when we view the possible damage to human beings exposed to these chemicals, we wonder why these steps have not been taken before now. Damage to the central nervous system, the liver and kidneys, internal bleeding and even birth defects are among the adverse effects that exposure can cause. The Illinois study concluded that "all pesticides are dangerous to some degree." Thus, even the least harmful provide some risk for those who handle them or are otherwise exposed.

For this reason we heartily endorse the training program proposed for those who are under the direct supervision of pesticide applicators. The registration requirement for those who inspect for pest infestation is another matter of public protection that we endorse as well. Only qualified applicators should be using such dangerous materials, and only when a valid infestation warrants such usage.

In summation, we view this measure as a protection of public health and we applaud the sponsor as we heartily endorse S. [redacted]. We urge the committee to vote "yes" on Senator Lesniak's bill.

CWA
Local 1031

LOCAL 1031

AFL-CIO

COMMUNICATIONS WORKERS OF AMERICA

84 Culver Road, Monmouth Junction, NJ 08852

(201) 274-2171

Good afternoon. I would first like to thank you for this opportunity to testify in support of the Pesticide Control Amendments, A4171 and S3079, which would expand the scope of the Pesticide Control Act of 1971. My name is Amy J. Bahruth and I am currently employed as a staff representative and health and safety coordinator for the Communications Workers of America, CWA Local 1031. Local 1031 represents the support staff at the nine state colleges and the Department of Higher Education. I also serve as a Council Member on Governor Florio's Worker and Community Right-to-Know Council. Finally, I am a graduate student at Hunter College, City University of New York, on a fellowship from the National Institute on Occupational Safety and Health, NIOSH, which is the research arm of the Occupational Safety and Health Administration, OSHA. I am studying Environmental and Occupational Health, specializing in Industrial Hygiene.

Of the 375,000 tons of pesticides spread on America's farmland every year, less than one-tenth of one percent actually reaches a pest. The other 99.9 percent is contaminating our soil, our water, and our food supply - as well as imperiling the health and safety of farmworkers and the general public.[1] The most alarming result of pesticide use is the health effects they

have on the human body. Acute poisoning kills or hospitalizes over 3,000 Americans annually; chronic poisoning accounts for an estimated 20,000 cancer cases annually from pesticide residues on food alone.[2] These figures, while startling, only indicate reported incidents. In the case of farmworkers, most of whom are migrant foreign workers, most health problems from pesticide exposure go unreported.

Farmworkers labor under some of the worst conditions of any group of workers in the United States. They are excluded, completely or partially, from Federal laws that protect other workers, including the National Labor Relations Act, the Fair Labor Standards Act, and the Occupational Safety and Health Act.[3] Because of this exclusion, farmworkers, especially in the area of occupational safety and health, are exploited. Occupational health problems that farmworkers face include heat stress, musculoskeletal problems, urinary tract infections, accidents, cancer, and most important here, pesticide-related illness.

Pesticides are absorbed into the body through three routes on entry: by skin contact or dermally, by inhalation, and by ingestion. However, the primary route of worker exposure is through the skin. Field workers are exposed to pesticides in a variety of ways: through residues on leafy surfaces and on the soil, by drifts or pesticides carried by the wind, by direct spraying of pesticides while workers are in the fields, by eating food with contaminated hands or eating the contaminated produce

in the fields, by the proximity of their housing to the fields and by drinking contaminated water.[4]

The term pesticide has a broad definition and covers such specific catagories as fungicides, herbicides, insecticides, fumigants, and growth regulators. Each category has a multitude of products with a variety of hazardous ingredients. In New Jersey, there is over 800,000 acres devoted to agriculture, producing 72 vegetables, 10 fruit, and 8 grain commodities. Due to the diversity of crops, there is a wide range of types and amounts of pesticides used in the State. Over 10,000 products, containing over 400 active ingredients, are currently registered for use as pesticides in New Jersey. In 1985, 1,591,346 pounds of pesticide were applied in New Jersey alone.[5]

Drifts of pesticides have been reported as far as 50 miles from the site of application, depending upon particle size and wind conditions.[6] Pesticides also easily invade our water supplies and remain as residues on our food. Clearly, pesticide use is not only a worker health and safety issue, but a consumer and community resident health and safety issue.

My first comment on this bill is that it is way overdue! What makes farmworkers any less worthy of protections guaranteed to other workers by law is beyond me. Try to picture the migrant farmworker by imagining yourself in a foreign country, unable to speak the language and being sprayed in a field by an unknown substance. Imagine seeing your kids and your co-workers

kids being born with unexplainable birth defects, which is certainly happening. Imagine working on a farm and not having the right to ask what, when, or why. Now place yourself in America as an American in a farming community, and watch drifts of pesticides blow by your kids school playground. Imagine not being given information on that pesticide. Imagine watching your kids die of cancer. Unfortunately, this scenario I've laid out is reality for certain farming communities in California today. I've attached some articles documenting the plight of farmworkers and the farming community in California to my testimony for your consideration.

This bill is merely an attempt to correct the injustices of previously excluding farmworkers of information and rights to act on information and by giving farming community residents the right of asking questions and getting real answers. It's aim is to **educate** workers and the community in order to **prevent** harm to themselves and their families.

I must emphasis that pesticides hurt and kill people. We cannot allow this to continue. The bill before you today must be seen as critical to the State. What it offers is information in Spanish and English, to farmworkers and community residents on the chemicals they are exposed to, either directly or indirectly. What it offers is training for those farmworkers in what they should know about the pesticides they are exposed to, how to protect themselves, and where to go for help if they are having

health related symptoms. What it offers is training for the medical community to recognize and treat pesticide poisonings. What it offers is a reporting system for pesticide poisoning incidents so that we can track problem areas and hopefully correct those problems. What it offers is the banning of aerial spraying over residential areas. What it offers is the basic right to know what you are being exposed to on your job and in your community. It is a right that is certainly overdue.

I have talked a lot about farmworkers today, because it angers me as to the injustices they face regularly. Every working person deserves to work in a healthy and safe environment, **even** farmworkers.

However, I was scheduled to speak about pesticide use in the office environment, where most of my members work. A provision in the bill mandates rules and regulations to establish "notification requirements to afford all people who may be exposed to pesticides the opportunity to minimize their exposure." The bill then gives examples which **may** be included, such as posting of notices **during** pesticide applications and maintaining those notices for a period of time. I am assuming these regulations would apply to pesticide applications in offices.

I do not believe that posting notification at the **time** of pesticide exposure guarantees the kind of rights that people should have in order to "minimize their exposure" to a pesticide.

The language should be broadened to include that **prior notification** be given to people who are likely to be exposed to a pesticide, including when, where, what kind of pesticide, and the health effects of such pesticide. In addition, the bill should reflect the New Jersey Department of Health's recommendation that pesticide application in the office environment **should not** be applied during working hours and should have ample time to air out prior to reoccupation of the building. After many a struggle, the state colleges and the Department of Higher Education adhere to that recommendation . . . it **is** feasible.

In conclusion, I must again re-emphasis the **need** for this bill. We can no longer sit back and treat farmworkers and farm community residents like second class citizens. People deserve to know what they are exposed to on the job, whether they be an office worker, construction worker, assembly-line worker, or a farmworker. And just as workers deserve the right-to-know, community residents deserve the right-to-know what they and their children are exposed to in their neighborhoods.

This bill is fair and reasonable. I strongly urge this bill be supported in the legislature. Thank you for this opportunity to speak.

Amy J. Bahruth

REFERENCES

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#3 :

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Wilk, V. A., **The Occupational Health of Migrant and Seasonal Farmworkers in the United States**, Farmworker Justice Fund, Inc., Washington, D.C., 1986.

#5 :

Meyer, L.W. et. al., "New Jersey Agricultural Applicator Pesticide Use Survey", New Jersey Department of Environemental Protection/Rutgers Cooperative Extension, Rutgers University/New Jersey Department of Agriculture, 1985.

Attached articles from:

Food and Justice, United Farm Workers. August 1986 and October 1987.

TESTIMONY OF

RICHARD F. FLETCHER,

REGIONAL TECHNICAL SERVICES MANAGER

FOR

CHEMLAWN SERVICES CORPORATION

Presented to:

THE NEW JERSEY STATE SENATE

LABOR, INDUSTRY, AND PROFESSIONS COMMITTEE

REGARDING SENATE BILL NUMBER S-3079 (ASSEMBLY BILL A-4071)

JANUARY 23,1991

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Members Of The New Jersey State Senate Labor, Industry, and Professions Committee, Ladies And Gentleman,

My name is Richard F. Fletcher and I am the Regional Technical Services Manager for Chemlawn Services Corporation ("Chemlawn"). I am providing comment on behalf of Chemlawn with regard to Senate Bill S-3079/Assembly Bill A-4071. I am a resident of the State of New Jersey and an Agronomist by profession. I have extensive experience in Turfgrass and Ornamental management. I am responsible for the design and implementation of all agronomic and horticultural programs. I am a certified pesticide applicator in turf, ornamentals, household/structural pests, and right of way control.

Chemlawn is in the business of providing lawn and tree and shrub services to residential and commercial customers. Services are provided through a network of company-owned and operated branches throughout the U.S. and Canada. Chemlawn services over 72,000 customers in the state, employing a staff of nearly 350 people.

NOTIFICATION REQUIREMENTS AND PESTICIDE EXPOSURE

After careful review of the proposed legislation, I am concerned with page 5, section 8. I wish to make several points:

1. Regulations to address the notification of the general public are currently in place. These were the result of over two (2) years of public meetings held by the DEP. The proposed bill would create the need to redevelope the notification framework and consume resources that the DEP and the state do not have.
2. The proposal to notify by mail, phone, or personal services has been proposed in the past. It was rejected as being totally unworkable. The use of legal advertisements has long been an acceptable procedure for public notification. What will happen when the state needs to make large scale applications in the mosquito, Gypsy moth, or right of way program applications along our state's highways? Providing said notification would require extreme costs and potential health risks caused by delays in applications as we waited to notify everyone. The proposal to notify should be limited to those persons who require it. "Right to Know" laws protect this right. These individuals can register with the DEP or the DOH. This list could be made available to all certified applicators as public record of those persons requiring the right to minimize exposure.

At Chemlawn, we provide this type of service to customers and non-customers alike. Any individual who informs a Chemlawn facility of their desire to be notified is afforded that right.

REPORTING PESTICIDE EXPOSURE

I wish to take a moment to applaud section 15C on page 8. The bill's intent to provide a mechanism of education to medical professionals on the symptoms, diagnosis, treatment, and reporting of pesticide related health effects is long overdue. However, this bill would establish a mechanism for the reporting by physicians and veterinarians of incidents of pesticide exposure. I wish to emphasize two (2) facts:

1. Physicians and veterinarians are not toxicologists. A majority of reported exposure cases were not related to pesticides or their proper use.
2. Until the DOH establishes the necessary education programs, implements them, and evaluates their preformance, we will not have a accurate mechanism for reporting.

I strongly suggest that the phrase "incidents of pesticide exposure" be changed to read "clinically determined evidence of adverse effects from pesticide exposure". We have a great need for factual information in our current environment. The DEP and DOH should devise a standard reporting format that is linked to the educational programs so that the information gathered will be useful and reliable. This reporting should be shared equally between the DEP and DOH to enforce existing regulations and provide a safe environment for the public.

DEPT. ENVIRONMENTAL PROTECTION SELF FUNDING

Page 11, section 21K, breaks new ground. This paragraph converts the N.J.DEP. into a self supporting organization. If left alone, this approach to pesticide regulatory funding would be the first of its kind in the nation. I wish to make several points:

1. Current funding for the DEP comes from the federal and state levels in the form of grants and appropriations. Other funds come from fees and regulatory fines. Changing this money flow allows a regulatory agency to "tax" the private/business sector for the public good.
2. The bill provides no checks and balances. It could lead to an abuse of power by the department. What will constitute actual or projected costs?

The purpose of the DEP in pesticide regulation is to serve the public good. However, they are accountable to those they protect and regulate. Chemlawn supports strong,

consistent enforcement of pesticide regulations that promote the proper, safe use of products for the public good. Changing the DEP into a self supporting organization removes the accountability of spending funds in a prudent manor to support the public and private sector.

FINES AND PENALTIES

The fines and penalties proposed of page 12, item 22, section 10B, represent similar amounts covered under Federal Environmental Laws. Having to pay both federal and states fines for the same offense constitutes double jeopardy.

CONCLUSION

Chemlawn supports reasonable pesticide legislation and regulation. Although this bill does represent improvements on the educational front, it fails to improve the public good. Redefining notification requirements and creating a fee supported organization only weaken the position of the DEP. This poses a threat to the real issue, the consistent enforcement of existing law and regulation. Safety to our customers, our employees and the environment are of the utmost importance to us. We share the same goal. It is unreasonable to think that the induction of this bill will effectively improve the public good.

Richard F. Fletcher
Regional Technical Services Manager
Chemlawn Services Corporation

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NEW JERSEY FARM BUREAU
GARDEN STATE

168 West State St., Trenton, New Jersey, 08608 tel. (609) 393-7163

January 23, 1991

TESTIMONY ON PROPOSED

AMENDMENTS TO THE PESTICIDE CONTROL ACT OF 1971

(S-3079, A-4171)

New Jersey Farm Bureau is the largest private organization of farmers and farm families in the state of New Jersey, representing over 5,400 members throughout 20 counties of the state. We are organized and function as the spokesgroup for agriculture in the state, and offer comments on behalf of our members on legislative, regulatory, and other public policy issues. Pesticide use and control ranks among other topics like land use, water supply and management, labor, marketing, taxation and others that are of major importance to us.

I have organized my remarks on this bill into three categories: general comments about agriculture today in New Jersey and agricultural labor management; general comments about the bill; and specific comments about the bill.

I. AGRICULTURE IN NEW JERSEY TODAY

- New Jersey agriculture is in the midst of major changes. These are largely driven by changes in the marketing of farm commodities produced here. Producers of fresh market crops have suffered from a string of bad years due to poor weather conditions, leaving many highly leveraged and questioning their future. Regulatory pressures from many sources are frequently cited as a factor in undermining a farmer's view of the future in New Jersey.

- while acreage base shrinks, dollar value of production continues to increase each year. Some of that may be due to expanded production to off-set lower returns per unit of production.

- in recent years, there has been a pronounced shift away from wholesale market agriculture (i.e. large scale production of fruits, vegetables, and nursery crops) to a retail market orientation which requires less land and total number of workers.

- ag labor management: traditional reliance on large numbers of migrant and seasonal workers is changing; contract workers through clearance orders from Puerto Rico decreasing; self-contracting crews from local towns increasing; availability of crew chiefs on the decline; high school/senior citizens workers in packing house; legalized Mexicans abound.

Agriculture Keeps New Jersey Green

115X

- we estimate that our unit cost of labor is twice that of other major U.S. production areas due to number of regulations; relatively high level of enforcement and competition from other sectors in New Jersey economy (casino, construction, etc.); cost comparison with Mexico and central America is at least 4-5 times higher.

- labor management for agriculture in New Jersey is costly and difficult.

- the vast majority of farm employees in New Jersey agriculture do not work directly with pesticides. This is a function that is normally done by the farmer, his sons, or a foreman-level employee. It is a violation of both federal and state law to expose workers to wet spray and to allow re-entry into a treated area prior to federally-regulated time intervals. The state pesticide code several years ago was amended to incorporate a separate section on farmworker safety, which among other things instituted a bulletin board notice system for workers who were interested to learn more about pesticides used on the farm. We also endorsed at that time the addition of bi-lingual enforcement personnel to ensure better access for workers who had questions about pesticide safety. The record of safety on farms, measured by either number of complaints or of violations is very low compared to the number of applications made in agriculture.

II. GENERAL COMMENTS ABOUT THE BILL

- this bill, as written, has the potential of imposing some significant additional restrictions on farmers throughout the state.

- we are not aware of any analysis of the bill that reviews its terms from the standpoint of putting farmers at a <u>competitive disadvantage</u>. In the absence of that and the knowledge that the New Jersey pesticide code ranks with California and Texas among the most restrictive in the nation, we are concerned that the bill as written would add to the regulatory burden which makes farming in New Jersey difficult and contributes to the loss of New Jersey farmland.

- the bill needs an economic assessment, to determine what the <u>costs</u> are and who will bear these new costs. Fees like taxes are difficult to assimilate during a recession in the economy, particularly for agriculture and ag-related businesses that have seen marginal returns in recent years. We understand that the Departments of Health and Environmental Protection estimate the cost of implementing this bill to be in excess of $1 million.

- we believe that New Jersey should have an effective, scientifically-based, and well-enforced pesticide control program. However, we suspect that there is an anti-pesticide undercurrent in the bill which will eventually result in being at cross-purposes with the pursuit of farming in New Jersey. We accept the role of advocacy and think it has its place, but we should be very careful when it affects legitimate business pursuits.

- the <u>trend in pesticide usage</u> in New Jersey agriculture is toward safer products that break down faster, making applications on a less frequent basis, and moving toward more biological controls just as fast as the research and extension service at Rutgers can lead farmers in that direction. We believe that the Bureau of Pesticide Control in the DEP has been fair and balanced in its administration of pesticide rules and the need for legislative mandates is limited.

- the core of the bill seems to be centered on the training and education mandates for farm employees. This is an issue that we have a keen interest in and have been discussing with our farmer members for the past two years. We realize that every farm employer bears a responsibility in informing his or her employees about the potential risks of exposure to chemicals in the workplace. The question is not whether such should be done but rather how it should be done. A practical, effective program in fact should be part of a farm employer's worker training program. With or without this bill we were already developing recommendations for adoption by farmers in association with a Rutgers/NIOSH program.

- we strongly believe that any set of mandatory requirements for a worker training/education program should be related to a worker's potential level of exposure to chemicals in the workplace.

- since the introduction of the original version of this bill several years ago, there have been other changes in pesticide control management that address some of the same concerns, which may preclude the need for parts of this bill. For example, the "FIFRA-Lite" bill enacted by Congress in 1988 mandates the re-testing and re-registration of all pesticide products registered before 1984. The cost of this re-registration is so expensive that one of our biggest problems is manufacturers deciding to discontinue certain products because the cost of re-registration exceeds the return on the sales. Senator Bradley has attempted to assist New Jersey farmers by seeking federal appropriations for the independent testing of these "minor use" pesticides at the IR-4 project at Rutgers. OSHA is now very active in farm employee exposure issues, and the EPA is finally nearing the release and final review of its farmworker standards.

- we support the move toward reduced pesticide use, which will in turn reduce potential exposure to pesticides. The Legislature could make a substantial contribution to reducing the use of pesticides in agriculture by expanding its appropriation to the Integrated Pest Management Program at Rutgers/Cook College and the Department of Agriculture's Beneficial Insect Lab. The director of the Ag Experiment Station commented just yesterday that a cut of about 30% in the pesticide use in New Jersey agriculture could be achieved with additional funding support. We would much prefer that the Legislature take this approach to reducing potential exposure to pesticides.

- we have already taken action on our own with regard to worker education and training on pesticide safety. We formally communicated our support last year to the DEP Bureau of Pesticide Control for them to prepare a program for incorporation into the state pesticide code. Each spring, we conduct pre-season farm employment management seminars in several locations throughout the state. We have been stressing the importance of pesticide safety at these informational meetings. Perhaps most significantly, we have been developing a bi-lingual video program on worker pesticide safety for use by growers in labor camps. We think with our endorsement growers will feel confident in the educational value of this and will welcome its use.

III. SPECIFIC COMMENTS ON S-3079 (& A-4171)

1. Sections 10-15 deal with farmworker safety. As previously stated, we support a worker training/education program that should be practical and effective for both the farmer and his employees. We suggest the following:

- Section 10: this requirement seems to duplicate the existing state pesticide code. We would like to see the bill incorporate the DEP suggestions for this.

- Section 11: We suggest that the word "information" be substituted for "pamphlets" to allow for an alternate and perhaps more effective means of education/training. Also, we suggest that the following sentence be added after the first sentence in the paragraph: "The level of information shall be determined by the department based on the employee's job responsibility and potential exposure to pesticides." The Department of Agriculture and Rutgers/ Cook College should be party to the preparation process.

- Section 12: add the term "based on potential exposure" at the end of the first sentence. The second sentence should be revised to read: "The training shall consist of approved training materials adopted by the department." We would like to see the NJDA and Rutgers/Cook College added here also. The DEP must have some flexibility in adopting the training criteria, and therefore the term "shall include" before a-f should be changed to "may include."

- Section 13: subsection "c" should be revised to change "shall provide the pamphlets" to "make available information". Such a change would be consistent with the change suggested in Section 11 and give the DEP the flexibility to make the program work. That subsection should also add the following to apply to the unique situation of day-contract employees, who in fact may be employees not of the farm owner but rather of a sub-contractor: "In instances of day-contract employees, a posted notice placed in the vehicle of transport shall suffice."

In subsection "d", we suggest that an MSDS sheet or a fact sheet be required, rather than both. We assume that the DEP will be responsible for the preparation of these fact sheets.

- Section 14: we think this section is duplicative of sections 11-13 and should be eliminated.

2. Sections 19 and 20 allow for law suits due to violations of this act. Inasmuch as there are penalty sections elsewhere in the bill and since most of the new requirements deal with education and training, we think these two sections may encourage frivolous law suits. They may inhibit the establishment of the cooperation needed to implement the education/training program for farm employees and therefore should be deleted from the bill.

- Section 7: the proposed ban on the aerial application of broad spectrum chemical pesticides should be reconsidered. While we recognize the ban does not affect agricultural uses and grants a reprieve under certain circumstances for mosquito control and health emergencies, we are not convinced this ban is a good idea.

Such a ban would undercut the aerial applicator businesses, which provide a vital support service to New Jersey farmers. The loss of business could force some of these operators to close, and that hurts the farming industry the same way as when a vegetable processor closes, a farm equipment dealer closes, or a grain elevator leaves the state.

From a health standpoint, we are concerned what this ban might do. In gypsy moth control, using air blast sprayers instead of aerial applications will lead to more not less pesticide use. The control of lyme disease may be inhibited as well, since the tick which transmits the disease is located in wooded environments that could be sprayed to prevent eventual human contact with this easily transmitted disease - New Jersey has a serious lyme disease problem.

From an aesthetic standpoint, we think the foliage loss to trees by gypsy moths that is best controlled by aerial application contradicts the purpose of open space programs. New Jersey state and local government agencies put considerable time into protecting open space. Forest land not controlled by BT could be damaged by the gypsy moth and then suffer a reduced recreational value.

- Section 1 and Section 3: we support the DEP's position regarding proposed changes to the Pesticide Control Council. As proposed in the bill, we think 16 members is too large and unwieldy. There should also be a balance of viewpoints represented in the composition of the council's members, and a statement to that effect should be added to the bill to give guidance to the Governor. The Council should not be a platform for philosophical debate or advancing ideology. The report to the Legislature in Section 3 could put the Council into a political context and that should be avoided. It should serve as a resource to the DEP in maintaining a fair and effective set of rules for controlling all pesticide use in the state.

- Section 8: we recognize that the notification section now calls for DEP to develop rules in this regard, rather than proposing criteria as the original bill did. The DEP probably has this authority now. We will repeat our concerns about the practical limits for this if and when it becomes necessary. The committee should be reminded that any off-site drift of wet spray is already a violation of federal and state regulations. Any residential neighbor who suspects that he or she is being illegally exposed to such can file a complaint, have swab samples taken, and analyzed by highly sensitive lab equipment. Most applicators know this and exercise appropriate caution. Insurance underwriting is perhaps another significant safeguard.

January 23, 1991

Testimony of Mark Lyons, PAC, MPH,
Re: Cost analysis of Pesticide Safety and Right to Know Bill

Below is a possible cost break-down scenario for two economic issues raised by the RTK Bill, which might be useful if these issues are raised in the hearings:

1. The costs of raising funds for the DEP and DOH to implement the program mandated by the law.
2. The cost to farmers of providing the training to farmworkers.

I. COSTS FOR DEP AND DOH TO IMPLEMENT THE BILL:

DEP estimates that the total cost of the bill will be approximately $ 1.2 million per year. This includes the funds needed by both DEP and DOH to implement their specific responsibilities, as defined in the bill. The bill mandates that this money shall be raised through increasing fees (registration, certification, and permit) and through penalities imposed for non-compliance. A scenario for proposed increases in fees and the economic impact of raising fees follows (this division of costs did not come from DEP-- they are not yet ready to decide how to divide up the costs; the proposed fee scenario is mine):

TOTAL WHICH NEEDS TO BE RAISED: $1.2 MILLION/YEAR

1. SOURCE #1: Registration Fees for product manufacturers and formulators.

Total number of registrants: 8,000
Current fee: $200/product
Proposed fee: $300/product
Revenues generated from increased fee: $800,000

Economic Impact: This is not easy to calculate because it is very difficult to get total sales or profits from these products. In 1985 total sales of pesticides used for agriculture was $30 million, and is at least $35 million/year now. However agricultural products are easily less than 50% of total sales of "pesticide products" (which includes such items as chlorox and other household disinfectants, paints which contain anti-fungal chemicals, etc.) within the state, so total sales of these 8,000 products is probably over $80 million/year. Thus, this increase in fees probably represents less than 1% of total sales of the products.

In the agricultural sector, the cost of the pesticide is only a portion of the total production costs of the food, say 10-20%. (continued on next page)

If the increased cost of the pesticides is passed on to the farmer, who then passes it on to the consumer, the total increased costs to the consumer could be calculated in the following manner:

If we multiply the 1% increase in the price of the peticide sold to the farmer X the 10% (or 20%) of his costs of production which are allocated to pesticides:

.01 X .1 = .001
.01 X .2 = .002

Thus, if all the increase in registration fees was eventually passed on to the consumer, it would amount to a 1-2 mil tax on agricultural products. To give you an idea of the extent of this increased burden on the consumer, a $10.00 bag of tomatoes would increase in price to $10.01 to $10.02.

In fairness, this increase in cost should be shared by all who profit by the use of pesticides: the manufacuturer, the farmer, and the consumer. Although the total burden is small, it would be even smaller if divided by three.

2. Source #2: Commercial Operator License Fees:

Total # Commercial Operators: 7,300
Current fee: $75
Proposed fee: $125
Revenues generated from increased fee: $365,000

Economic Impact: Let's say the entire cost of raising fees was passed on to the consumer. Conservatively, each applicator will do three applications/day X 200 working days, or 600 applications per year. If fee is increased $50/year, it would add 8 cents to the cost of each application:

7,300 applicators X $50/applicator = $365,000
7,300 applicators X 600 applications = 4,380,000 apps.
$365,000 / 4,380,000 applications = $.083 per app.

Thus, increasing the cost of each application by $.08 would pay for the increased licaense fees of the applicators.

3. Source #3: Applicator Business Permits:

Total Applicator Businesses: 1,900
Current Permit Fee: $150
Proposed Fee: $175
Revenues generated from increased fee: $47,500.

Using the formula above, if this cost was passed on to the consumer, it would result in an increase in cost of applications by $.01
($47,000 / 4,380,000 applications = $.01/ application.)

4. Note: farmers no longer have to pay registration fees for pesticides they use, although in the past they did.

TOTAL REVENUES RAISED FROM THESE THREE SOURCES:

1. Product Registration:	$800,000
2. Commercial Applicator License:	$365,000
3. Business Permits:	$ 47,500
TOTAL:	$1,212,500

NOTE: This does not include fees which might be raised from penalities, which would allow the above fees to be decreased.

SUMMARY: The annual increase of $1.2 million needed to implement the Pesticide Safety and Right to Know bill is substantial. However, because the volume of pesticide sales, the number of pesticide applications, and the sales of agricultural products in New Jersey is so great, the actual burden of increased cost to any one party (manufacturer, farmer or consumer) can be kept to a minimum. Hopefully, the burden of these increasd costs would not be borne by one party only (eg. absorbed by the farmer, or passed on to the consumer), but would be shared by all three parties.

.....

II. ESTIMATES OF GROWER COSTS TO PROVIDE RIGHT TO KNOW TRAINING TO FARMWORKERS:

The estimates below are based on the following assumptions:

1. Average # of workers on farms in NJ: 12 (costs would be less if had more workers).
2. Average wage: $3.85/hr.
3. Average length of training: 1 1/2 hours.
4. Cost to hire outside trainer: $150. (This cost would be eliminated if grower did training himself.)
5. Cost of materials: none, because provided free by DEP.

TOTAL COST TO TRAIN 12 WORKERS:

12 workers X 1.5 hrs. + $150 = $219

This averages out to $18.25/worker if hire a trainer, or $5.77/worker if grower does training.

Over a 20 week season this averages out to $10.95/week if grower hires a trainer, and $3.45/week if grower does own training.

New Jersey Environmental Federation

January 23, 1991

State Office
16 Bayard Street
New Brunswick, NJ 08901
(908) 846-4224
FAX: (908) 846-4320

North Jersey Office
14 South Park Street
Montclair, NJ 07042
(201) 783-5112
FAX: (201) 783-5247

Jersey Shore Office
108 Belmar Plaza
Belmar, NJ 07719
(908) 280-8988
FAX: (908) 280-0371

South Jersey Office
518 Walnut Street, #1304
Philadelphia, PA 19102
(215) 735-8409

Northwest Jersey Office
504 North Seventh Street
Allentown, PA 18102
(215) 434-9223

Legislative Office
121 W. State St., 2nd floor
Trenton, NJ 08618
(609) 396-4871
FAX: (609) 393-4893

National Office
1320 18th St., NW, Ste. 300
Washington, D.C. 20036
(202) 457-1286
FAX: (202) 457-0287

Testimony before the Senate Labor, Industry and Professions Committee and Assembly Energy and Environment Committee in support of S-3079/A-4171 , Amendments to the Pesticide Control Act of 1971.

Chairmen Lesniak and Smith, Committee members , thank you for holding this public hearing on a very important piece of legislation, and Senator Lesniak, thank you for encouraging citizen and deparmental input into the legislative process which culminated in this bill, which is actually a re-introduction of the Lesniak bill of 1983, S-1342. The proposal on the table has been reworked over the last 7 years in order to make it doable, workable and affordable and at the same time protective of rights of applicators ,farm workers, farmers, consumers.

My name is Jane Nogaki and I represent the New Jersey Environmental Federation, a broad based coalition of 50 citizen, labor, and environmental groups, and 60,000 individual members who are spoken to at their door by our professional canvass. The NJEF has made the pesticide safety issue one of its major campaigns in 1991 because of the concerns of our individual and group members regarding this issue. As a coalition we have worked to get better pesticide notification regulations, tried to educate the public about safer alternatives through our "Home Safe Home" exhibit and brochures, spoken at environmental conferences about the hazards of pesticides and alternative approaches, and supported legislation to get more funding for the beneficial insect rearing laboratory in an attempt to promote non-toxic alternatives to pest control. We've sen a major step forward in regulations which require notification and posting of public buildings, lawns, golf courses, when pesticide applications take place, but there are major gaps in regulations and inequities which we feel must be addressed in law - particularly right to know and training for farmworkers who are exposed to the most dangerous pesticides as they work in fields to harvest the food that we eat., and yet have no legal right to know the names of the pe sticides used in the fields where they work. Twice the Federation has worked within the state budget process to get appropriation resolutions for the Bureau of Pesticide Control, only to see those funding levels cut in the 1989 and 1990 budgets. We have supported the Department of Agriculture and the Department of Environmental Protection in their use of Bacillus Thuringiensis, a selective biological insecticide, for gypsy moth control on residential and state lands. We worked with Monmouth County groups such as Clean Ocean Action and NJ Shore Audubon Society to encourage the Monmouth County Board of Freeholders to pass a resolution in support of B.T. as the "least toxic alternative" control for gypsy moth in the county aerial spraying program, and with the strong leadership of then Freeholder John D'Amico, that resolution passed unanimously and carbaryl (Sevin) is no longer sprayed aerially in Monmouth County .

We feel that a better awareness on the part of the pesticide industry and the public exists today than five years ago. In a February 1987 EPA report, entitled "Unfinished Business," the EPA ranked pesticides in food as one of the nation's most serious health and environmental problems. the EPA's disclosure in 1987 of groundwater contamination by twenty pesticides in at least twenty four states, one of which is New Jersey, has led to several federal legislative initiatives for groundwater protection, which are heavily opposed by the national farm bureau and agricultureal chemicals lobby.

Because of the heightened awareness, we believe that the legislative agenda as proposed in S-3079/A-4171 is a necessity if citizens are to have confidence in government's ability to control pesticide use safely. Concerns about pesticides in food, ground and surface water, and in our homes, lawns, farms and workplaces can only be addressed through a strong and technically competent regulatory authority, and that authority , the NJDEP, is currently hamstrung in its ability to adequately regulate pesticides because of inadequate, sporadic funding and some unclear areas of authority.

124X

The Pesticide Safety and Right to Know Act clarifies the Departments authority and spells out areas that must be regulated in order to insure adequate training for people who work with or around pesticides, including applicators and farmworkers, and adequate notification to members of the public who may be affected by pesticide exposure. The details of the training and notifications systems will be worked out in regulations, the ACT established the areas which must be addressed in regulations.

In addition, authority invested by this bill in the NJDept. of Health will give a sound basis for making judgements about which, if any, pesticides, are causing health problems to applicators , workers, or the public at large., and empower the Health Department to train physicians and emergency response personnel about the recognition and treatment of pesticide poisoning. Finally, the bill gives citizens the right to know what pesticides are being used in their environment and workplace, and to take civil action when the governmental agencies have not carried out their mandate. This is a very important component of the bill and a means to insure that environmental laws will be enforced. The increase in penalties to $10,000 per violation (from $3000), coupled with the citizens rights,will act as a serious deterrent to violations. In a department such as the Pesticide Control Element, which has only 8 active field inspectors to monitor the more than 9,000 pesticide applicators operating in 21 counties of NJ, the additional deterrence of citizens suits and heavy fines play a critical enforcement role. There are precendents for these rights and fines in the Clean Water Act and the Environmental Rights Act.

The New Jersey Environmental Federation is in **strong support of every measure outlined in THE PESTICIDE SAFETY AND RIGHT TO KNOW ACT**.. Constituent members of our coalition will be testifying on different parts of the bill today, and in the interest of avoiding repetition I will focus on The Pesticide Control Council, The Technical Review Council, and the issue of fines and penalties.

PESTICIDE CONTROL COUNCIL EXPANSION (P. 1., Section 6.a):

The PCC under current law is composed of nine members appointed by the Governor: three public members (undesignated), three representing DOA, DOH, and Cook College, and three members designated as an ecologist, farmer, and toxicologist. The purpose of the PCC is to advise the DEP Commissioner on matters relating to the improvement of pesticide control programs, to review regulations, and to hold periodic public hearings concerning the use and application of pesticides.

The proposed make-up of the Council broadens it to include more representation of interested parties as well as more technical support. The recommendations for each position comes from an academic or organizational body of that kind of individual, thus removing some of the politics out of the recommending process. Thus the applicator representative will be recommended by the pest control association, and the environmental group representative will be recommended by environmental groups. The proposed make-up of the PCC is modelled after the NJ Right-to-Know Advisory Council, which is thought by most to be a representational group of all interested parties which functions well.

By expanding the PCC, more points of view will be represented on the Council, and hopefully a broader base of expertise. Speaking from personal experience as a public member of the PCC, I have been concerned by the political nature of the appointment process to the Council in the past, and by the imbalance of interests represented on it, with applicator and agriculture interests being well represented and consumer/health/worker interests being underrepresented. This situation will be corrected in the proposed legislation by specifically adding to the Council (in addition to the members of the DOH, DOA, Cook College, the ecologist,

farmer and toxicologist already on the Council) an organic farmer, a farmworker, a person with integrated pest management experience,a representative of an environmental group, a representative of a public interest group, a person with expertise in fish, game and wildlife issues, a pesticide applicator, a local or county health officer, a pesticide manufacturer representative, a person trained in occupational safety and health, a groundwater hydrologist.

By requiring the PCC to submit an annual report to the Governor and Legislature regarding the PCC's recommendations for legislative or administrative action, the PCC will be more accountable for executing its responsibilities. The PCC will also serve as a vehicle to receive technical recommendations from the Pesticide Technical Advisory Committee and funnel those recommendations to the Governor, Legislature, and the public. It is important for the public to be able to learn of the recommendations of the Technical Advisory Committee and to provide comment on them, and the appropriate vehicle for doing this should be the PCC meetings.(Note. these comments reflect my personal views and are not be be construed as the position of the present Pesticide Control Council)

THE PESTICIDE TECHNICAL ADVISORY COMMITTEE (P.4, Section 4.a)

NJDEP has long recognized its need for technical support in reviewing the use of pesticides and developing a priority scheme for overseeing the progress of pesticide assessments and research. The PTAC would provide such support for the Department, and we support the creation of this committee. We have been frustrated in the past by DEP's and DOH's inability to respond to a "pesticide crisis" such as the ones surrounding ALAR, CHLORDANE and ALACHOR and TEMIK. In fact, DOH has acted proactively on a pesticide only once, in the case of EDB in 1985, restricting its food tolerance to 0 ppm.

NJEF has petitioned the DOH AND DEP to take action independent of the EPA on the four above mentioned pesticides several times to no avail. Lack of resources /technical support have been cited as the reasons for the inaction. Other states, Massachusets, Maine, New York,have acted independently to ban one or all of the above mentioned pesticides, while NJ has relied on the EPA for guidance, a reactionary posture we would like to see changed in the interest of all our citizens but especially for the most vulnerable, our children, our elderly, our chemically sensitive.

The reporting of pesticide exposure incidents (p.8, section 15.c,16) will directly tie into the effectiveness of the PTAC in directing its energies to the problems that are specific to NJ. With increased awareness of the recognition and treatment of pesticide exposure by physicians and emergency responders, and a system in place for recording exposure incidents, a more accurate picture of problems related to pesticide use can be cast. Eight states already have mandatory reporting of pesticide incidents by physicians (CALIFORNIA, IOWA, FLORIDA, MISSISSIPPI,NEW YORK, OKLAHOMA, OREGON,WISCONSIN)

RETURN OF FINES, UPGRADE OF PENALTIES (p.11,sect.21 k.,22.10.b)

The New Jersey Environmental Federation strongly supports the return of fines into an environmental services fund for support of pesticide control programs. The current trend towards making programs self supporting through the chaergin of fees, and fines from the regulated industry coming back into the department for enforcement and education is a concept which is most appropriate. Most important to the continued operation of a good enforcement program is a stable source of funding. It would be our goal for the Pesticide Control Element that sufficient funding be available to insure a prompt response to the 1000 or so pesticide complaints registered per year, and that each of the 5,000 farms and 5,000 pesticide businesses in NJ could expect an annual inspection visit from NJDEP. (Under current practice, an inspection might occur once in five years, or as a response to a complaint)

126

Additionaly, we strongly support the raising of the maximum penalty fee from $3000 per violation per day to $25,000. Please note that the maximum penalty for violations of the Clean Water Act is $50,000 per day per violation. It is imperative that fines be stiff enough to act as a deterrent; at present they are low enough to be figured into the"cost of doing business."

IN CONCLUSION, we support all the proposals in S-3079/A-4171 and think that the gaps in farmworker right-to-know and community-right-to-know about pesticide applications and precautions for safety need to be closed now. In addition to this bill, we support intitiatives that would promote increased use of Integrated Pest Management, a shift to sustainable agriculture, and the certfication of organic food in New Jersey. Pesticide alternatives are available and they have been shown to work, but they require education and a shift in policy by the state Department of Agriculture , Cook College and the Extension Service of Rutgers University. According to the recent report of the National Academy of Science entitled "Alternative Agriculture", "Well-managed alternative farms use less synthetic chemical fertilizers, pesticides and antibiotics without necessarily decreasing, and in some cases, increasing per-acre crop yields and the productivity of livestock systems." (NY TIMES 9/8/89)

RECOGNIZING THAT THIS SHIFT TO SUSTAINABLE AGRICULTURE WILL BE GRADUAL, AND THAT CONCURRENTLY THERE WILL CONTINUE TO BE USED MILLIONS OF POUNDS OF PESTICIDES PER YEAR IN NEW JERSEY, WE STRONGLY ENCOURAGE THE PASSAGE OF THIS ACT TO INSURE THAT THE DEPARTMENT OF ENVIROMENTAL PROTECTION HAS THE AUTHORITY TO PROTECT PEOPLE FROM THE ILL EFFECTS OF PESTICIDES. . We look forward to working with the applicators, farmers, and farmworkers to establish workable regulations WHEN THE ACT BECOMES LAW. THANK YOU FOR YOUR INTEREST, WE LOOK FORWARD TO YOUR SUPPORT.

Jane Nogaki, Chairperson
New Jersey Environmental Federation

127X

Resolution 88-[illegible]

RESOLUTION REGARDING PESTICIDES
FOR THE SHADE TREE COMMISSION

Freeholder D'Amico offered the following resolution and moved its adoption:

WHEREAS, the pesticide Sevin is known to be toxic and, if not properly applied and controlled, can pose a danger to the health of citizens of Monmouth County; and

WHEREAS, the New Jersey Department of Environmental Protection and the New Jersey Department of Agriculture have abandoned the use of Sevin and is now using Bacillus Thuringensis (Bt.), which is not toxic;

NOW, THEREFORE, BE IT RESOLVED, that the Monmouth County Board of Chosen Freeholders recommends that the Monmouth County Shade Tree Commission take the following actions:

1. Require all municipalities which proceed with the use of chemical pesticides, such as Sevin and Dimilin, to notify its residents in the impacted areas, in writing, concerning the precautions to be taken to avoid exposure to those pesticides;

2. Modify its gypsy moth control program to eliminate the use of Sevin and recommend the use of Bacillus Thuringensis (Bt.) wherever possible and Dimilin when necessary in high gypsy moth infestation areas, in its program for municipalities and County lands in 1989 and future years; and

3. Refrain from the use of Dimilin in areas that would affect streams, ponds and waterways in its gypsy month control programs for 1989 in accordance with manufacturers' instructions.

Seconded by Freeholder Villapiano and adopted on the following roll call vote:

	YES	NO	ABSENT	ABSTAIN
Harry Larrison, Jr.	(x)	( )	( )	( )
Thomas J. Powers	( )	( )	(x)	( )
Theodore J. Narozanick	(x)	( )	( )	( )
John D'Amico, Jr.	(x)	( )	( )	( )
John A. Villapiano	(x)	( )	( )	( )

CERTIFICATION

I HEREBY CERTIFY THE ABOVE TO BE A TRUE COPY OF A RESOLUTION ADOPTED BY THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MONMOUTH AT A MEETING HELD April 24 1989

130X

New Jersey Environmental Federatio

State Office
46 Bayard Street
New Brunswick, NJ 08901
(908) 846-4224
FAX: (908) 846-4320

North Jersey Office
14 South Park Street
Montclair, NJ 07042
(201) 783-5112
FAX: (201) 783-5247

Jersey Shore Office
503 Belmar Plaza
Belmar, NJ 07719
(908) 280-8988
FAX: (908) 280-0371

South Jersey Office
1518 Walnut Street, #1304
Philadelphia, PA 19102
(215) 735-8409

Northwest Jersey Office
304 North Seventh Street
Allentown, PA 18102
(215) 434-9223

Legislative Office
321 W. State St., 2nd floor
Trenton, NJ 08618
(609) 396-4871
FAX: (609) 393-4893

National Office
1320 18th St., NW, Ste. 30
Washington, D.C. 20036
(202) 457-1286
FAX: (202) 457-0287

FOR IMMEDIATE RELEASE
JANUARY 18, 1991

CONTACT: Jane Nogaki
609-767-1110
Dolores Phillip
609-396-4871

FARMWORKERS AND ACTIVISTS TO FIGHT FOR PESTICIDE-RESTRICITIONS

Trenton - Pesticides, fungicides, and herbicides - all poisc with dangerous effects, will be the target of farmworker environmental, labor, and community activists at a special joi hearing of two state legislative committees on January 23rd.

The Assembly Energy & Environment Committee and the Senate Labc Industry, and Professions Committee will be meeting jointly the Union County Administration Building in Elizabeth to he testimony on S.3079/A.4171 (Lesniak/Smith), the Pesticide Safe and Right-to-Know Act.

Introduced on November 19, 1990, the legislation amends Pesticide Control Act to require pesticide safety training farmworkers, disclosure of the names of chemicals farmworkers exposed to before and during picking, and bans aerial spraying broad-spectrum chemical pesticides over residential areas.

Jane Nogaki, Chairwoman of the NJ Environmental Federati praised the bill's sponsors claiming that "few legislators willing to take on the chemical industry. Senator Lesniak Assemblyman Smith are leaders for proposing to control pestici in our environment".

During the hearing Jessica Herzstein, M.D. will present evide of injuries from pesticide spraying to farmworkers, along w Laurie Talbot, M.D. of the Bridgeton Area Health Services who treated several farmworkers exposed to pesticide residues in fields.

Farmworkers who have personally been sprayed by pesticides w be represented by farmworker Adalberto Alicia, a pestic poisoning victim, who will be appealing to the legislators their support.

Mark Lyons, M.P.H., representing the Farmworkers Support Gro noted that "It is unscionable that the farmworkers of New Jers who work with some of the most hazardous chemicals known, do have the right to know even the name of the pesticide they w with, or to have the training to protect themselves from th poisons".

-more-

New Jersey Chapter
Clean Water Action
Washington, D.C.

printed on recycled paper

132X

David Robertson, an attorney from Bergen County, will testify about his son's birth defect which he suspects stems from the pesticide Dursban which his wife was exposed to while pregnant.

Also expected to testify are Ramon Rivera, Chairman of the Hispanic Directors Association; John Cavright, a organic farmer from Middlesex County; Ed Pulver of the Hudson County Labor Council; the NJ Council of Churches; NJ Environmental Lobby; NJ Audubon Society; Communications Workers of America, NJ Environmental Federation; Coalition Against Toxics; Industrial Union Council; and the Dept. of the Public Advocate.

The entire hearing will be televised by TKR Cable Co. of Elizabeth.

-30-

PESTICIDE SAFETY AND RIGHT TO KNOW LAW FACT SHEET

THE PROBLEM:

FOUR MILLION pounds of pesticides are sprayed every year on the farms, lawns, roadways, greenspaces and buildings of New Jersey.

Yet the 15,000 farmworkers of our state, most of whom come from Puerto Rico and Mexico to grow and pick the "New Jersey Fresh" food we eat, do not have the right to know even the name of the pesticides they work with, or to be trained to protect themselves. All other workers in New Jersey legally enjoy this basic right to know.

Our communities likewise do not have the right to know what pesticides are being used on our lawns, roadways and schools, or on the farms that are close to residential neighborhoods.

THE SOLUTION

AMENDMENTS TO THE NEW JERSEY PESTICIDE CONTROL ACT were introduced in November 1990, by Senator Raymond Lesniak and Assemblyman Bob Smith. If these amendments become law they will protect the farmworkers and communities of New Jersey from pesticides. They will:

* Give all farmworkers the right to know the name of the pesticide they work with and to recieve pesticide safety training.

* Require communities to be notified of all types of pesticide application.

* Enact a ban on aerial spraying of broad spectrum chemical pesticides over residential areas.

* Require the Department of Health to train health providers to recognize and treat pesticide poisonings.

* Require all pesticide exposure incidents to be reported to the Department of Health.

* Expand the Pesticide Control Council to include more public and technical representatives, including a farmworker representative.

* Provide funding for the Department of Environmental Protection to carry out certification, training and monitoring programs. The bill enacts no new taxes or appropriation of State monies. Funding is through increased pesticide registration and penalty fees.

FOR MORE INFORMATION, INCLUDING HOW YOU CAN HELP PASS THIS LAW, CONTACT ONE OF THE FOLLOWING ORGANIZATIONS IN THE PESTICIDE SAFETY AND RIGHT TO KNOW COALITION:

Jane Nogaki
NJ Enviromental Federation
(609) 767-1110

Mark Lyons
CATA
(609) 881-2507

Carmen Rivera
Puerto Rican Congress of NJ
(609) 989-8888

NEW JERSEY COALITION FOR ALTERNATIVES TO PESTICIDES
P.O. BOX 627
BOONTON, NEW JERSEY 07005
(201) 334-7975

SUMMARY OF NEW PESTICIDE NOTIFICATION REGULATIONS

- Signs must be posted for at least *24 hours* following pesticide applications to lawns, trees or shrubs on single family residences, multifamily residences, commercial buildings, institutions, parks and similar sites. Signs must say "Pesticide Treated Area" and have a symbol with a person and a dog within a circle with a line through it warning to keep off area.
- Golf courses require more extensive posting. Signs are posted at starting tees and include date of last application, area treated, pesticide used, proposed date of next application and person to contact for additional information.
- Posting of permanent signs is required for indoor spraying of institutions, commercial or public buildings. Posting includes date of latest application, pesticide(s) used and person to contact for additional information and proposed date of next application. The regulations are specific as to where the notice is posted. For example, in hotels and motels the notice is posted at the main desk, in restaurants - next to the Health Department inspection card, at schools and places of worship - on a central bulletin.
- At malls, stores, airports and other large public places, signs are posted *during* application where the public may come in contact with pesticides. The sign, however, only has to remain until pesticides have dried.
- For multiple family residences, notice must be provided at least *48 hours* prior to proposed date of application. This notice is given to each occupied unit to be treated.
- Any person who contracts for pesticide applications must receive in writing the following information: proposed date of application, pesticide to be used, label instructions relating to safety and a Consumer Information Sheet which contains the telephone number of the applicator, as well as telephone numbers of the NJ Dept. of Health for general health information and the NJ Poison Information and Education System for emergencies.
- In addition, no *aerial* application of pesticides can take place within *300 feet* of schools, hospitals, nursing homes, houses of worship if the premise or building is occupied by people. No *aerial* application of pesticides can take place within *100 feet* of any private residence unless written consent of the inhabitant is given.
- Most pesticide applications *cannot* be made in or around a school in grades preschool through 12 during normal school hours. After normal school hours, applications can only be made in areas where students will not make contact with treated areas until the pesticide has dried or settled.
- The pesticide, diazinon, responsible for many bird deaths cannot be applied to sod farms, golf courses or other turf areas greater than 3 acres (or to other areas less than 3 acres if frequented by waterfowl).

PREPARED BY SUSAN SHAW

NEW JERSEY COALITION FOR ALTERNATIVES TO PESTICIDES

PESTICIDE SAFETY AND RIGHT TO KNOW COALITION

Groups who support S.3079/A.4171

Coalition Against Toxics
New Jersey Citizen Action
New Jersey Council of Churches
CATA(Farmworker Support Committee)
New Jersey Environmental Lobby
Sa-Lantic Health Services
PHILAPOSH(Phila. Area Project On Occupational Safety & Health)
New Jersey Industrial Unions Council, AFL-CIO
New Jersey Coalition for Alternatives to Pesticides
CAPE(Citizens Association for the Protection of the Environment)
Clean Water Action
New Jersey Shore Audubon Society
National Health Coalition for Environmental Health Strategies
PAPA(Parents Against Pesticide Abuse)
Puerto Rican Congress
Farmer John's Organic Produce
Clean Ocean Action
New Jersey Audubon Society
New Jersey Environmental Federation
New Jersey Hispanic Health Coalition
Environmental Response Network of Atlantic County
South Jersey Vegetarian Society
Marlton Food Corporation
Cornucopia
W.A.T.E.R.(Watch Against Toxic Effluent Residue)
Hispanic Labor Task Force
Passaic River Coalition
Hispanic Directors Association
Delaware Riverkeeper Project
New Jersey Right-To-Know & Act Coalition
P.U.K.E.(People United for A Klean Environment)

Coordinated by the New Jersey Environmental Federation
46 Bayard St., New Brunswick, NJ 08901
201-846-4224

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COALITION AGAINST TOXICS

223 Park Avenue
Atco, New Jersey 08004

23 January 1991

Testimony in Support of S-3079/A-4171, Amendments To the Pesticide Control Act of 1971, sponsored by Senator Raymond Lesniak and Assemblyman Robert Smith

Senator Lesniak, Assemblyman Smith, Committee Members, and Staff:

Thank you for holding joint public hearing before the Labor, Industry and Professions Committee and Energy and Environment Committee on S-3079/A4171.

My name is Wynne Falkowski and I am Chairman of Coalition Against Toxics, a grass roots citizens group which works specifically to reduce pesticide exposure to people and the environment in New Jersey. While recognizing the right of farmers and the pesticide industry to do business in New Jersey, we nevertheless uphold the right of citizens to live in a safe environment and to be able to avoid pesticide exposure whenever possible. **The proposed legislation will help make that choice possible.**

I would like to share with you my reasons for being here to testify in favor of this bill. If this bill had been a law I would not have experienced the following unnecessary exposures:

* aerial application of carbaryl over my home despite requesting to be excluded from the privately contracted program

* ground application of carbaryl while in my first trimester of pregnancy - not notified by neighbor

* ground application of unknown pesticide by farmer which entered car

*aerial application of unknown pesticide for mosquito control at Island Beach State Park

*indoor application of unknown pesticide at Haagen-Daas ice cream store

*repeated intrusions of lawn service applications onto my property

As a medical professional I have seen and read about the increased incidences of late onset (over 30) allergies/sensitivities to chemicals in general. It is believed that this is caused by the cumulative chronic exposure to chemicals in everyday life. The notification provision (section 8) in the proposed legislation is key to preventing exposure When this bill becomes law you will have the satisfaction of knowing that you contributed towards helping to eliminate needless chemical exposure.

There is one immediate step the legislature can take to reduce exposure to broad spectrum chemical pesticides such as carbaryl (Sevin) and diflubenzuron(Dimilin) and that is a restriction on aerial spraying of toxic substances over residential areas for gypsy moth control. (Section 7a) The restriction would not apply to the use of target specific pesticides such as the biological control for gypsy moths, Bacillus thuringensis (B.t.). There is precedence for such restrictions in the Province of Ontario, Canada, and in the State of Connecticut. There is also a precedent for the use of safer alternatives right here in N.J. in the municipality in which I live, Evesham Township, and in Monmouth County. There is not a single state or federal program for gypsy moth control using Sevin anymore. For the past five years, the Department of Agriculture and the Department of Environmental Protection have used only Bt. in their aerial spray gypsy moth control programs. 137X

Every year there are cases of citizen complaints about exposure of children to the spray while waiting for school buses in the morning. Since exposure incidents are nearly impossible to prevent in a residential area, it is imperative that the least toxic alternative be used in aerial spray programs. Our group feels that low flying aircraft over residential areas is in itself inherently dangerous, but when you add the extra risk of gallons of pesticide on board the aircraft, the risk increases substantially.

In the proposed legislation, restrictions will be placed on aerial spraying for gypsy moth that basically reflect the policies that DOA and DEP are already implementing.: first, use the least toxic alternative, BT. Secondly, aerially spray only when the gypsy moth population level reaches a damage level, as determined by the Departmentof Agriculture.

The gypsy moth permit system proposed in the bill(Section 9) would insure that unecessary and/or duplicative aerial spraying would not occur. A similar permit program exists in DEP for aquatic pesticide applications, and we think that aerial spray programs over residential areas pose a significant enough exposure that a permit program should be in place. Is there a major use of chemical pesticides over residential areas in NJ, even though the DOA and DEP are using Bt. in their suppression programs? The most recent statistics show that in 1987, while Bt. was clearly in the lead with 78,939 acres aerially sprayed for gypsy moth, nevertheless 62,449 acres were sprayed with Sevin, and 2,582 with Dimilin. (This represents a swing toward the least toxic alternative, Bt., since 1980 when virtually no town was using BT. and the DOA was offering **only** Sevin for gypsy moth programs.) While we are pleased with the direction of the change towards the less toxic B.t., it is clear that a considerable amount of chemical spraying continues, often unnecessarily.

Please support the aerial ban of chemical pesticides over residential areas and the gypsy moth permitting program. Where a safe, least toxic alternative exists and has proven satisfactory over the years, why are we needlessly exposed to more toxic pesticides than we need to be?

We support the Department's desire to register structural pest inspectors in order to protect the public from untrained or unscrupulous inspectors, and the Department's plan to upgrade and make verifiable the training of pesticide operators working under the supervision of certified applicators.

Coalition Against Toxics has been active on pesticide issues for 9 years, testifying at every public hearing on regulations revisions and answering calls from citizens who are upset by exposure incidents which could have been prevented with some foresight and communication. Every section of this bill is in the proposal because of direct experience our groups members have had with the inadequacy of the present system to deal with pesticide exposure in a preventive way. While DEP has enacted some very good regulations and started the notification procedures for indoor and lawn/ornamental pesticide applications, the glaring gaps need to be filled in order for pesticides to be used safely in New Jersey. Please pass S-3079/A-4171 in order to insure Pesticide Safety and Right to Know in NEW JERSEY, for farmworkers, who are most at risk from pesticide exposure,, and for consumers, who are at the end of the chain of pesticide exposure in their residences, workplaces, and through their food consumption.

Thank you for the opportunity to share our views today.

Wynne Falkowski, R.N.
Chairperson
Coalition Against Toxics

138K

MUNICIPAL PESTICIDE ORDINANCES: MODELS FOR COMMISSIONS

The following ordinance was adopted by the Evesham Township council in September 1984, after a two-year "testing period." Although it is more restrictive than the state regulations, it has been reviewed by the Attorney General's office and approved by the state Department of Environmental Protection. Described by Evesham environmental commission members as a "model" and "the toughest regulations in the state on spraying pesticides in non-agricultural, residential areas," the ordinance prohibits the use of chemical pesticides and transfers enforcement responsibility from the state to the municipality.

A more lenient model ordinance was developed for municipal use in 1982 by the Bureau of Pesticide Control Operations, N.J. Department of Environmental Protection (CN 027, Trenton, N.J. 08025, 1-609-292-8393).

TOWNSHIP OF EVESHAM
ORDINANCE NO. 29-9-84

AN ORDINANCE OF THE TOWNSHIP OF EVESHAM AMENDING ORDINANCE NO. 7-2-83 TO REGULATE THE AERIAL SPRAYING OF PESTICIDES IN THE TOWNSHIP OF EVESHAM

WHEREAS, the Township Council of the Township of Evesham has determined that aerial spraying of pesticides for non-agricultural use has resulted in the dispensing of said pesticides on unknowing and unwilling property owners and residents in the Township of Evesham in contravention of their legitimate interests; and

WHEREAS, the Township Council has further determined that control of aerial spraying for non-agricultural use may limit human exposure, prevent contamination of surface and ground water and prevent contamination of fish and wildlife habitats.

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Evesham, County of Burlington, State of New Jersey, as follows:

SECTION 1. Definitions

For the purposes of application and enforcement of this Ordinance, the following words and phrases shall be defined as indicated:

(a) "Person" means and shall include corporations, companies, associations, societies, firms, and partnerships as well as individuals.

(b) "Pesticide" means and includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substances or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator; provided, that the term "pesticide" shall not include any substance or mixture of substances which the EPA does not consider to be a pesticide.

(c) "Pest" means: (a) any insect, rodent, nematode, fungus, or weed; or, (b) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria or other micro-organisms on or in living man or other animals) which is injurious to health or the environment.

(d) "Toxic" means poisonous or capable of causing acute or chronic injury to living organisms.

(e) "Microbial Insecticides:" Preparations based on disease organisms which normally cause insect diseases. (See Bacillus thuringiensis; Milky Disease Spores.)

(f) "Non-Agricultural Use" means use of a property, which property has not been assessed as "farmland" by the Township Tax Assessor and/or is used for purposes other than the production of an agricultural commodity.

139X

(g) "Agricultural Commodity" means any plant or part thereof or animal product produced by a person (including farmers, rangers, vinyardists, plant propagators, Christmas-tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable person) primarily for sale, consumption, propagation or other use by man or animal.

SECTION 2.

Any person engaged in aerial spraying of pesticides over lands located in Evesham Township must register with the Evesham Township Manager, or his designee, at least seven (7) days before the anticipated date of spraying operations; such registration shall include accurate information regarding:

(a) the pesticide to be sprayed; a copy of the label to be filed with the Township Clerk;

(b) the area, by lot and block numbers, to be sprayed;

(c) the aircraft (by registration number, model and general description) to be used in the spraying;

(d) the identity of the pilot of the aircraft and his pesticide applicator license number;

(e) the dates and times when the spraying is to take place;

(f) name and address and telephone number of the person making the application for registration;

(g) name and address of the insurance carrier insuring the aircraft and the policy number of a public liability and property damage insurance policy covering personal injury and property damage resulting from the spraying and operaton of the aircraft; said coverage shall meet or exceed the standards set forth below:

i. Bodily injury liability
   (1) $100,000 - each occurrence
   (2) $300,000 - aggregate

ii. Property damage liability
   (1) $50,000 - each occurrence

SECTION 3.

All aerial spraying operations must conform to existing Federal and State regulations. For example, no single engine planes are permitted at low altitudes over congested areas.

SECTION 4.

The aerial spraying of pesticides, other than microbial insecticides, for non-agricultural uses is specifically prohibited.

SECTION 5. Applicability

The provisions of this Ordinance shall not apply to County, State or Federal agencies.

SECTION 6. Penalty

Any person violating the provisions of this Ordinance (including, but not limited to, the registration requirements) and any person assisting or participating in an aircraft spraying operation resulting in the violation of this Ordinance, shall be subject to a fine of not more than $500.00 or imprisonment in the County Jail for not more than ninety (90) days, or both.

SECTION 7. Severance

Should any section, clause, provisions, or portion of this Ordinance be adjudged unconstitutional or invalid, such decision shall not affect or impair the validity of the remaining portions of this Ordinance.

SECTION 8. Effective Date

This Ordinance shall become effective twenty (20) days after its final passage and publication according to law.

SECTION 9..

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

Organizing for Action

Effective action by environmental commissions and citizen groups requires good organization. Enforcement problems, Superfund cleanups, applications for open space acquisition, site plan review — whatever the issue, you must know what you are talking about and be organized in your efforts.

The following guidelines were developed by Lewis Goldshore, Esq. and James Lanard, Esq. as part of ANJEC's workshop program on environmental enforcement (Spring 1984).

- Get involved in the issue early.
- Get the facts straight. Do your "homework."
- Get the group organized.
- Show strength and depth.
- Put everything in writing.
- Keep accurate records and files.
- Use photos and videotapes.
- Be persistent.
- Spend money for technical help and testimony.
- Know your limitations. Be good at what you do. Forget the rest.
- Work with local and state officials. Cooperate or co-opt.
- Work with the press.
- Make your public officials accountable — or run for election yourself.

140 X

STATE OF CONNECTICUT

[illegible]

1981

March 18, 1981

David Copeland
36 Georgia Trail
Medford, NJ 08055

Dear Mr. Copeland:

Thank you for your request for additional information regarding our April, 1982 news release on carbaryl. Enclosed is a copy of our statement. The following background information may be helpful in understanding our decision to issue that warning.

Our state's Department of Environmental Protection regulates aerial applications of pesticides. At the time our statement was issued, they already prohibited aerial spraying of broad spectrum pesticides such as carbaryl near residential areas. Only Bacillus thuringiensis (Bt) is currently approved for aerial use over or near residential areas. Therefore, our target audience for the news release was primarily individual residents, landlords and/or municipalities contemplating ground spraying of ornamental trees and shubs either by commercial pesticide operators or via the do-it-yourself method.

Numerous complaints of symptoms, including some suggestive of cholinesterase inhibition, were observed following reported exposures to carbaryl during the gypsy moth season in 1981. This experience prompted a review of the toxic effects of carbaryl, especially in view of the anticipated heavy usage associated with the expected gypsy moth mania in 1982.

A major source of information for our review and evaluation was the EPA Decision Document on Carbaryl, evaluating its status as an RPAR candidate. The length of this document precludes its reproduction by our staff. If you wish to obtain a copy, I suggest you contact the nearest branch office of the EPA.

Our decision to recommend against the use of carbaryl was based on its known potential for causing immediate health problems if used improperly, uncertainties regarding long-term toxic effects (including mutagenesis, carcinogenesis, and teratogenesis) and the availability of a safer, more biologically selective alternative, Bt.

566-8166

[illegible]

John E. Keys
Epidemiologist
Toxic Hazards Section

Alan J. Siniscalchi
Acting Chief
Toxic Hazards Section

141X

BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF BURLINGTON
MOUNT HOLLY, NEW JERSEY
08060

OFFICE OF
BURLINGTON COUNTY
HEALTH DEPARTMENT
Telephone 267-0631
Area Code 609

January 28, 1983

TO: Municipal Clerk

FROM: Walter Trommelen

RE: 1983 Gypsy Moth Control Program

It is my understanding that municipalities have been sent information from the New Jersey Department of Agriculture, regarding OPTIONS for the 1983 Gypsy Moth Control Program.

We respect the various factors involved in deciding whether to spray, and if so, in which areas and whether to select either of the chemical pesticides (i.e., Sevin or Dylox), or B.t. (Baccillillus thuringiensis), a bacterial pesticide. We understand also, the lesser technical assistance being offered by the New Jersey Department of Agriculture for 1983.

If you select the option to spray, we wish to point out an advantage of the B.t. method; i.e., B.t. is not known to be toxic. Conversely, chemical pesticides are toxic in nature. Unfortunately, there are unanswered questions about long-term health effects of exposure to chemical pesticides like Sevin or Dylox.

While the cost for B.t. is greater, only one application is needed now, thus reducing the greater cost differential experienced in previous years.

We also look forward to the State Pesticide Council completing its work on a Model Municipal Ordinance, addressing spraying procedures on private properties. We hereby encourage each municipality to consider such an ordinance, when available.

These recommendations are the result of concerns brought to our attention by the Coalition Against Toxics, our independent review of studies and expert opinions, and our professional judgement, coupled with the various concerns and complaints we receive from residents, as your agent.

For any municipality which may elect area-wide spraying of chemical pesticide in residential areas, we recommend a thorough public information effort to inform all residents in spray areas, of appropriate precautions, similar to our recommendations, as distributed last year. Even if B.t. is used, municipalities are required to notify the public of the particulars of your aerial spray program.

We shall review our precautionary recommendations from last year and distribute an update version during March of 1983--thus leaving you enough time to inform your citizens of appropriate precautionary measures.

cc: All Local Boards of Health

142X

EPA

NATIONAL PESTICIDE SURVEY

Project Update February 1989

Health Advisory Summaries Available for NPS Pesticides

EPA has prepared Health Advisory Summaries for participants in the National Pesticide Survey and is also making them available to the general public. Health Advisory Summaries have been prepared for nitrates and the 55 NPS pesticides listed below. These substances are considered to have a high potential for reaching drinking water.

The Health Advisory Summaries describe possible health effects of these substances and suggest actions that may be taken by a well owner or community system operator to ensure a safe drinking water supply.

The one page summaries are written in non-technical language to provide clear and understandable information to survey participants and the general public. The summaries also describe the uses of each pesticide and sources of further information and assistance.

The summaries are based on longer, more technical Health Advisories, issued by EPA to assist federal, state, and local officials in responding to drinking water contamination. Health Advisories contain information on health risks and treatment technologies, and specify levels of chemical concentrations in water that are acceptable for drinking. These levels, based on human data or experimental animal studies, include a "margin of safety" that provides an additional level of protection.

Appropriate Health Advisory Summaries are being sent to well owners and operators for any pesticides found in their wells as a result of National Pesticide Survey sampling. The summaries are also being made available to federal, state, and local officials, and to industry, farm, and environmental groups for further distribution.

Information on how to obtain the Health Advisory Summaries or the full Health Advisories can be obtained by calling the Safe Drinking Water Hotline, 1-800-426-4791, toll-free, Monday thru Friday, 8:30 to 4:30 E.S.T. (In Washington, D.C., call 382-5533.)

LIST OF HEALTH ADVISORY SUMMARIES

- Acifluorfen
- Alachlor •
- Aldicarb &
  - Aldicarb sulfone &
  - Aldicarb sulfoxide
- Ametryn
- Atrazine •
- Baygon •
- Bentazon
- Bromacil
- Butylate
- Carbaryl •
- Carbofuran
- Carboxin
- Chloramben
- Chlordane
- Chlorothalonil
- Cyanazine
- Dalapon
- 2,4-D •
- DBCP
- Diazinon •
- Dicamba •
- 1,2-Dichloropropane
- 1,3-Dichloropropene
- Dieldrin
- Dinoseb •
- Diphenamid
- Disulfoton
- Diuron
- Endrin
- Ethylene dibromide
- Ethylene thiourea
- Fenamiphos
- Fluometuron
- Heptachlor &
  - Heptachlor epoxide
- Hexachlorobenzene
- Hexazinone
- Methomyl
- Methoxychlor
- Metolachlor
- Metribuzin
- Nitrate/Nitrite •
- Oxamyl
- Pentachlorophenol
- Picloram
- Prometon
- Pronamide
- Propachlor
- Propazine
- Propham
- Simazine •
- 2,4,5-T
- 2,4,5-TP (Silvex)
- Tebuthiuron
- Terbacil
- Terbufos
- Trifluralin

• Common lawn chemicals

1987 GYPSY MOTH SPRAY PROGRAM

COMPOUND	ACRES TREATED*
SEVIN	62,449
DIMILIN	2,582
B.t.	78,939
OTHER	156

* RESULTS FROM 20 OF 21 REG. AERIAL BUSINESS

144X

Ann C. Obelkobel
2 Hunters Lane
Waterford, NJ. 08089

January 15, 1991

Senator Raymond J. Lesniak
Assemblyman Robert G. Smith

Re: Hearing - Pesticide Control Amendments
Senate #3079 & Assembly #4171

Dear Chairmen:

I am unable to attend the hearing scheduled for January 3rd but would like to give you some food for thought regarding the legislation before you. Several years ago, when my daughter Laura was around 15 months old, my neighbors banded together to hire a plane to spray toxic "Sevin" over the trees in our development to kill gypsy moths. There was no way to avoid having my property sprayed and I was concerned about the health risks to my young, growing child and my husband, self and pets. I felt helpless to the situation. We left our home on the day of spraying but we knew our property would have a residual from the pesticide. I did not feel it safe for my daughter to play outdoors since toddlers tend to put things into their mouths to see what it's like.

Please seriously consider passage of this bill to protect people from this kind of aerial assault.

Thank you for your time and consideration.

Sincerely,
Ann Obelkobel

November, 1990

TO WHOM IT MAY CONCERN:

In November of 1982, our family, after very careful consideration, made a decision to have a child. After various tests were performed on both my husband and myself, my doctor performed surgery on me so that I might attempt to become pregnant. In February of 1983, I did indeed become pregnant. We questioned my doctor at length about things I was to stay away from, such as: no smoking, no caffeine, no drugs, no new activities, etc... We even checked to see if it was ok to have our dog, Misty and our bird, Bobby.

Everything was going beautifully until we became aware that the township wanted to spray 'SEVIN' for the control of gypsy moths. My husband and I went back to the doctor and asked if this was okay and we were told that any aerial spraying would be fine except 'SEVIN!' We tried fighting the spraying every way we knew; writing the White House, attending the township meetings to beg the board not to spray. I even left town for two weeks when the spraying was scheduled to take place. All to no avail! I had to return home because my other two daughters were missing too much school. On the Friday that I returned from Michigan, I received a phone call telling me that we would be sprayed in fifteen minutes. 15 minutes!! I asked the gentleman what I could possibly do with 15 minutes notice.. which direction could I drive in...? He said there was nothing I could do but stay indoors. Which I did, crying. We tried not to think about it, since there was nothing more we could do at that point except hope for the best as any expectant parents would.

On October 4, 1983, Tara Renee Harding came into this world at 6:53 pm. Weighing in at 6 lb 6.5 oz and 18 inches long. She was the most beautiful redhead we had ever seen. As the nurses were cleaning our child she made one small sound, the first and last sound we would hear for more than SEVEN months. Tara was transferred to Children's Hospital of Philadelphia on October 5, 1983, with some of the most hideous internal birth defects I had ever seen or heard of:

Interrupted aortic arch
Ventricular septal defect
DeGeorge Syndrome
Tracheal-bronchial malasia

Tara had 10 major operations leaving her with 19 ugly scars. The list of drugs given to Tara in her first 5 months of life was longer than a normal person would take in a life time. Tara had IVs surgically implanted [9 at one time] because every vein in her body had been infiltrated. She had bleeding ulcers. Grand mal seizures that left her

blind, deaf, and brain damaged, and she had a surgical procedure to wrap her stomach around her esophagus and a gastrostomy, since she could not be fed any other way. Tara had Arnold Ciari Syndrome, Static Encephalopathy, and atrophy of the brain.. The things we had to learn to do to keep Tara alive should have earned us a medical degree. I cannot begin to tell you how much suffering, hurt, and deprivation we have endured. The medical expense rose above $4 MILLION. We had three shifts of nursing, seven days a week when Tara wasn't hospitalized. With out the nursing, Tara would have had to be institutionalized because we were just not equipped to handle the situation alone.

We were not able to do a lot of the things we would have liked to do with our daughter because of her inability to fight infection. We couldn't take her for a walk around the block, because we didn't know what my neighbors might have sprayed on their lawns. Every time a plane went over head spraying something we ran the risk of loosing Tara because we didn't know what was being sprayed. We couldn't depend on any notification in advance, because quite frankly, it just doesn't happen. Tara's problems could have been prevented with just a little advance warning. It should be a crime that during the course of trying to kill a 'bug', we are destroying our most precious and prized resource---our children!!

If this were an isolated incident, we would not be bothering you here today, but we had over 28 other families in the same county going through the same agony that we were. Most of the other families children didn't survive the spraying. Tara quietly passed away on April 27, 1990. She was finally set free from a little body that never knew what it meant to live a happy, normal, healthy life. Tara lived to be six and a half years old; but, at what expense? She could not sit up, roll over, stand, pick anything up with her hands, or even hold up her head. She died with out ever having smiled. You tell me what her quality of life was! The parents of those children that didn't survive were very lucky, they didn't endure the living hell we did.

My child's life had no meaning. It had no purpose. But through this letter and others, through our ongoing fight to inform the world of the dangers of pesticides, her death need not be meaningless. No other family need ever know what it is to like to have this kind of hurt and torment.

Sincerely,

Kathy Harding

Raymond A Harding

Kathy & Ray Harding

1605 Holly parkway
Williamstown, N.J. 08094

147X

January 1991

TO THOSE WHO ARE CONCERNED:

My name is Erica Lynn Musser. I am 20 years old. My mother is the most wonderful human being on this planet. My papa runs a very close second. Now I run into a problem. I don't quite know how to finish my little autobiography. I don't know exactly how to number my siblings. I can't say I have one sister because that would be unfair to her. She did exist, if only for a short time. I can't say I have two sisters because that would be unfair to me. I haven't got two sisters anymore. My youngest sister, Tara, was taken from me, from my family. She was murdered, if you will allow me to use such a strong word, by an ignorance that pervades our society. Insecticides and pesticides kill. Everyone knows these things kill insects and pests, hence the terms, but couldn't they also be considered 'infant-cides' or 'child-cides?' But I ramble. I want to tell you a story about a little girl, my little Tara. You needn't listen if you don't want to. No one listened before she was born. Very few listened while she was alive. She's gone now and I have yet to see if anyone else is listening. After all, it doesn't concern you. What I'm going to tell you about could never happen to you, only to the other guy, some other family, never yours.

I was thirteen when I found out my mother was pregnant again. I was overjoyed. I was going to be a big sister! I already had a younger sister, but she didn't really qualify me for big-sisterhood. We were only two years apart and all we did was fight. (You know how sisters are.) But thirteen years! That would qualify me. I'd make up my mind. She would want for nothing. If Mom said 'no,' I'd get it for her. After all, I was her big sister and by the time Mom got to telling her no to big things, I'd be over twenty-one. I'd get her everything and tell Mom to forget it when she tried to yell at me.

My girlfriend and I plotted everything we would do: the boys we should see she got introduced to, the boys we would make sure she stayed away from. You know, all the important things in life.

On one day in early spring, now I can't remember exactly when, I sat in school waiting for an assembly. Planes were flying overhead. I couldn't see them but I could hear them. They were so low to the ground and so loud the windows started to shake. My teacher made jokes. He grabbed his throat and pretended to choke. He knew what was being sprayed. I started to cry. I also knew what was being sprayed. The township had voted to spray carboyl or

Sevin as it is commercially sold. I also knew what that had the potential to do to the three month old child my mother was carrying inside of her. After a while I forgot to worry about it. Like most people I also thought it could never happen to us. I was wrong.

On the night Tara was born we were in almost constant contact with the hospital. My sister and I knew our little sister had been born. We knew shortly thereafter that she would not be coming home with Mom. We knew that in fact she may never be making it home. I immediately called my girlfriend in near hysterics. All I remember saying is 'They killed my little girl. They stole my little girl.'

For over six years, I watched as an ever elusive "they" slowly killed my little Tara. She died a lot in the hospital for the first eight months of her life. The only image I really remember clearly of her here was when we thought she was in the process of actively dying. At four months, her entire body bloated up to over 20 pounds. Her poor face was so bloated her lips kept cracking and bleeding from the stretch. And I remember being told that she would be leaving us soon be cause she was bleeding from every oriface in her body. I was too frightened by the images in my head of what this could look like to say goodbye.

She didn't finish dying in the hospital though. She died a little more every day she was home. In November of 1989 it was decided to institutionalize her. We could do no more for her. On April 27, 1990 after 6 years 6 months and 23 days my little Tara died without ever having known what the sunshine felt like on her face, without ever having had any fun or friends. She never played or went to school. She never looked at me with recognition in her eyes and asked me to pick her up or read her a bedtime story. She never picked her head up or sat up unassisted. She never smiled.

On the day she died, a friend drove me home from school and asked me, with all due respect, who my tears were for. I told him they were for both of us, for Tara because she never knew what she was missing and for me because I did.

I thank you for listening to my very abbreviated account of my sister's life. It doesn't do her justice but what could? The hell we went through, the hell I can only assume she went through should never have been allowed to happen. Please don't let it happen again. Please don't make anyone else have to write a letter like this.

Thank you,

Erica Lynn Musser

1605 Holly pkwy.
Williamstown, W.J. 08094

149X

Testimony for the New Jersey Community and Farmworker Pesticide Safety and Right to Know Law

Presented by the Nationalities Service Center of Philadelphia

Nationalities Service Center (NSC) is a United Way agency that provides legal, educational and social service assistance to immigrants, refugees and non-English speakers. Many of the refugees we serve are working on farms within the day-haul system.

Our understanding is that there are 2,500 to 3,500 day-haul workers and 221 buses running daily from Philadelphia to the New Jersey farms. The workers come from diverse South East Asian backgrounds and represent four or five language groups. Crew leaders contract with farmers and recruit people usually from their own nationality background. These farm workers usually spend two to three hours a day on a bus.

Because of the importance of farmworkers knowing what pesticides with which they may be coming in contact, and knowing the appropriate ways to protect themselves, we have given some thought as to possible approaches for efficiently and effectively educating workers about pesticides and their rights.

The approach we believe is preferential is the development of audio-tapes that would be played on each trip out to the farm. The tapes would assure a standardized message, they are easy to duplicate, and the only requirement is that each bus or van have a tape-deck and PA system.

Other approaches require training crew leaders or some other personnel to make presentations either during the trip to the farm, or before work is started. This approach may allow for more personal involvement, however, it has disadvantages. The standardized message is not assured; possible personnel changes and on-going costs may make this approach less efficient and more costly.

As part of either approach written materials could also be distributed to reinforce the oral message and help the workers remember what is presented.

NSC would be willing to assist in the development of training materials. We have been involved in similar efforts with Jefferson Hospital, the Fox Chase Cancer Center and the Pennsylvania Department of Public Welfare. We are able to train leaders or assist in the development of audio-tapes in the languages required. We could help in the development and

150X

testing of written materials to assure their cultural and literacy appropriateness.

While there would be some initial costs, the audio-tape approach and the development and production of written materials, would be the least expensive approach. The PA system and tape deck may be a cost that could be shared among the crew leader and farmer, with possibly, a subsidy from the Department of Environmental Protection.

In closing, we would like to emphasize that the proposed Pesticide Safety and Right to Know Law will give farmworkers access to information that they presently do not have. The refugees from South East Asia are particularly vulnerable due to language and cultural differences. Our suggestions offer practical solutions to providing diverse language communities the important information they need. Often a major obstacle in implementing these solutions is having access to resources knowledgeable about diverse language groups. NSC is such a resource, and we are willing to cooperate with efforts in New Jersey to develop practical approaches in helping people what they should know.

Nationalities Service Center of Philadelphia
1300 Spruce Street
Philadelphia, Pa. 19107

Michael D. Blum
Executive Director

January 14, 1991

PRINCETON PUBLIC AFFAIRS GROUP, INC.
PUBLIC AND GOVERNMENT AFFAIRS COUNSEL

THE PRINCETON HOUSE
160 WEST STATE STREET
TRENTON, NEW JERSEY 08608
(609) 396-8838

BRADLEY S. BREWSTER
DALE J. FLORIO
PETER J. McDONOUGH, JR.

SUITE 210
3333 K STREET, N.W.
WASHINGTON, D.C. 20007
(202) 785-2203

FACSIMILE
(609) 989-7491

MEMORANDUM

TO: Senator Ray Lesniak

FROM: Brad Brewster

DATE: January 22, 1991

RE: Amendments to Senate Bill 3079/Assembly Bill 4171 - Pesticide legislation

The New Jersey Pest Control Association would like you to consider the following changes to Senate Bill 3079 and Assembly Bill 4171.

1. **Provide for an additional industry member on the Pesticide Council.**

(Section 1)

The bill currently allows for only <u>one</u> council member from the "recognized organizations of pesticide applicators." In fact, however, there are <u>two</u> distinct types of applicators both having different functions and organizations. The New Jersey Pest Control Association represents the indoor commercial and residential pest control applicators, while the outdoor turf and ornamental industry is separately organized. Inclusion of each group will allow for proper and knowledgeable representation of these different activities.

2. **Permit DEP approval of industry training programs**

(Section 5)

The bill authorizes only the DEP to conduct pest application training programs. The pest control industry, however, has conducted training programs for many years. From the standpoint of cost and efficiency, industry training programs which meet DEP standards should be permitted to conduct programs to satisfy training requirements.

152X

3. **Clarify that registered and certified pesticide applicators may inspect for pest infestation without further registration.**

The bill correctly requires a certification and registration procedure for pest inspectors, such as, home building inspectors or termite inspectors. Inadvertently it may also require pesticide applicators or registered operators (7b certification) who are already competent to conduct inspections as a part of their pesticide applicator certification to submit to an additional and unnecessary registration procedure.

4. **Clarify the type of pesticide incidents to be reported to the DOH.**

(Section 15)

The bill requires that the Department of Health maintain a record of pesticide exposure incidents reported by physicians or veterinarians. In order to better define what type of matters should be reported and to avoid a misleading indication of pesticide danger, the bill should specify the reporting of incidents where there is "clinically determined evidence of an adverse health effect as a result of pesticide exposure."

5. **Specify that a civil action may be brought under the act where damage to a person or property occurs.**

(Section 20)

The bill allows for a civil suit solely on the basis of "exposure" to a pesticide. Therefore, mere "exposure" to a pesticide resulting from even a technical violation of the act could trigger a civil action. The allegation of some personal or property damage should be necessary to bring suit.

6. **Clarify DEP's authority in assessing fines for violation of the act.**

The DEP is given wide discretion of up to $25,000 per violation in assessing fines under the Act.

Using the "Clean Water Enforcement Act" as a model, we propose the following additional provisions to section 22 of S-3079.

> The commissioner is authorized to assess in accordance with a uniform policy adopted therefore, a civil administrative penalty which shall fall within range established by regulation by the commissioner for violations or similar type, seriousness, and duration.

In adopting rules for a uniform penalty policy for determining the penalty amount to be assessed, the commissioner shall take into account the type, seriousness including extent, toxicity, and frequency of a violation, the economic benefits from the violation gained by the violator, the degree of cooperation or recalcitrance of violator in remedying the violation, any measures taken by the violator to avoid a repetition of the violation, any unusual or extraordinary costs directly or indirectly imposed on the public by the violation.

Again, thank you for your attention and consideration of our recommendations. We appreciate the opportunity to work with you on this bill.

CAMDEN REGIONAL LEGAL SERVICES, INC.
FARM WORKER DIVISION
71 EAST COMMERCE STREET
BRIDGETON, NEW JERSEY 08302
PHONE (609) 691-4500 / (609) 935-8047

January 22, 1991

Honorable Raymond Lesniak, Chairman
Senate Labor, Industry and Professions
Committee
State House Annex, CN -068
Trenton, New Jersey 08625

RE: TESTIMONY OF THE FARMWORKER DIVISION OF CAMDEN REGIONAL LEGAL SERVICES, INC. ON PESTICIDE CONTROL AMENDMENTS A4171/S3079

Honorable Chairman Lesniak and Members of the Committee:

The Farmworker Division of Camden Regional Legal Services, Inc. ha served the legal needs of migrant and seasonal farmworkers in New Jerse for approximately twenty years. In our role as the legal services provider for this occupational group, we have repeatedly received complaints from farmworkers regarding pesticide exposure. The extensive experience of this office indicates that the Pesticide Control Amendment need to be passed to adequately protect farmworkers from pesticide exposure. This testimony is presented to the Committee at the request o a migrant farmworker client who was sprayed by pesticides and then terminated after he filed complaints related to this exposure.

Our experience with farmworkers in New Jersey has shown that current state and federal standards are inadequate, and that New Jersey should follow the example of Texas, Washington and California and adopt the Amendments. The experience of the Farmworker Division leads us to agree with findings of pesticide studies by the New Jersey Department of Health (NJDOH)[1] and Sa-Lantic Health Services[2], one of the farmworker public health clinics in New Jersey:

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1 New Jersey Department of Health, Development of a Voluntary Reporting System for Agricultural Worker Health Incidents in Southern New Jersey, 1988.

2 Lynne J. Steinberg, Sa-Lantic Health Services, Inc., Pesticide Report - 1985, December 31, 1985.

(1) There is a substantial need for pesticide education and training for farmworker fieldworkers. (NJDOH, p. 6, Sa-Lantic p. 16)

(2) There is a substantial amount of pesticide exposure among farmworker fieldworkers. (NJDOH p. 9, Sa-Lantic p.15).

(3) There is a substantial need for specific information about pesticides in the field to be given to farmworkers. (Sa-Lantic p. 16, NJDOH p.6)

(4) There is a substantial fear of retaliation among workers related to reporting pesticide problems which requires additional protections for such workers. (NJDOH p. 10, Sa-Lantic p. 15).

Due to the above-listed concerns, the Farmworker Division of Cam Regional Legal Services, Inc. urges you to enact Pesticide Control Amendments A4171 and S3079.

Sincerely,
Camden Regional Legal Services, Inc.

Keith G. Talbot, Senior Attorney
Farmworker Division

kt

STATEMENT REQUESTING AMENDMENT
TO
SECTION 8 OF S-3079 AND A-4171

On behalf of Consolidated Railroad Corporation we request an amendment to the notification provisions in Section 8 so as to permit a railroad to give advance notification of a pesticide application by newspaper advertisements to be followed by direct mail notification to those who request it.

Section 8 gives broad power to DEP to adopt regulations, but the last paragraph states (emphasis supplied):

> "To the greatest extent practicable, notification shall be made directly by mail, telephone or personal service to affected persons prior to a pesticide application. When direct notification is not feasible, other means shall be designed to maximize the number of people notified. <u>Legal advertisements alone shall not constitute notice under this section.</u> The department may direct county or municipal governing bodies to assist in carrying out its responsibilities under this section."

Direct notification by a railroad is not feasible. We don't know the names or addresses of the persons who live adjacent to our right-of-way. Conrail operates over 968 miles of track in New Jersey.

Federal law requires railroads to control vegetation. Specifically, 49 C.F.R. Section 213.37 states:

Vegetation on railroad property which is on or immediately adjacent to roadbed must be controlled so it does not . . .

(a) Become a fire hazard to track carrying structures;

(b) Obstruct visibility of railroad signs and signals;

157X

(c) Interfere with railroad employees performing normal trackside duties;

(d) Prevent proper functioning of signal and communication lines; or

(e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

In addition to being required by law, vegetation control is necessary in order to ensure the safety of both the travelling public and railroad employees. Visibility hindrance at grade crossings presents a risk of collision with motor vehicles.

Also, vegetation control serves an aesthetic function in that it prevents an overgrowth of noxious weed in urban and suburban areas. Weed control also reduces the number of weed seeds which may adversely affect agricultural operations.

The application of herbicides is the only feasible means of weed control for railroads. Mowing is not a reasonable alternative because of the topography of railroad track structures and drainage ditches.

Conrail and the railroad industry in general, contract with thoroughly qualified licensed applicators of herbicides who make appropriate use of the chemicals.

Light maintenance rates of herbicides are applied once a year. Obviously, Conrail's use of herbicides is negligible as compared to the average farmer's agricultural use of fertilizer, herbicides and insecticides. The typical farmer applies chemicals three or four times a year, and in much greater quantities than Conrail.

Posting of notices during applications, as authorized earlier in Section 8, would be meaningless because the low pressure spray equipment on the track is self-explanatory. Notices posted in advance below the ballast would not be visible; if posted on stakes driven into the ballast on the upper level of the roadbed they would be knocked down.

We don't know any practical method of giving notice except by a newspaper advertisement, and thus propose this insertion on page 4, line 50:

> "Legal advertisements alone shall not constitute notice under this section, <u>unless followed by further notice to those who request it.</u>"

<u>CONCLUSION</u>

For the above reasons we hope you will agree to the proposed amendment which will provide the same notification that is now required by DEP regulation for applying pesticides on a community or areawide basis.

Respectfully submitted,

Augustus Nasmith

Augustus Nasmith

Dated: January 14, 1991

159X

BARTLETT
TREE EXPERTS

P.O. Box 177
2964 Falmouth Road
Osterville MA 02655

(508) 428-2397

January 21, 1991

Senate Committee on Labor, Industry and Professions and Assembly Committee of Energy and Environment comments for Public Hearing on SB 3079 and AB 4171.

We have reviewed the proposed changes in the New Jersey pesticide regulations and, on behalf of our Company, would like to submit the following comments for your consideration.

By way of background The F. A. Bartlett Tree Expert Co. is a third generation commercial tree service having been founded in 1907 by Dr. Francis A. Bartlett. We are a national firm servicing private, commercial, industrial and utility clients in over thirty states. We maintain plant research laboratories in Charlotte, North Carolina staffed with plant pathologists, entomologists and physiologists. We are leaders in the development and implementation of Integrated Pest Management strategies.

As Vice President for Environmental and Regulatory Affairs I have the responsibility for ensuring compliance with state and federal regulations. I have been a practicing commercial arborist for almost 40 years and have been involved with pesticide regulations since 1963. I served on the Governor's Pesticide Task Force for four years and for eight years, as the commercial applicator member of the Massachusetts Pesticide Board.

Our Company, in general, supports the expansion of the Council. We are concerned, however, with what may be a dilution of the mission of the Council with the addition of members without sufficient credentials. We would, for instance, oppose the addition of an organic farmer because of the inherent anti-pesticide position of such a member. Although organic farmers may be familiar with the principals for Integrated Pest Management, they would not have the technical background of our research staff at our Charlotte Laboratories. It would be counter-productive to have someone without equal technical background influencing IPM programs.

We do not feel that increasing the committee's membership to 16 accomplishes anything other than creating an unwieldy group. The public at large and the farm workers are already adequately represented on the Council.

As an advisory group the Council best serves the interest of the state by making recommendations to the Commissioner. It would be most inappropriate, in our opinion, to circumvent the present relationship.

The regulations should not preclude the ability of the industry to develop and implement in-house training programs, approved by the Department, if such training is not provided by the state.

We are concerned about what is intended in Section 7 regarding the aerial application of broad spectrum pesticides. Application by aircraft is not the same as aerial application. Regulations using such language could preclude the use of back pack mist blowers in IPM programs.

States that have carefully examined the need for notification, have determined that a roster of persons whose sensitivity to pesticides has been confirmed by competent medical authorities, satisfies the problem. The courts in New York have determined that notification is a private right and should not indiscriminately be imposed on everyone.

The section addressing pesticide exposure is much too broad. Exposure does not necessarily result in injury or adverse effects. Such a provision in a regulation would permit and encourage civil action even though an applicator had been complying with label instructions. The same is true regarding the language in Section 20 of the proposed regulations.

Finally, suggesting that fees reflect actual or projected Department expenses is like saying that fares for Amtrack will be commensurate with the cost of this government run operation. No other agency is funded in a like manner and it is particularly inappropriate in this case.

I would like to thank you for the opportunity to present our comments regarding these regulations. Our Company is committed to the concepts of Integrated Pest Management and has dramatically reduced its reliance on chemical controls. We are anxious to cooperate with the State in any way we can regarding the responsible regulation of pesticides in New Jersey.

Very truly yours,

THE F. A. BARTLETT TREE EXPERT CO.

Erik H Haupt

Erik H. Haupt
Vice President for Environmental
& Regulatory Affairs

EHH:njp
cc: Robert A. Bartlett, Jr.
John E. Signorini
Greg Daniels
Ilona Gray
Assemblyman Robert G. Smith

161X

Agricultural Division

CIBA-GEIGY Corporation
P.O. Box 18300
Greensboro, North Carolina 27419
Telephone 919 632 6000

CIBA-GEIGY

January 25, 1991

Senate Labor and Industry Protection
Committee
Attention: Mr. Dale Davis
Committee Aide
Office of Legislative Services
State House Annex
Room 443/CN 068
Trenton, NJ 08625

Dear Mr. Davis:

SUBJECT: COMMENTS FOR PUBLIC HEARING ON SB 3079/AB 4171

The Agricultural Division of the CIBA-GEIGY Corporation is a major producer and supplier of pest management products used in New Jersey and throughout the United States. As such, we are vitally interested in legislation that seeks to protect public health and the environment, while at the same time, exhibits potential impact on the ability of the public to receive the important pest management benefits these products offer. The following comments are offered for your consideration on the subject bill:

Section 1 - Amendment to Section 6 of P.L. 1971

The Division supports the idea of broadening the expertise of the Pesticide Control Board by adding a toxicologist, ecologist, and medical doctor to the Board provided these individuals are knowledgeable about pesticides and are practicing in the field. However, we question the addition of an "organic farmer." This is based on the fact that organic farmers inherently biased against the use of synthetic pesticides and represent a very small segment of production agriculture. We feel this need would be better served by a more unbiased representative such as a representative from Rutgers involved in Integrated Pest Management (IPM) research.

Attention should also be given to the size of the Board itself. Increasing the number of Board members from 9 to 16 could greatly inhibit the Board's ability to be effective. The goal of the Bill to expand the Board's expertise can still be achieved with the addition of the above seats reducing the number of public at large positions.

162X

Section 7 - Aerial Application Limitations

It is the Division's position that pesticide application methods and product use should not be a specific legislative item, but rather should continue to be regulated through the state's lead pesticide agency under existing authorities. This approach ensures that the benefits of a pesticide use can be thoroughly weighed against any potential public or environmental risks.

Section 8 - Development of Notification Regulations

With notification regulations already in place in New Jersey, we question the need to impose further rules in this area. Since the existing notification regulations are reasonably new, it would be in the citizen's best interest to allow the present rules enough time to prove themselves effective.

For those people who truely have a high sensitivity to pesticides, a notification registry could be established. These individuals could request, on an annual basis, inclusion on such a list, once this sensitivity has been established by a trained physician. This concept has been instituted in several states with success and provides a workable solution to the challenge of notification.

Section 15 - Reporting Pesticide Exposure

Inasmuch as pesticide exposure symptoms resemble those of other conditions, requiring physicians and veterinarians to report incidents of pesticide exposure would not yield accurate information. Confirmation of such exposure would require specialized testing. The objectives of this section can only be realized if specific guidelines are developed to aid in the recognition and confirmation of exposure.

Section 21 - Fee's Reflecting Actual or Projected Expenses

The proposed fee structure that allows the state to charge fees to cover actual or projected expenses, costs for registration, and certification or permit fees, can lead to inefficiencies negatively impact the pesticide program in New Jersey. Increasing the fees charged to registrants could result in the withdrawal of some minor use products that could seriously impact specialty crop growers. Escalation of certification fees would result in fewer trained applicators, possibly resulting in increased incidents of misapplied pesticides.

If you should have any questions on these comments or desire further discussion, please contact me. Thank you for the opportunity to give input.

Sincerely,

Jeffrey L. Case/st

Jeffrey L. Case
Regional State Government
Relations Manager

L304AM0123JC

NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION
THE MADISON BUILDING
1155 Fifteenth Street, N.W., Washington, D. C. 20005
202 • 296-1585 Telex: 263-381 FAX 202 • 463-0474

February 5, 1991

The Honorable Raymond Lesniak (Chairman)
District 20, Union County
24-52 Rahway Ave.
Elizabeth, NJ 07202

Senate Labor, Industry, and Professions Committee

RE: Comments on SB 3079/HB 4171

Dear Senator Lesniak:

Please accept this letter as the official comments of the National Agricultural Chemicals Association to SB 3079 and HB 4171, currently pending before the Senate and General Assembly of the State of New Jersey. We appreciate the opportunity to submit these comments, and invite your response.

The National Agricultural Chemicals Association (NACA) is a nonprofit trade association of manufacturers and formulators of pest control products employed in agricultural production. NACA's membership is composed of companies which produce and sell virtually all the technical crop protection materials (active ingredients) and a large percentage of the formulated products registered for use in the United States and State of New Jersey.

NACA's comments to the captioned bills concern the particular sections of the bill discussed below:

Section 5 - Actions for Training Persons working under certified Applicators

As written, this provision does not allow "persons working under" to be trained by anyone other than employees of the department. The size of this training program could be quite large and burdensome to the department. Once such persons are trained, the department trainers would not have much continuing need. We suggest that this section be modified to allow for the training of persons by department approved training programs offered by properly recognized and certified trainers who may be employed by other state

165X

agencies or who may be employed by the private sector.

Section 7 - Limitation of Application by Aircraft

As written, it appears that spray programs such as ones used for control of the gypsy moth would not be permitted without state agency determinations that no practical alternatives are available or that emergencies exist. This section is quite rigid and lacks flexibility. We suggest that spray programs funded by the legislature be allowed when appropriate.

Section 15 - Reporting on Pesticide Exposure

We agree that reporting would be beneficial but are aware that reporting without confirmation provides misleading information for health and medical authorities. Some provision should be made to allow confirmation of such exposure before the results of such reporting are made available to the public. Not all physicians and veterinarians have the specific training needed to confirm exposure, so specific guidelines should be developed in order that reporting required by the state of New Jersey would be accurate and meaningful.

Section 19 - Actions For Failure to Enforce the Act

As written, Section 19 expressly provides that persons with no actual interest in the litigation may bring an action against either of two state agencies by alleging failure to enforce the Act. This provision departs from accepted notions of jurisprudence, and recognized theories of standing, by expressly waiving the traditional condition precedent that the potential plaintiff have some real or actual connection to the subject matter of the lawsuit.

The concept of "standing" -- the condition precedent to the filing of a lawsuit -- was originally developed (1) to prevent the courts from becoming overburdened with duplicative and/or baseless lawsuits, (2) to keep private citizens with no real or actual interest in the litigation from becoming "individual private attorney generals," and (3) to prevent those with political agendas from achieving political ends through abuse of the judicial branch.

By requiring some connection with the litigation, the proposed bill would avoid all three of these dangers.

Section 20 - Actions for Exposure to a Pesticide

Section 20 currently allows one whose property or person is exposed to a pesticide to sue "any person" who violates the act. As currently written, there is no requirement that the person sued be the person who caused the "exposure."

Further, to allow a person to sue someone because his property is simply exposed to a pesticide, rather than being damaged by one, is to depart from the common law of torts, and virtually all statutory adaptations of tort law. Certainly, if there were a showing of injury, damage, or harm from an exposure, then to allow or encourage such a suit would serve needed ends. However, the current threshold would make all applicators of pesticides strictly liable for all exposures, no matter how small, without regard for whether or not such exposure causes damage, or harm, to the plaintiff or his property. Such a threshold seems particularly inappropriate where, as here, the legislation also provides for an award of punitive damages.

Section 21 - Proposed Fee Schedule

Subsection k proposes a fee schedule which indicates that the legislature has abdicated part of its role of directing enforcement of this law. Citizens through their duly elected representatives need controls on the executive branch of government. For the legislature to give the department authority to hire whatever staff it needs and increase fees to pay for such staff, the control by the legislature is lost. Either the size of the staff or the amount of fees should be controlled by the legislature. We favor setting caps on fees to be charged. If this is not possible, then some provision should be made for a legislative committee to provide oversight and give endorcement of projected program expansions, fee assessments and budget expenditures. Unless some form of control is provided, excessive fees could lead to purchase of products out of state and to application of products by untrained persons. It should also be pointed out that assessment of fees results in the passing along of such fees to pesticide users wherein the citizens of new Jersey ultimately pay for this increased form of taxation.

Section 22 - Increased Penalties

Increase of penalties from $3000 to $25,000 seems to be

excessive. $25,000 fees for violations of toxic waste handling and disposal and chemical spills normally have penalty caps at this level but pesticide law violations are lesser threats and therefore normally carry lower penalties. We suggest that the maximum be set at $10,000 and further that the penalty be for each violation rather than each day of a violation. We do not believe that past experience in New Jersey or in any other state warrants the $25,000 per day proposal which is being offered in the subjects bills.

If you should have any questions on these comments or desire further discussion, please contact me. Thank you for the opportunity to give input.

Sincerely,

Arthur Hart, Director
State Legislative Affairs

NOFA
NATURAL ORGANIC FARMERS ASSOCIATION OF NEW JERSEY
R.D. 1 Box 263A
Pennington, NJ 08534

1/20/91

Dear Chairmen Lesniak, Smith & Committee Members,

As a concerned citizen, an organic farmer, a representative of NOFA, and past president of the Cornucopia Network of NJ, I urge your passage of Senate bill 3079/ Assembly 4171.

The bill is a strong one as it should be, for pesticides are after all poisons. The following three aspects of the bill seem especially important;

1. Placement of an organic grower on the Pesticide Control Council gives the Council greater credibility in the eyes of the public. With disturbing frequency, regulatory agencies wind up in the pockets of the group being regulated. The presence of an organic farmer would reassure skeptical voters that the Council remains true to its charge. In addition, such a member could provide proven alternatives in cases where a particular pesticide had to be restricted or prohibited.

2. Informing and protecting farm workers or others potentially exposed to pesticides is long overdue. While many applicator groups oppose this, I feel they are overlooking the public relations and legal benefits that will derive from the bill. Injury suits brought by those suffering pesticide induce damage can be enormously expensive in both economics and public good will. Adherance to this statute will provide the applicator legal protection and more importantly minimize the likelihood of injury in the first place. The applicators investment of a few hours in paperwork will be, not a nuisance, but a very cost effective expenditure of time.

3. The need for restrictions on aerial spraying is obvious in this, the most densely poplated state in the nation.

With appreciation of your time, thought and efforts,

John M. Canright

John M. Canright

169X

OFFICE OF LEGISLATION LIAISON

EXECUTIVE DEPARTMENT LEGISLATIVE COMMENT SHEET

BILL NO: S3079/A4171 SPONSOR: Lesniak/Smith

DATE INTRODUCED:

1-3-90/1-3-90

LEGISLATIVE HISTORY:

1-3-91: Law Public Safety & Defense Committee
1-3-90: Energy and Environment Committee
1-23-91: Public Hearing-Energy & Environment Committee and the Labor Industry & Professions Committee
1-23-91 Joint Public Hearing-Energy & Environment Committee and the Labor Industry & Professions Committee

CORE ISSUES:

Revisions to the Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.) to strengthen and add new provisions.

PROVISIONS OF THE BILL:

This bill provides major revisions to the Pesticide Control Act. These revisions include medical education, incident reporting, a home inspection program, increased penalties, and farmworker protection.

CURRENT PRACTICE:

The Department maintains an effective Pesticide Control Program. This bill will strengthen the current provisions of the Act to provide improved environmental protection to the residents of the state.

FISCAL IMPACT:

A fiscal note worksheet is attached.

INTERESTED PARTIES:

Department of Agriculture
Department of Health
New Jersey Farm Bureau

TECHNICAL CORRECTIONS:

Pesticide Control Council Membership

The Department requests amendments to the makeup of the Pesticide Control Council to provide for greater flexibility in expertise. Ground water is an

170K

important media to examine, but the impacts of pesticides on surface water via pesticide runoff are also important. It would be better to designate the member as a hydrogeologist who could deal with both types of issues.

Page 1, Section 6

;one from persons with training or experience in [groundwater hydrology] hydrogeology;

Secondly, there is no mention of someone with knowledge about biotechnology. This is a field which is likely to become extremely important in the future. It might be possible to find someone who is experienced in both Integrated Pest Management and biotechnology.

Page 2, Section 6

;one from persons with training or experience in integrated pest management and/or biotechnology recommended by recognized organizations of farmers;

Pesticide Control Council Report

This legislation will require the Pesticide Control Council to submit an annual report to the Governor and the Legislature. As the Council is an advisory body to the DEP, the Department recommends that this bill be amended to require the Council to submit its annual report directly to the Commissioner. The following amendment will achieve this:

Page 4, Section 3

3. The Council shall prepare and submit to the [Governor and the Legislature] commissioner an annual report summarizing its activities..."

Pesticide Technical Advisory Committee

S-3079 would also establish a Pesticide Technical Advisory Committee. The Department recommends the following additions to clarify the function of this group:

Page 4, Section 4b

b. The committee shall:

1. Formulate criteria for triggering technical reviews of pesticide[s] registrations and develop a priority scheme for [scientific evaluations] such reviews based on, but not limited to, carcinogenicity, teratogenicity, mutagenicity, neurotoxicity, exposure and environmental and ecological effects.

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2. Provide recommendations regarding budget needs to fund pesticide technical reviews, [and studies] monitoring studies, and research.

[3. Oversee the progress of pesticide assessments and pesticide related research]

[4] 3. Review the progress and the findings of the technical studies, reviews, and research, and make appropriate recommendations.

Training

The Department is supportive of the increased training requirements established in S-3079. These requirements will upgrade training standards for the industry. The following amendment will require the DEP to conduct the training while allowing the option for industry experts to conduct it if the program is approved and monitored by the Department.

Page 4, Section 5

"5. The department shall conduct a training program or monitor a department-approved training program for persons working..."

Aerial Application

The ban of aerial application of broad spectrum chemical pesticides over non-agricultural and horticultural areas is an issue which must be addressed with caution. A complete ban of these applications may promote an increase in ground level applications by homeowners and commercial tree sprayers to address heavy pest infestations. The Department offers the following amendment to clarify the legislative intent to limit aerial pesticide applications over residential areas:

Page 5, Section 7

"7a No person may aerially apply any broad-spectrum chemical pesticide [on land not actively devoted to agriculture or horticultural] in residential areas, except....."

Notification

The Department currently enforces notification requirements to limit public exposure to pesticide applications under Subchapter 9 of the Pesticide Control Code (N.J.A.C 7:30-9 et seq.). To date, the Department has developed notification regulations to limit exposure to many applications, including indoor applications, aerial applications, and lawn care applications. As the department has already developed notification regulations in many areas, this bill should be amended to remove the one year rulemaking deadline. As instances arise in which additional regulations are required, the department will amend current regulations to address notification issues.

172X

Page 5, Section 8

"8. [Within one year of the effective date of this amendatory and supplementary act,] As required, the Department of Environmental Protection, in consultation with..."

Farmworker Protection

The Department supports the farmworker protection provisions of S-3079, which will further enhance legal authority in this area. The Department currently regulates worker reentry times, protective clothing, and posting and notification procedures. Such requirements are outlined in subchapter 9 of Pesticide Control Code (N.J.A.C. 7:30-9 et seq.). However, the Department would like to note one area that would be difficult to address through the farmworker protection provisions outlined in this bill.

Many farm owners employ workers known as "dayhaulers". These individuals are recruited in downtown areas, such as Camden, and bussed to work on a farm. While the Department will make every attempt to ensure that the proper farmworker protection provisions be promulgated, there is still some concern that the logistics of proper training for dayhaulers may be difficult. The Department requires the flexibility of the regulatory development process to address this type of scenario. On the federal level, the Environmental Protection Agency is currently formulating comprehensive agricultural worker protection standards which will be proposed in the near future.

The Department suggest a minor amendment which will more accurately make the record of application forms available to farmowners who employ farmworkers.

Page 6, Section 10

"10. The department shall [prepare and provide to all farm owners] make available to all farm owners who employ farmworkers, record of application forms..."

The Department requests the following amendment to allow for flexibility in the contents and requirements of training programs.

Section 12, Page 6

The training shall be conducted by a person certified as a trainer by the department. Other instructional methods and procedures approved by the department may be implemented as necessary, in lieu of formal presentations by a certified trainer.

The Department suggest a minor amendment to require the farm owner to make department prepared pamphlets available to farmworkers. This change will also make this section consistent with Section 11.

Page 7, Section 13c

c. Every farm owner shall [provide] make available the pamphlets prepared by the department...

The Department also suggests a minor amendment indicating that fact sheets should be prepared on each pesticide active ingredient used on crops rather than on each pesticide product. Different products with the same active ingredients would have the same fact sheet. Also, there is an addition identifying the Department as the agency creating the fact sheets.

Page 8, Section 13d

"13d The farm owner shall maintain a Material Safety Data Sheet for each product and a department prepared fact sheet on each pesticide [product] active ingredient used on crops...."

Civil Suits

Currently, any party may bring a civil action against the department. Since this is already a statutory right, Page 9, Section 19 should be deleted.

CEHA

The Department suggests the following amendment to clarify its authority to enter agreements with certified local health agencies pursuant to the County Environmental Health Act.

Page 11, Section 9j

j. Cooperate with, and enter into agreement with, any other agency or government entity of this State, or the United States, and any other state of agency thereof for the purpose...

Fees

The Department suggests the following amendment to clarify the allowable uses of service fees:

Page 11, Section 21

"21k ...The criteria for registration, certification, or permit fees shall reflect the actual or projected expenses incurred by the department in regulating and monitoring the distribution, use, application, handling, transportation and disposal of pesticides, less the amount of other program service fees collected hereunder by the department. Program costs may include the costs to the department of planning, developing rules and regulations, reviewing,

174X

issuing and administering registrations, certifications of permits, and monitoring compliance with this act departmental rules and regulations, technical studies, research and educational programs adopted pursuant thereto... The fee schedule, as adopted by regulation by the department, shall also provide for costs incurred by the Department of Health [to implement its responsibilities delineated in] or any agency or government entity assisting in the implementation of the mandates of P.L. c (C.)(now before the Legislature as this bill)."

Enforcement

The Department supports amendments upgrading enforcement procedures which provide additional incentive for compliance with the statute. The following amendments should replace the current section 10, which outlines the enforcement provisions of the Act. These amendments will make the Act consistent with the enforcement provisions of other environmental statutes and regulations.

Page 12, Section 22
(New Section 10)

a. Whenever the commissioner has cause to believe that any person is violating or has violated any provision of this act or any code rule, regulation, or order promulgated or issued thereto, the commissioner shall cause a prompt investigation to be made in connection therewith.

b. If upon investigation or inspection the commissioner discovers a condition which is in violation of the provisions of this act or any code, rule, regulation or order promulgated or issued thereto, the commissioner shall order the violation to cease and take such steps necessary to enforce the order. The order to cease the violation issued by the commissioner and sent to the violator by certified mail or personal service shall include a reference to the section of the statute, rule, regulation, order, or permit condition violated; the amount of the civil administrative penalty which shall be imposed; a concise statement of the facts alleged to constitute the violation; and a statement of the right of the violator to a hearing.

1. Any person aggrieved by an order or notice of civil administrative penalty assessment of the commissioner has 20 calendar days from receipt of the order or notice of civil administrative penalty assessment within which to deliver to the commissioner a written request for a hearing.

2. An order issued pursuant to this subsection shall be effective immediately upon receipt of the order and any person to whom such order is directed shall comply with the order immediately. A request for a hearing on the order shall not automatically stay the effect of the order.

175X

3. Upon application and pending a determination by the commissioner, therefore, the commissioner may stay the operation of an order upon such terms and conditions as the commissioner may deem proper.

4. A notice of civil administrative penalty assessment becomes a final order upon the expiration of the 20 calendar day period if no hearing is requested. Subsequent to a hearing, if requested, the commissioner may issue a final order assessing and fixing the amount of penalty therefore.

5. Payment of the penalty is due when a final order is issued assessing the civil administrative penalty assessment or when the notice of civil administrative penalty assessment becomes a final order after the expiration of the 20 calendar day period.

6. The person requesting a hearing on an order or notice of civil administrative penalty assessment shall comply with all procedures for requesting a hearing as set forth by the department. Failure to comply with such procedures for requesting a hearing shall constitute grounds for denial of the hearing request.

7. The hearing shall be held in accordance with the requirements for contested cases in the "Administrative Procedures Act", P.L. 1968, c. 410, (C.52:14B-1 et seq.).

(New Section 11)

a. Whenever on the basis of information available to him, the commissioner finds that any person is, or may be, in violation of any provision of this act, the commissioner may:

(1) Issue, in accordance with section 10, an order to cease or refrain from committing the violation;

(2) Bring a civil action in accordance with section 12 or issue a civil administrative order in accordance with sections 10;

(3) Levy a civil administrative penalty in accordance with section 10; and

(4) Bring an action for a civil penalty in accordance with section 12 of this section.

b. Recourse to any of the remedies specified herein shall not bar recourse to any other remedy available hereunder, and any remedy may be pursued either singly or in combination with any other remedy provided in this section.

c. In addition to the remedies available in section 10 and 11 above, the commissioner may institute a civil action in Superior Court for:

(1) A temporary or permanent injunction;

(2) Assessment of the violator for the costs of any inspection or investigations that led to the establishment of the violation, and for the reasonable costs for preparing and litigating the case under this subsection;

(3) Assessment of the violator for any cost incurred by the state in removing, correcting or terminating the adverse effects upon the environment resulting from any violation of this act; and

(4) Assessments against the violator of compensatory damages for any actual damages, including any loss or destruction of wildlife or degradation of the environment caused by the violator.

(New Section 12)

a. The commissioner is authorized to assess a civil administrative penalty of not more than $25,000 for any violation of the provisions of this act. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. In determining the amount of the civil administrative penalty, the commissioner shall take into account the circumstances of the violation, the nature, seriousness, and extent of the harm to the public health or welfare, or to the environment, resulting therefrom, the previous compliance record of the violator, or any other factor that the commissioner deems relevant in measuring the seriousness or frequency of the violation of the conduct of the violator. A person is liable for the acts of his employees acting in the scope of their employment.

b. Assessments made pursuant to section 10 shall be payable to the department and deposited in the Environmental Services Fund created pursuant to P.L.1975, c.232 and kept in a separate subaccount from other receipts deposited therein, and shall be appropriated for the support of the Pesticide Control Program in the Department of Environmental Protection.

c. An assessment made pursuant to section 11 may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq. The commissioner, by administrative order, may assess a violator for costs authorized pursuant to sections 10 and 11 above, and may recover any costs incurred by the department in making and collecting an assessment, including any administrative hearing costs.

d. If a civil administrative penalty imposed hereunder is not paid within 30 days of the date that the penalty is due and owing and the person against whom the penalty is assessed does not contest the penalty within the time

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prescribed thereof, or payment is not made when due and owing pursuant to a payment schedule entered into with the department, an interest charge shall accrue on the amount of the penalty, or the outstanding balance thereon, as of the date payment was due and owing. The interest charge shall be based on the rate if the interest on judgments established by the New Jersey Supreme Court in accordance with the Rules Governing the Courts of the State of New Jersey. The department may also recover any costs incurred in imposing and collecting a penalty pursuant to this subsection, including any administrative hearing costs.

e. No civil administrative penalty shall be levied except upon an administrative order issued pursuant to section 10 and subject to the notice and hearing provisions of that section. Payment of a civil administrative penalty shall not be deemed to affect the availability of any other remedy in connection with the violation for which the penalty was assessed.

f. The commissioner is authorized to compromise and settle any penalty assessed under this section in such amount as he deems appropriate and equitable under all of the circumstances, subject to such terms and conditions as the commissioner may establish by rule or regulation

g. A civil administrative penalty imposed, and costs recoverable pursuant to a final order:

(1) may be collected or enforced by summary proceedings on Superior Court in accordance with "the penalty enforcement law," N.J.S.2A:58-1 et seq.;or

(2) shall constitute a debt of the violator, and may be docketed with the clerk of the Superior Court, whereon it shall have the same standing as any other judgement docketed pursuant to N.J.S.2A:16-1, except that no lien shall attach to the real property of a public entity.

(New Section 13)

a. Any person who violates the provisions of this Act, or any code, rule regulation, or order promulgated or issued thereto or fails to pay a civil administrative penalty in full, or to make a payment in accordance with a schedule of payment of penalty entered with the department, is subject, upon order of the court, to a civil penalty of not more than $25,000 for each offense. If the violation is of a continuing nature, each day during which it continues ., or each day in which the civil administrative penalty is not paid in full constitutes an additional, separate and distinct offense. Any penalty imposed under this subsection may be recovered with costs in a summary proceeding in the Superior Court pursuant to the "penalty enforcement law" (N.J.S.2A:58-1 et seq.).

NOTE: The existing Sections 11 through 13 would need to be renumbered in accordance with the amendments noted above.

BILL PRIORITY:

High

AGENCY POSITION:

Support with amendments

RATIONALE:

The Department strongly supports this legislation with the amendments noted above. This bill, with the Department's proposed amendments, will strengthen and improve the Pesticide Control Act to better protect human health, welfare, and the environment.

RELEVANT PUBLICATIONS OR STUDIES: Please attach copies or summaries.

PREPARED BY: Nancy Bothwell-Binder DATE: 2/8/91
Director, Office of Legislation

SUBMITTED BY: [signature] DATE: 2/6/91
Commissioner, NJDEP

RECEIVED BY: DATE:

APPROVED BY: DATE:

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