P U B L I C H E A R I N G

before

SENATE ENERGY AND ENVIRONMENT COMMITTEE

on

SENATE BILL 1670

(WORKER AND COMMUNITY RIGHT TO KNOW ACT)

Held:
October 13, 1982
City Hall
Newark, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Nicholas LaRocca, Vice Chairman

ALSO PRESENT:

Senator Wynona Lipman, Chairperson
State Government, Federal and Interstate
Relations and Veterans Affairs Committee

Norman Miller, Supervising Research Associate
Office of Legislative Services

Mark T. Connelly, Research Associate
Office of Legislative Services
Aide, Senate Energy and Environment Committee

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I N D E X

INDEX (continued)

INDEX (continued)

SENATE, No. 1670

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 16, 1982

By Senator DALTON

Referred to Committee on Energy and Environment

AN ACT concerning certain hazardous substances in the workplace and the community.

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

1. This act shall be known and may be cited as the "Worker and Community Right to Know Act."

2. The Legislature hereby finds and determines that the proliferation of chemicals in the workplace and the community poses a growing threat to the health of employees and community residents who are or may be exposed to these chemicals; that the number and variety of these chemicals makes effective monitoring of these potential health hazards by governmental agencies difficult and expensive; that employees and community residents themselves are often in the best position to detect evidence of effects of exposure to hazardous substances, provided they are aware of the nature of the chemicals to which they may be or have been exposed; that employees and community residents have an inherent right to know the dangers to which they may be exposed in their workplace and their community so that they may make knowledgeable and reasoned decisions concerning their employment, living conditions, and the need for corrective action; that local fire, safety, and health officials need detailed information about the characteristics and quantities of chemicals stored and used within their jurisdictions so that they can properly plan for and respond to emergencies; that county and municipal executive and legislative officials, and members of planning boards, need detailed information about the

characteristics and quantities of chemicals handled and stored in their communities; that law enforcement officials need detailed information about the characteristics and quantities of chemicals handled and stored in their communities to enable them to enforce compliance with applicable laws and regulations; that the presence of chemicals in the workplace often serves as an early warning mechanism for potential exposure of the public to those chemicals; that containers of chemicals and chemical mixtures should be clearly labeled at all times with their chemical contents; and that a policy of identification of chemicals facilitates the prevention of the adverse effect of chemical exposure by requiring identification of chemicals before they have been proven to be hazardous.

The Legislature therefore declares that it is in the public interest for employees and community residents to have access to information about chemicals which are stored in or emitted from their workplace and communities.

3. As used in this act:

a. "Chemical" means any material listed in the latest edition of the National Institute for Occupational Safety and Health's Registry of Toxic Effects of Chemical Substances, but shall not include chemicals unintentionally present in a compound in a concentration of less than 0.5% by weight or chemicals contained in packages offered for sale at retail stores.

b. "Material safety data sheet" means a written document prepared by the manufacturer of a chemical which shall conform to the format of, and contain the information required by, the United States Department of Labor form OSHA-20, material safety data sheet (latest edition). The material safety data sheet shall contain the name, address, and telephone number of the person responsible for preparing it, and the date on which the sheet was prepared, and shall provide, at the minimum, the following information:

(1) The specific chemical name which conforms to the Chemical Abstract Service rules of nomenclature, the Chemical Abstract Service number, the trade name, and all common names of the chemical and of each of the component chemicals contained in any mixture;

(2) A reference to all relevant information on the chemical from the most recent edition of the National Institute for Occupational Safety and Health's Registry of Toxic Effects of Chemical Substances;

(3) The chemical's solubility in water, vapor pressure at standard conditions of temperature and pressure, and flash point;

(4) The hazards posed by the chemical, including its toxicity, carcinogenicity, mutagenicity, teratogenicity, flammability, explosiveness, corrosivity and reactivity, including specific information on its reactivity with water;

(5) A description, in non-technical language, of the acute and chronic health effects and risks from exposure, including the medical conditions that might be aggravated by exposure, and any permissible exposure limits established by the Occupational Safety and Health Administration;

(6) The potential routes and symptoms of exposure;

(7) The proper precautions, handling practices, necessary personal protective equipment, recommended engineering controls, and other safety precautions necessary or beneficial, including specific information on how to fight a fire that involves the chemical;

(8) The appropriate emergency and first aid procedures for spills, fires, disposal, potential explosions, and accidental or unplanned emissions involving the chemical;

c. "Public information data sheet" means a written document prepared by an employer which lists all the chemicals existing or being emitted from his facility for which material safety data sheet forms are required. The public information data sheet shall provide the following information for each chemical listed:

(1) The chemical's specific chemical name conforming to the Chemical Abstract Service rules of nomenclature and the Chemical Abstract Service number of the chemical and of the component chemicals contained in any mixture;

(2) The total amount in weight of the chemical handled at the facility during the previous 12 months;

(3) The types of containers used to contain the chemical and the street-address locations at which the chemical is used, stored, handled, or generated;

(4) The maximum rate of emission of the chemical into the air, the annual total amount of emission, and the location of the source of the emission;

(5) The on-site location of either the chemical or the wastes resulting from the use, disposal, or handling of the chemicals;

d. "Discharge" means the emission of a chemical into the air or water, or onto the land, whether accidental or intentional, which is not part of a normal manufacturing process and which is not otherwise reportable under this act and which involves more than 500 pounds or 55 gallons of the chemical, or any quantity of a chemical that has been listed by the Department of Environmental Protection as a special health hazard chemical.

e. "Employer" in addition to its usual meaning means any individual, corporation, state or local government or any agency, authority, department, bureau or instrumentality thereof, but shall not include employers who employ only domestic servants.

f. "Container" means a container used to store or otherwise hold chemicals, and shall include pipelines.

g. "Facility" means the contiguous area, building, and equipment used by any employer at a single location in the conduct of business.

h. "Special health hazard chemical" means any known or suspected carcinogen, mutagen or teratogen as defined by the department, any chemical assigned a toxicity hazard rating of 3 in the most recent edition of N. Irving Sax's Dangerous Properties of Industrial Materials; and any other chemical so designated by the department.

i. "Department" means the Department of Environmental Protection.

4. a. Every employer shall obtain a material safety data sheet for each chemical or chemical component of a mixture existing or emitted at his facility which is a special health hazard chemical, and for every chemical or chemical component of a mixture which is regularly stored or handled in the facility in amounts in excess of 500 pounds, or 55 gallons, whichever is less, during a 24 hour period, except that a single material safety data sheet may be obtained for a chemical mixture if the mixture has been submitted to sufficient analysis and testing to justify a valid judgment of its properties, and the mixture label identifies the mixture's constituent chemicals. Every employer shall annually update any material safety data sheet required pursuant to this section.

b. Every employer shall prepare and annually update a public information data sheet for each facility and transmit it to the department.

c. Every employer shall establish and maintain an up-to-date material safety data sheet and public information data sheet file at his facility. Employers shall post the public information data sheet for the facility and a notice of the availability of the material safety data sheets on bulletin boards readily accessible to employees, and shall provide employees with any material prepared by the department designed to inform employees of their rights pursuant to this act. Employers shall provide their employees with access to a material safety data sheet within 24 hours of a request therefor.

d. Employers shall establish an education and training program for all current and future employees, which shall inform employees

of the nature of the chemicals to which they may be exposed in the course of their employment, the potential health risks which the chemicals pose, and the proper and safe procedures for handling the chemicals under all circumstances. Employers shall provide current employees with the education and training program within 120 days of the effective date of this act, and annually thereafter, and, for employees hired thereafter, within the first month of employment and annually thereafter. Employers shall provide all prospective employees with notice of the availability of the public information data sheet and the material safety data sheets.

e. Employers shall label containers which contain more than 500 pounds or 55 gallons of a chemical or any quantity of a special health hazard chemical Labels shall be fixed on containers at all times and shall clearly identify the common name, Chemical Abstract Service number, and the health and safety dangers posed by the chemical.

f. Employers shall report any discharge to the department within 48 hours of the occurrence of the discharge.

g. Beginning 120 days after the effective date of this act, no employer shall store, generate, handle, or emit any chemical unless he is in compliance with the provisions of this section.

5. If any employer claims that the provision of the information required for a public information data sheet would disclose a trade secret or otherwise put him at a competitive disadvantage, he may request the department to conduct an administrative hearing to determine the legitimacy of the claim. The department may, after such a hearing, consider a public information data sheet, or a portion thereof, to be confidential, and not to be made available to the public, if the employer can show that the public information data sheet, or a portion thereof, if made public, would divulge processes or production methods unique to the employer or would otherwise adversely affect trade secrets. No employer may make a claim of confidentiality concerning emission or discharge data pertaining to chemicals which are potentially toxic in the environment. The department may release information subject to a claim of confidentiality to a licensed physician or osteopath when the information is needed for a medical diagnosis or the treatment of a person exposed to a chemical. The department may require the physician or osteopath to sign an agreement protecting the confidential information from public disclosure.

6. a. Except as otherwise provided in this act, any employee, including an employee of the State or any political subdivision thereof, or any collective bargaining agent of an employee, may

request, in writing, from his employer a copy of a public information data sheet or a material safety data sheet filed pursuant to this act for the facility at which he is employed. The employer shall provide any public information data sheet or material safety data sheet so requested within 24 hours of the request. If the request for a public information data sheet or material safety data sheet is not honored, any worker shall have the right to refuse to work with a chemical for which a request was made without loss of pay or any other right or privilege until the request is honored.

b. Any employee or an employee's representative who believes that an employer has not complied with the provisions of this section may file a complaint with the Commissioner of the Department of Labor. Upon receipt of the complaint, the commissioner shall investigate the allegations contained in the complaint and, if the commissioner deems that the employer is in violation of the provisions of this section, he shall initiate a civil action by summary proceeding under "the penalty enforcement law" (N. J. S. 2A:58-1 et seq.). Any employer violating the provisions of this section shall be liable to a penalty of not less than $2,500.00 and a prison term of not less than 30 days for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

7. a. No employer shall discharge, or cause to be discharged, or otherwise discipline or in any way penalize or discriminate against any employee because the employee or the employees collective bargaining agent has filed any complaint, or has instituted, or caused to be instituted, any proceedings related to the provisions of this act, or has exercised any right provided in this act. If any employer takes any disciplinary action against a worker within 90 days after the worker has exercised any right provided in this act, there is a rebuttable presumption that the employer's action was in retaliation to the worker's exercise of these rights.

b. Any employee who believes that he has been discharged, disciplined, or otherwise penalized or discriminated against by any employer in violation of subsection a. of this section may, within 30 days of the violation, or within 30 days after he first obtains knowledge that a violation occurred, file a complaint with the Commissioner of Labor alleging such a violation. Within 30 days of receipt of a complaint, the Commissioner of Labor shall conduct an investigation and determine if the complaint is frivolous. If the commissioner does not deem the complaint frivolous, he shall refer the complaint to the Office of Administrative Law, which shall conduct a hearing on the complaint pursuant to the provisions of P. L.

1978, c. 67 (C. 52:14F-1 et seq.). This hearing shall be an adjudicatory proceeding, and shall be conducted as a contested case pursuant to the "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.). If the Commissioner of Labor or employee introduces evidence that prior to the alleged violation the employee engaged in activity protected by this act, the employer shall have the burden to show just cause for his action by clear and convincing evidence. The administrative law judge's action on the complaint 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.

8. Any person shall have the right to inspect and reproduce material safety data sheets and public information data sheets, which shall be available at reasonable hours and reasonable costs at the office of the department and at each county health department or at the county clerk if no county health department exists.

9. Any person may bring a civil action in law or equity on his own behalf against any employer for a violation of any provision of this act or any rule and regulation promulgated pursuant thereto or against the Department of Environmental Protection or the Department of Labor 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 maintainance 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.

10. The department shall:

a. Maintain a file containing a material safety data sheet for each chemical existing or emitted at facilities within the State and a public information data sheet for each facility in the State. If the department is unable to obtain a material safety data sheet from the manufacturer of a chemical, the department may obtain the material safety data sheet from an employer who listed the chemical on a public information data sheet required pursuant to this act. The department shall assure the quality of the material safety data sheets and public information data sheets required by this act.

b. File with each county health department, or with the county clerk if no county health department exists, the material safety data shet for each chemical used, stored, generated, handled or transported in the county, and an up-to-date public information

data for each facility located within the county.

c. Inspect facilities for compliance with the provisions of this provisions of this act and respond to complaints alleging violations of this act.

d. Initiate, when it deems appropriate, legal action in the Superior Court to enforce compliance with this act or any rule or regulation promulgated pursuant thereto. The Superior Court shall have the power to issue injunction relief for violations of this act, and to assess civil penalties of up to $10,000.00 for each violation.

e. Provide, upon request, copies of material safety data sheets and public information data sheets to fire fighters, ambulance squads or companies, hospitals and other emergency service personnel within 48 hours of such a request. In an emergency situation, the material safety data sheets or public information data sheets shall be made available immediately. A material safety data sheet or public information data sheet requested from the department by other persons shall be provided within 10 business days, except that a material safety data sheet or public information data sheet requested by the governing body of a municipality shall be provided within five business days.

11. Nothing in this act shall be deemed to limit the powers of local governing bodies to enact ordinances consistent with the intent of, but more stringent than the provisions of, this act.

12. Within one year of the effective date of this act the department shall prepare and submit to the Governor and the Legislature a report analyzing the implementation of this act, assessing the feasibility and estimating the cost of devloping and maintaining a computerized data storage and retrieval system containing the material safety data sheets and public information data sheets required by this act, which individuals having the necessary computer equipment could have access to, and identifying any ways of improving the implementation of this act.

13. The Commissioner of the Department of Environmental Protection and the Commissioner of the Department of Labor shall, within 90 days of the effective date of this act, promulgate any rules and regulations deemed necessary to effectuate the provisions of this act.

14. This act shall take effect immediately, but sections 1 through 12 of this act shall remain inoperative for 90 days.

STATEMENT

This bill requires employers at facilities where chemicals are stored, handled, or emitted to prepare information sheets on the chemicals indicating the nature of the chemicals and the health risks which they pose. These information sheets would be kept on file at the facility, where employees would have access to them, and at the offices of the Department of Environmental Protection and at county health departments, where members of the community could have access to them.

This bill also requires employers to label containers of chemicals indicating the chemical's health dangers, and to provide employees with education and training programs concerning the safe handling of dangerous chemicals. In addition, this bill establishes procedures to protect employees who exercise the right to information concerning chemicals provided by this bill.

S E N A T O R N I C H O L A S La R O C C A (Vice Chairman): Will everyone please take their seats so that we can start. We are already five to ten minutes late. Everyone must be seated before I will start this meeting.

Good evening ladies and gentlemen. I first want to make an announcement that we have no public amplification. These microphones are only for recording purposes so that a record can be made for the Committee.

I am Senator Nicholas LaRocca and I am Vice Chairman of the Senate Energy and Environment Committee. Senator Dalton, Chairman of the Committee, and sponsor of Senate Bill 1670, is attending a conference on hazardous waste in Utah and will not be here tonight. Therefore, I will chair tonight's meeting.

Because this is an evening meeting, we will be working under certain time constraints. The meeting will end at 10:30. The person speaking at 10:30 will be the last person to speak. Senator Dalton and I have determined that tonight's hearing will be conducted along the following schedule.

Witnesses will be allotted five minutes each. First, there will be a supporter for S-1670, and then there will be an industry spokesman in opposition, or to give statements in favor of his position. We will continue that way, on an odd/even basis.

The gentlemen who are here with me are Norman Miller and Mark Connelly. They are of the Senate staff. Also, my aide, Hugh Maguire.

I urge all those who have written statements to file the written statements when they come to the desk here, or this area where they will speak into that microphone. Please file the papers with us here if you have a prepared statement. Some of you on either side may have exhibits, or you may have some charts. You may refer to the charts as an exhibit or for an easier understanding of your position. However, there will be no marching with any signs. There will be no walking around with any of the signs or exhibits. And, because of the lateness of the time, I want to get the testimony on the way. These people came all the way from Trenton, and I think 10:30 is a reasonable hour to finish. Please try to confine yourselves to the point. Many of your points may be repetitious. I do not want to cut anyone off. You may want to submit the names of those who have a position, and leave the paper, but if it is a similar position -- well, let's see what we can do to cut the time down so that we will not be bogged down. Those are the time limits and ground rules that we have set, and we have set these based on experience with other public hearings.

I ask all speakers, in the spirit of fairness, to adhere to this schedule, and if each speaker will be concise and try not to repeat what the other speakers have said, we will be able to hear from everyone, and this will be a fruitful hearing. The hearing will now begin. Mark Connelly will announce which persons will go on at which time in accordance with a prepared schedule of those who have sent in their names saying that they will appear.

UNIDENTIFIED MEMBER OF AUDIENCE: I have an objection to the ground rules for the testimony because I feel that we have done a very hard job in terms of going out and mobilizing many, many different parts of the community here, to come to present their testimony. I think the way the testimony should be given should be representative in proportion to the type of people that are here, not one in opposition to the bill and one in support of the bill.

SENATOR LaROCCA: It is quality that controls, and not quantity. That is the only statement that I can make on the ground rules, or otherwise we'll be here forever.

UNIDENTIFIED MEMBER OF AUDIENCE (#2): Sir, this is patently unfair. We have a minute proportion of the population which is involved in running the various chemical corporations throughout this State, and their point of view is different than all the rest of the people in this State, both the workers and the community residents -- all the people who have to suffer from cancer and birth defects, and other diseases. (applause)

SENATOR LaROCCA: There is no question about that. There will be no demonstrations, please. I will have to rule you out of order if you conduct this in a demonstrative manner -- please.

UNIDENTIFIED MEMBER OF AUDIENCE (#2): Based on our proportion of the population, we have a right to speak. We are the vast majority of the citizens of this State, and no minute minority has the right to come here and take up passels of time. This is the kind of thing that one would expect to find in a country that does not enjoy democracy and the liberties that we do in this country, and we demand that that democracy and those liberties be enforced tonight. (applause)

SENATOR LaROCCA: It will be, but we have to set some ground rules, and I am the only one who can do that based on experience. I will try to do my best to see that everyone will be heard. If we spend a lot of time on these ground rules, we won't get anywhere, and we will just have to have other meetings, and we may not have too many more meetings here in this area.

UNIDENTIFIED MEMBER OF AUDIENCE (#3): Excuse me -- see, what happens is that industry comes into our city (several sentences inaudible). I would suggest that we have four speakers who support the bill and two speakers who oppose the bill. That generally would perhaps represent a little more diversity. I don't like the idea personally of six people here from industry being able to speak and afterward split and leave. They have to sit here and listen to the people. So I suggest the way to do it is to have four speakers for and two against. (applause)

SENATOR LaROCCA: I can only repeat what I have said before, that the ground rules have been set. This is no different from any public hearing that was set in Trenton, and we will have to proceed along those lines.

Mr. Connelly, who is the first speaker?

UNIDENTIFIED MEMBER OF AUDIENCE (#2): Then what that means is (inaudible) shove it down our throats. -- reflects the sentiments in the room and around the State.

SENATOR LaROCCA: I am not jamming anything down your throats. We are not running a popularity contest on sentiments, I'm sorry.

UNIDENTIFIED MEMBER OF AUDIENCE (#4): Excuse me. I asked for a point of order at the outset. Now, in the point of order at the beginning when you started the meeting -- right now it is about 35 minutes late. At the time you made the split, when you said you were going to split the time, you couldn't split the time because it wouldn't have been equal if we went off when you said we were supposed to go off. It wouldn't have been equal. That wouldn't have been democratic in itself. People have spoken to you in a very communicative fashion. You are supposed to be running this bill, as the Committee Chairman, to represent the people, the people who vote for you. But now it seems to me, with the audacity of what I saw -- what I am looking at now, that this is forgotten.

You can't forget the purpose for which the bill is being written.

SENATOR LaROCCA: I came here to listen to people.

UNIDENTIFIED MEMBER OF AUDIENCE (#4): Well, you are not listening to people when you tell them that they cannot speak. When you tell me they cannot speak, then you are not listening to the people. You are not doing that. (applause)

MR. CONNELLY: The first speaker is Maria Turco from the Ironbound Community Corporation.

M A R I A T U R C O: Hello, my name is Maria Turco. I am eleven years old. I feel that our fire fighters have the right to know what is in the fires they are fighting so that they can protect themselves. On the 10th of October, there was an explosion on Doremus Avenue. To this day, they still do not know what they were fighting. If they had had the right to know legislation, they would have been able to protect themselves. All they know so far is that the toxic waste leaked into the Passaic River, meaning that there were toxic chemicals in the fire.

Even the Department of Environmental Protection does not know what caused the explosion. In a society like ours, with pollution, hazardous chemicals and such, the right to know legislation would certainly be beneficial to our citizens, fire fighters and workers.

Many people have gotten ill and some have died because of the environment they worked in. This new legislation will allow workers to decide if they want to work under hazardous conditions. If these workers decide to work under these conditions, they can take the proper precautions to protect themselves.

I feel that in the event of a fire or explosion, the residents in the area can be told what to do, that is, to close their windows and stay indoors, or to be evacuated out of their houses, if we have the right to know legislation. The proof is the explosion of October 10. If it is proven that cancer-causing fumes and smoke did come out of that fire, the damage is already done. Whatever the investigation shows will not help the residents who inhaled the fumes on Sunday.

Ladies and gentlemen, don't you feel that our citizens, our workers, and our fire fighters have the right to protect themselves. I would like an answer to that question.

SENATOR LaROCCA: This is not going to be a debate, or questions and answers. It is going to be just a listening to testimony. That was very well stated. Thank you.

MR. CONNELLY: The next witness will be Mr. Hal Bozarth from the Chemical Industry Council.

SENATOR LaROCCA: Again, you have the same time limits as I have explained to the others. Please adhere to them.

H A L B O Z A R T H: Thank you, Senator, and I will adhere to the decorum which you so rightly pointed up should be adhered to tonight.

Good evening, Mr. Chairman, members of the Committee.

UNIDENTIFIED MEMBER OF AUDIENCE (#4): He already testified in Trenton. We don't need his testimony. (many inaudible comments from others in audience)

SENATOR LaROCCA: Please continue, Mr. Bozarth.

MR. BOZARTH: Senator, for the record, my testimony is new here this evening. I will not cover ground that I covered before. It is not my same story, Madam. Now, I am more than willing to listen to her, but she has to be willing to listen to me. (sustained interruption from the audience)

SENATOR LaROCCA: This meeting will be adjourned if this keeps up. I am trying to keep a cool head under adverse conditions here, and everyone will be heard. You will not be heard in a demonstrative fashion; you will be heard in an intelligent fashion. We will listen to you, and what you say will be in the record. It is the record that will count. Please -- he has the floor. I can't open it up to everybody. (loud comments from audience)

The rules apply the same to everybody. Let the record show that there is a lot of disruptive talking. Proceed.

MR. BOZARTH: Thank you. As I stated, Senator, I am presenting testimony here today on behalf of the Chemical Industry Council. It is the second time I have appeared, and it is the second of three times that I will appear. Each time I will indicate to the Committee that we have a plethora of information that needs to be known.

As I mentioned at the first hearing, the chemical industry in New Jersey is the single largest, employing approximately 130,000 people in over 1,000 manufacturing plants and laboratories. New Jersey's chemical production accounts for approximately 12.5% of the nation's output. In fact, the chemical industry ranks second largest in the nation, behind Texas, and Louisiana, steadily gaining ground in third place. Although mentioned at the first hearing in our testimony, it is instructive to remind everyone that we do live in a chemical society, and fully 40% of all goods and services rely on chemicals in some way. In addition to being the base of lifesaving drugs, chemicals are the building blocks for consumer products ranging from telephones to detergents.

The issue here tonight is hazards communication. The members of the Chemical Industry Council have long-established programs for effective hazards communication. Our association, as well as the National Trade Association for our companies, the Chemical Manufacturers' Association, has taken strong positions in favor of protecting workers' health and safety, and that is the main concern here, effective hazards communication.

For your information, the National Safety Council's 1981 Report showed that the chemical industry was the safest among the nation's 43 basic industries. This statistic reflects the lowest number of incidents of occupational illness and injury involving days away from work and deaths. (jeers from audience)

Senator, it seems my time is being usurped by other members of the audience. Street theatre is one thing, but I know we are here on a sensitive and technical information basis, and we want to make sure that we are accorded the ability and the availability of making sure we get our point to you, Senator. We feel the statistics that I have cited reflect our belief that workers in the chemical industry do not have to choose between a good job and good health. I cannot stress strongly enough that the member companies which I represent are deeply committed to the informed use of hazardous substances in the workplace. This strong sentiment is reflected by our ongoing support for the soon-to-be promulgated Federal Occupational Safety and Health Hazards Communication Standard. This standard is a comprehensive, strong national program which will guarantee that all industrial establishments provide an effective hazards communication program.

There are three things we would like to cover tonight; specifically, existing regulatory coverage, the added burden to employers, and a prospective

on the cancer issue. Up front, Senator, let me say that the New Jersey Department of Environmental Protection has asked for our help in assessing the overlap of regulatory -- We are pleased to announce, Senator --

UNIDENTIFIED MEMBER OF AUDIENCE (#5): I truly object, Mr. Chairman. Mr. Bozarth is repeating word for word what he said in Trenton -- (uncontrolled comments from entire audience)

SENATOR LaROCCA: This is not a debate. This is a hearing. I cannot vote intelligently on the bill when it comes to a vote unless I hear the testimony from both sides. The witness has about two more minutes.

UNIDENTIFIED MEMBER OF AUDIENCE (#5): I have heard every word that he has now said. I have heard his testimony in Trenton. It is nothing new. I am not trying to protest, but as a point of order, if I am on the list to speak and I did not get to speak in Trenton, how can he come back ahead of me. That is not right. That is wrong. All these people from this community want to speak. This guy gives the same garbage he gave us in Trenton. He said it was new. It is not new because the phrases, the clauses, the words are precisely the same, excuses and garbage. It is not justice. What it is, is criminal. (applause)

SENATOR LaROCCA: The speaker has about two more minutes, so please try to adhere to the rules. (much disturbance from audience)

MR. CONNELLY: I'm keeping time.

SENATOR LaROCCA: Your people will be on next. In about two minutes, you people will be on.

MR. BOZARTH: I would be more than willing to let the gentleman take my time right now, and I'll follow him. (interruptions from audience)

SENATOR LaROCCA: No, someone has the stand there. No one has ever heard of rules? I don't know, I live in a society of rules. (constant interruption from unruly audience) Again, the rules are -- I'll wait here until 10:30 -- This is for my benefit, and for the benefit of others on the Committee, but I have to hear both sides. Time is running -- (inaudible comments from entire audience) This is not a debate; it is a hearing. You are trying to set the rules, and the rules have been set. I would like the witness to complete in another minute or so. Then, whatever evidence you have in writing, submit it to the Committee, and then we will proceed. Please -- no, you cannot address the meeting. (constant disturbance from crowd) Let the record show that someone in the audience is addressing the audience and disrupting the hearing. One more minute, Mr. Bozarth. Submit what you have and the Committee will consider whatever written material or exhibits you have. Then we will proceed and Mark will call the next witness.

MR. BOZARTH: Thank you very much. We had a chart and handout to tell you where we feel the regulatory overlap occurs between existing Federal and State statutes. For the sake of time, however, we will not do that and I will try to synopsize the rest of my time so that my fellow Americans can have their time to speak to the issue here today. Even though they refused to let me have my allotted time, that is all right. I will be a bit bigger and let them have some of my time.

We could pick, Senator, any one of the many specified requirements that S-1670 discussed, but let's just take one very quickly, the MSDS, which is recognized as one of the basic hazards communication tools. OSHA has estimated that 60% of all hazardous chemicals are now covered by MSDSs. Such MSDSs include

most of the information which S-1670 would require. OSHA's soon-to-be promulgated standards should bring this figure up to 100%. The current MSDSs and those prepared to meet the OSHA standard would have to be reworked to comply with S-1670 should it become law.

I'll skip the rest of that, Senator, and just give you some facts and figures on the cost. Suffice to say that my companies strongly support effective hazards communication in the workplace. They spend literally millions of dollars, regardless of what you hear later tonight, in making sure the workers know exactly what the substances are they are working with, what the hazards are, and what precautions to take should an accident or an incident occur. I submit to you that that is going on in New Jersey, it has been going on in New Jersey, and it will continue to go on in New Jersey, while we make the State vibrant for economic growth.

But, let me talk a second about the cost. OSHA, the Federal standard to be promulgated in early 1983, the OSHA figures and the OSHA promulgated standard indicate that a small company between one and nineteen employees will cost them approximately $40.00 to effectively do the OSHA standard. It will cost a large company in excess of maybe $80.00. The chemical industry in New Jersey has approximately 130,000 people working for it -- it's my turn, thank you. You'll get yours. Now, if you multiply 130,000 people by $40.00, you will come up with close to a half a billion dollars that it is going to cost the industry to do the OSHA standard alone. We're saying that it is performance based as it should be. The one in S-1670 is specification based, and is going to cost in excess of four times as much, and we are talking about an awful lot of money, and it is a great concern. Thank you, Senator. It has been a pleasure here tonight. I am glad to see democracy in action.

SENATOR LaROCCA: Will you present all of the documents here?

MR. BOZARTH: I will.

SENATOR LaROCCA: The next speaker --

MR. CONNELLY: Mr. Jim Butler.

J A M E S B U T L E R: Senator, ladies and gentlemen in attendance, my name is Jim Butler. I am a 20-year veteran of the Newark Fire Department, and I also have the position of Chairman of the New Jersey State Firemens Mutual Benevolent Association Health and Safety Committee.

A vote, taken at last month's Executive Board meeting of the State FMBA, showed that the entire Executive Board, along with the officers of the State Association, were 100% in favor of Senate Bill No. 1670.

Very briefly because I realize time is a problem tonight, the fireman is almost always the very first one to be called to a scene and almost always the very last one to leave a scene. He is called to a hazardous incident, whether it be a spill, a fire or an explosion. At the present time, the firemen have only the knowledge that they can decipher for themselves at the scene, or it is something they are liable to learn from someone from the company possibly being at the scene. Relating very quickly, Sunday morning with the chemical fire on Doremus Avenue, we were quite fortunate that one of the workers was not that seriously injured, and we had a team response at St. James Hospital. Via radio from St. James Hospital to the scene of the fire, the information of what was contained in the tanks was relayed. If we did not have that one individual, if he had been seriously injured, we never would have known what we were going in after that morning.

I'll say one thing though to be very fair. Although I am 100% for S-1670, there are some exceptions, very rare as they may be. But there are some exceptions to this rule of "no knowledge whatsoever." Senate Bill No. 1670 though, will change this entire picture, and not only make the duties of the firemen safer, but will also aid in the control or extinguishment of the incident in a lot more efficient manner.

There are, however, some amendments which we would like to see added to this bill. Among them are having the fire department have direct 24-hour access to this information. Right now, if we call someone, we can get an answer within 48 hours. If we could only figure out how to have that fire wait 48 hours for us, it would be fine, but that is kind of hard to do. We need information immediately. We are looking for a direct 24-hour access line.

There is also a question that should be answered for the residents who are living in the immediate area of a chemical plant, and I will say that this quite often falls upon the fire department to make a judgment now. We would love to have some positive facts. The information needed is the minimum distance of evacuation that should be carried out in the event of an incident. Sunday morning, it was decided after, I guess, 15 to 20 minutes into the fire -- the chief officer on the scene decided to evacuate 2,500 foot downwind of the fire scene. It is all factories down there, but they did have skeleton crews working. These men were requested to lock up and leave their plants. They went up Wilson Avenue, up near the U.S. 1 bridge and waited until the scene cleared up before they were allowed back into their respective locations.

QUESTION FROM AUDIENCE: What would happen if the wind shifted and it went toward the reservoir? How would -- (remainder inaudible)

MR. BUTLER: That is one question that is kind of tough to answer. You just have to go by the facts that I knew that morning. I was there; I was fighting the fire, and I saw the incidents.

FROM AUDIENCE: If the wind changed direction, there is no telling which way it would go.

MR. BUTLER: I'll tell you, there are also 15 State Senators who are presently cosponsors of S-1670. One of them is Senator John P. Caufield, who is also the Fire Director of Newark. Now, if a Senator who is also a Fire Director, can see fit to cosponsor legislation of this type, that should be a message to everyone else, both on the Energy Committee and to all the rest of the State Senators. If he can see the need for it, and a justification for it, everyone else should really wake up and pay attention to what he thinks.

I would like to point out -- I have only three copies, but I would like to point out to the Senator that the State of New Jersey Health Department recently concluded and published a study entitled, "Fire Fighting in New Jersey - Hazards and Methods of Control." Just as a very quick plug, the gentleman who authored this entire book is standing in the back of the room there. I would like to publicly, again, thank Joe Schirmer for the outstanding job that he did on this publication. (applause) One remark right in this publication -- it is not added, it is printed right into the remarks, as follows: "On a statewide level, a strong recommendation be implemented -- the adoption of legislation to require identification of bulk chemicals." That is printed right in the State Department of Health book.

Nothing out of the Right to Know Act, right in here.

Senator, on behalf of the members of the State FMBA and all the other firemen across the State, I strongly urge each and every State Senator to vote for the passage of Senate Bill No. 1670.

I want to thank you for the opportunity you have given me to express the views of the firemen, both career and volunteer, throughout the State.

SENATOR LaROCCA: So that everyone will know, and so will I, I am going to ask the Secretary here, Mark Connelly, to advise me, and advise everyone here, how many people will be speaking approximately on behalf of the industry, and how many on behalf of the proponents, so we can see who is going to have the majority of the time, bearing in mind that everyone is limited to five minutes. Do you have that answer?

MR. CONNELLY: According to the existing lists, there are seven industry spokesmen and roughly 35 proponent supporters of the bill.

SENATOR LaROCCA: So, if each one is allotted five minutes, you can see that your own fears have been answered. Thank you. Next.

MR. CONNELLY: Mr. Hugh Toner, Society of the Plastics Industry.

SENATOR LaROCCA: Please state your name and who you represent for the record. Then proceed according to the rules.

H U G H P. T O N E R: -- whatever the rules are. I am Hugh Patrick Toner. I am an Assistant Technical Director for the Society of the Plastics Industry.

The plastics industry in New Jersey represents over 1,700 manufacturing plants, over 82,000 employees, and over $2,377,000,000 worth of manufactured products. We support legislation that gives the worker a safe and healthful workplace. We support legislation that protects the community and the environment. We are opposed, though, to Senate Bill 1670 as written. I will give you copies of my testimony. I will just hit the three main points in our testimony for the sake of time.

A major point is that any evaluation of hazard goes far beyond the identification of specific chemical products. In some cases, a chemical product in a mixture which by itself might be hazardous, is not hazardous at all. The OSHA regulation on asbestos specifically excludes asbestos in certain mixtures where the asbestos is not available in such a form to present a health hazard.

The second objection we have to Senate Bill 1670 is the use of the NIOSH Registry as the list of toxic chemicals. The Registry itself says in its preface that the presence of a chemical on the list does not necessarily indicate its hazard in common usage any more than the absence of a chemical from the list indicates that particular chemical's safety.

And the third concern we have about Senate Bill 1670 is that of proprietary business formulation information. This kind of information must be protected. The worker certainly has the right to know about the healthful or harmful effects of materials with which he must work. Certain community officials have the right to know, and the need to know about hazardous chemicals in their communities. Competitors do not have this right to know, and this is the fear we have, particularly with the Public Information Data Sheet portions and the labeling portions of Senate Bill 1670. Thank you, Senator.

SENATOR LaROCCA: I just want to make one comment. I think that is covered in the bill, that particular phase as to secrets and processes from unfair

competition. Am I right? That is my understanding of the bill.

MR. TONER: There is a provision for an administrative hearing in the bill. We do not find that that is a particularly satisfactory way to approach the problem. It presumes that the data might be disclosed, and we think the presumption ought to be that certain formulation information should be protected.

SENATOR LaROCCA: All right. Will you file what you have with the Committee, please?

MR. TONER: Yes sir.

SENATOR LaROCCA: Next, Mr. Connelly.

Mr. Connelly: Henry Martinez, Newark City Councilman.

H E N R Y M A R T I N E Z: Thank you, Senator. I am here on behalf of the East Ward of the City of Newark as a Councilman, an elected official of over 80,000 people. This Ward has the majority of the chemical plants within the City of Newark. I prepared a resolution today, and have spoken with my colleagues. The feeling I get is that it will be unanimously supported. I would like to put this resolution into the record for your Committee.

It is a resolution supporting S-1670 to propose State right to know legislation and further seeking certain information regarding toxic waste from the Department of Environmental Protection, the DEP, and the Environmental Protection Agency, the EPA.

The resolution reads: "Whereas, the State of New Jersey is currently holding public hearings regarding Senate Bill 1670, commonly known as the Right to Know Law, which would require employers to disclose to the public the identity, nature and potential health hazards of toxic substances being handled by said employers' businesses; and, whereas, the City of Newark, and especially the East Ward within the City, is home to many different businesses which use or handle a variety of toxic substances, and only within the last 48 hours one such business in the East Ward was virtually destroyed by fire and explosions during the processing of toxic chemicals; and, whereas, which company was alleged to have been in violation of various State environmental regulation and licensing requirements; and, whereas, in this particular incidence a major catastrophy was averted only because the wind direction carried the toxic fumes and smoke out into the Newark Bay rather than into the residential neighborhoods in the immediate area; now, therefore, be it resolved by the Municipal Council of the City of Newark, New Jersey that it does hereby:

1. Support, in general, Senate Bill 1670 and urges its immediate passage and signing into law to insure worker and citizen health safety; and,

2. Calls upon the New Jersey Department of Environmental Protection and the Federal Environmental Protection Agency to provide the City of Newark with a comprehensive list of all companies in the City of Newark handling any form of toxic chemicals and the legal statutes of each such company with regard to possession of proper State and Federal permits and licenses.

"Be it further resolved that a certified copy of this resolution be forwarded with all due haste to the proper authorities and elected officials on the local, State and Federal level for their review, quick response, and support."

I would like to leave you with a copy of the resolution, Senator. It will be adopted on Wednesday of next week at the regular session of the Newark City Council. I want to thank you for allowing me the opportunity to appear before you and to continue my city business.

MR. CONNELLY: The next speaker will be Martin Atherton with the American Industrial Health Council.

M A R T I N A T H E R T O N: I would like to thank Senator LaRocca for inviting the American Council on Science and Health to come and testify on S-1670, which is popularly called the right to know legislation for worker health and safety.

We at the American Council on Science and Health are opposed to the legislation called S-1670 for a number of reasons, technical and legislative. The problem with cancerphobia seems particularly rampant in New Jersey, primarily because of its unfortunate designation as "Cancer Alley." The designation apparently was derived from an analysis by the National Cancer Institute, which calculated mortality trends in every state during the period 1950 to 1969. New Jersey ranked high in cancer mortality for a number of different body sites, particularly the lung. However, a closer analysis of the data from New Jersey, including the most recent mortality statistics, clearly showed that New Jersey has approximately the same cancer death rate as does any other urbanized area in the United States. (speaker interrupted by disruptive audience) Thus, the most dangerous aspect of S-1670 is its apparent reliance on the term "Cancer Alley" for the designation of New Jersey as its legislative basis.

The most dangerous aspect of S-1670, however, lies in its ability to distort health priorities. The few rare carcinogens of occupational importance are dwarfed in comparison to the well-known risks due to smoking tobacco, alone responsible for nearly 325,000 premature deaths each year. In addition, smoking increases the cancer risk of work-site agents such as asbestos. Furthermore, in terms of overall job-related health risks, new evidence indicates that roughly 40% of all occupational fatalities are directly caused by vehicular accidents, including trucks and car accidents at the workplace. With 50,000 annual deaths attributed to on and off-the-job accidents, the current cancer focus on occupational health and safety is carelessly negligent in light of the summiting death toll due to job-related accidents.

In terms of the technical aspects of S-1670, I am afraid that it is a distortion also within the State of New Jersey, which relies heavily for its accidental and illness-related statistics on the Department of Labor's system for classifying job-related injuries and illnesses. At the present time, the Department of Labor -- and I have talked this afternoon with their Director, Margaret Hadley -- lists and classifies occupational exposures on the basis of roughly 20 groupings. By expanding that rate to the 20,000 to 30,000 mark, which would be the thrust of S-1670, the State of New Jersey will ironically counteract its own efforts to collect mortality and illness statistics for job-related injuries and illnesses. The gearing up effort that would be required, not only by the Department of Labor, but the Compensation Board, for determining compensable injuries and related mortality from cancer-causing agents of the workplace would be hampered. There would be relatively little effectiveness added by increasing that number to 20,000 to 30,000 worksite exposures, such as S-1670 would require. Of the handful of chemically-identified cancer causing agents of the workplace, roughly 20 or 30 are known reliably

in the scientific literature as cancer-causing agents. By claiming that 20,000 to 30,000 of the chemicals that are currently in the marketplace are causes of cancer, S-1670 would truly distort public health priorities in terms of identifying realistic hazards of the workplace.

We have a three or four page summary of the testimony we have provided today for those who are interested in seeing it. It has been submitted by Dr. Elizabeth M. Whelan, who is the Executive Director of the American Council on Science and Health, and who is a resident of the State of New Jersey.

I would like to thank you again, Senator LaRocca, for your patience.

FROM AUDIENCE: You just wasted your time.

SENATOR LaROCCA: Have you a copy of the prepared statement you wish to leave?

MR. ATHERTON: Yes.

SENATOR LaROCCA: Please leave it, and then we will proceed.

MR. CONNELLY: The next witness is Mr. Jack MacLear, who is a Bayonne City Councilman.

J A C K M A C L E A R: I am Jack MacLear, Training Officer of the Bayonne Fire Department. I would like to say, first of all, that the bill has the unqualified support of the entire City Council of the City of Bayonne and also its residents.

I heard one of the previous speakers make mention that thankfully the products of combustion at that recent fire blew out over the Newark Bay. It's fine for you, but guess who is on the other side of Newark Bay.

I want to say, first of all, that I am certainly no enemy of the petrochemical industry. My grandfather served 42 years at Standard Oil of New Jersey; my father for 32 years in corn products; and, all of my uncles are employed in the petrochemical industry. My wife is presently employed at Exxon. We have a good working relationship with industry in the City of Bayonne, especially the petrochemical industry. But this bill, in our estimation, can only make that better.

Two additions that we would like to see in the bill -- which Mr. Butler alluded to -- one, on the safety data sheet we would like to see recommended evacuation distances. As some of you know, there are certain chemicals involved in fires where the recommended evacuation distances are 5.2 miles, 6.5 miles, 3.1 miles. When there are residences within a mile, mile and a half, you can understand the problem we have. We would like that included.

Also, the industries covered under this legislation should be mandated to train fire departments in the proper handling of incidents involving unusual chemicals. Right now, and I don't know about other communities in this State, but the City of Bayonne trains the industrial fire brigades for the various industries. I do not think it is unreasonable to suggest that the industries in turn train us in handling their products when they become involved in incidents.

I just have one further recommendation, and that is that the fight of interested citizens not stop with this legislation. There are other areas to pursue. For instance, Federal legislation allowing communities a measure of self-determination as to what type of chemicals we will allow within our borders. At the present time, securing permits from the proper government agencies allows industries to ignore the wishes of any community in admitting hazardous materials in its areas. To avoid having the northeast urban areas turned into vast repositories of chemicals and chemical wastes not wanted by any other area in the country, we need Federal

legislation to guarantee a measure of home rule. We know best what type communities we desire, and we do not want to be treated as second-class citizens as we are now. Thank you very much.

MR. CONNELLY: The next witness will be Mr. Jeff Peterson from Economics Laboratory, Inc.

J E F F R E Y P E T E R S O N: Mr. Chairman and friends, my name is Jeff Peterson and I am the Manager of State Legislative Affairs for Economics Laboratory, Inc. I am also Chairman of the "Right-to-Know" task force of the Chemical Specialties Manufacturers Association.

Very briefly, CSMA is a national trade association with a membership of some 400 firms that manufacture and sell household, institutional and industrial specialty chemicals such as disinfectants, sanitizers, detergents, cleaning compounds, automotive chemicals, waxes, polishes and floor finishes, and we also include home and garden insecticides. Of that membership, over 100 of CSMA's member companies, including many small businesses, are either headquartered in New Jersey or maintain plants and facilities here. Speaking for Economics Laboratory, we have three of our plants in New Jersey, and this constitutes a major portion of our manufacturing work force in the United States.

In addition, and perhaps this is even more important, virtually all of CSMA's member companies market their products in the State. For Economics Laboratory, this is an even bigger concern for us, as each one of our customers, and we're talking about literally hundreds of small businesses, primarily in areas such as restaurants, dairies, nursing homes, hotels and hospitals, would be subject to the provisions of the current right to know bill, S-1670.

The chemical specialties industry supports the basic right of a worker to a safe and healthy environment. At the same time, each of our companies is committed to the protection of the community where our products are manufactured and used.

The greatest resource which each company strives to maintain is a healthy, productive and skilled work force. In addition, each of our companies is committed to the protection of the community in which it is located.

We believe, however, that there is a fundamental problem in attempting to merge the worker hazards communication program with the community need to respond to emergencies. We believe these are two different issues that require different approaches and should be addressed separately.

We feel what is really at issue though, and where we have the most difficulty with this bill, are the means required by S-1670 to reach the desired ends of worker protection and community emergency response capabilities. We believe the following have to be considered:

1. What is a Hazardous Substance? To begin with, we do not believe that everything in the NIOSH Registry, even in 55 gallon or 500 pound amounts, is necessarily hazardous. As you have already heard, the NIOSH Registry covers in excess of 40,000 substances. It is an inventory of those substances that do not, in many instances, necessarily have toxic effects. So, we do not believe that that listing is a valid description of hazardous or toxic.

   The definition, in addition to that, of special health hazard chemicals, which is based on Sax's Directory, we believe, does

not adequately address the potential hazards or toxicity. Included under this category in Sax's, are such things as sodium hydroxide, which also would be known as caustic soda, iodine, ammonia or even vinegar. In their pure state, certainly under certain conditions, any of these substances might very well be dangerous. But it could be an entirely different story if any of these substances are diluted or mixed in with other substances. Thus, under the current bill's definition -- examples of things, and these are examples -- of let's say an 8% of a hotel laundry cleaner might be caustic soda, or perhaps 3% of a hospital disinfectant may contain some iodine; a small portion of a window washer's spray might be ammonia, and as much as 20% or more of a restaurant's salad dressing might be vinegar. Under the definition as the bill is stated, all of these things would automatically become hazardous.

The function of a hazards communication program is greatly diminished unless it focuses on substances which are potentially hazardous through normal use or which present an acute or chronic health hazard. Additionally, any program must be designed to make a distinction between substances that individually are defined as hazardous or toxic, and mixtures which may contain these substances in smaller or diluted amounts. We think this is a very important distinction that has to be made.

2. <u>If a substance or a mixture is hazardous, how much does a worker have to know to be adequately protected?</u> There are no easy answers to that question. For some very hazardous substances, very detailed information may be required. For numerous other products used in a workplace or stored in a community where only a small portion of that mixture is hazardous, then perhaps less information is required.

   For certain products, not only can voluminous safety data sheets be confusing in a workplace or in an emergency response situation, but requiring detailed information can threaten certain proprietary information and trade secrets, which has previously been addressed.

There are a number of other things that I will leave to your judgment to consider -- (speaker interrupted by noisy, unruly members of audience) If I may conclude --

SENATOR LaROCCA: Time is being kept -- Please wrap up. We will accord your speakers too to stop them on the button -- (audience disruption)

MR. PETERSON: For the record, as you know a number of states and jurisdictions have already enacted some form of "right to know." Because of the complexity of the issue, most have not yet been implemented. Experience with other

right to know laws, we feel, makes it incumbent upon all of us to examine carefully the mistakes made elsewhere and to borrow workable language when it is to the benefit of everyone here who is concerned with this issue.

We urge you to move with great caution in fashioning any right to know legislation and, in the interest of cooperation, we are prepared to assist you with any deliberations. Thank you, Senator.

MR. CONNELLY: The next witness will be Robin Dressner.

R O B I N D R E S S N E R: Unlike the previous speakers, I am going to identify who I am. My name is Robin Dressner. I am a lawyer in Newark, and I am representing the New Jersey Committee on Occupational Safety and Health, a legislative committee.

The New Jersey COSH basically supports this bill, but we think it has to be stronger. There are a lot of loopholes in it, and I am going to talk generally about those loopholes and then I am going to talk about one special loophole and the change that we want made.

I also want to say that I am very upset that the other members of our Senate, who were elected by the people, did not find the time, or who felt that it was not important enough to come here tonight to hear what the people have to say. I find it also very, very disturbing that the gentleman who did come said that he might not hold any more hearings like this up in this part of the State.

The general areas that we want strengthened in this bill -- first, Section 4.a. -- we think that all chemicals should be identified. We want universal identification of chemicals, regardless of the amount. There are some chemicals that are extremely toxic even in very small quantities. For many of these chemicals the toxicity is not yet known because the money has not been spent to do enough research on them. Therefore, no chemical should be exempted from being identified and it should be in every quantity that is used.

Section 4.e. -- we want all chemicals labeled. We do not want any exemption for chemicals that are used in small quantities. In Philadelphia, where there is a right to know law which gives the exemption that the New Jersey law as proposed gives -- you know what the corporations are doing? They are buying the chemicals in small quantities under 500 pounds, in amounts smaller than 55-gallon drums, and then they do not have to report the stuff. They are going under the law. This is a major loophole that has to be closed. This is what is happening already in Philadelphia where they have the right to know law. Corporations can do this. And then they can tell us they are abiding by the law. The law is useless if it does not work.

The other thing we want is in Section 3.d. We want all discharges reported, whether they are accidents or whether they are intentional, because as we know and as we read in the papers day after day, a lot of these companies intentionally discharge into our sewers, into our water, into the ground, and later on, years later, somebody finds out about it and they say, "Oh yes, we're guilty," and they plea bargin away.

FROM AUDIENCE: We have that in Kearny now.

MS. DRESSNER: That's right, and I think that is outrageous. They should not be allowed to discharge anything unless it is reported. Then there is this business about trade secrets. That is another good loophole. That is a major

loophole which industry is going to use to prevent everyone from knowing, unless you have a lot of money to go to court, hire a lawyer and find out what is going on. Meanwhile, you, or your family, or friend, may be in the hospital dying from something, right? You need to know the information right away, but they can say, "Oh, it's a trade secret. We do not have to tell you. Go to a hearing and let the judge decide." You know how long it takes to get before the judge. Meanwhile, you are sitting in the hospital and you don't know what you have been exposed to. That is totally unacceptable -- totally unacceptable.

There is a law that has been proposed in Massachusetts which has this language. We want this language in the New Jersey law: "Disclosure of the above-mentioned hazard information and the use of this information by workers and residents to make decisions, where possible, to avoid toxic or hazardous working and living conditions outweighs companies' concerns for trade secrets. In this instance, the concern for public health must take precedence over private concerns." Basically what this means is that people are more important than profit.

FROM AUDIENCE: Bring their families into it and see how they would like it.

MS. DRESSNER: Section 10.b. -- As Mr. Butler testified earlier, and we support what he said 100%, emergency personnel, fire fighters, hospitals, doctors, need 24-hour a day access to this information. It should be computerized, and the information should be readily available.

In Section 8, we do not want the access to the information to be at the county level. We want the access to be at the municipal level. Municipal access is very important for a couple of reasons. In some of our counties, as you know, the county seat is very far away from where a lot of people live. Public transportation is very inadequate, and it is very expensive for many working people today. People do not have the time, and quite often do not have the energy to deal with traveling a long distance to get this very important information. They should have the right to get the information where they live, in the town where they live, or in the town where they work.

In Section 9, regarding enforcement of the law, we want the enforcement to be also on the municipal level, to interrelate with the access on the municipal level. We do not want the jurisdiction to be in Superior Court; we want it to be initially in Municipal Court, with an appeal to the Superior Court. I'll go into that in a minute.

FROM AUDIENCE: Mr. Chairman, time.

FROM AUDIENCE: I want to give up my time to her.

SENATOR LaROCCA: We have one minute left. Please, you are reading into her time. One minute left.

MS. DRESSNER: The last general area we want changed is that we are totally opposed to having the Department of Environmental Protection inspect these facilities. We want the inspection done by the fire fighters who are the people whose lives are on the line when they go into these places. We have had ample experience in New Jersey about the competence of the DEP to inspect facilities. I need only mention Lone Pine, Chemical Control, Kinbuc, Ferry Wholesalers -- you name it. The list could go -- I could talk here all night and name the places the DEP has inspected and has failed to inspect.

Now, I want to talk specifically about municipal access and enforcement.

SENATOR LaROCCA: You are over the time limit now, so please wrap up.

FROM AUDIENCE: I am giving my time to her.

SENATOR LaROCCA: I would like to make this comment, that whoever addresses should address the Committee here, because we are the ones who want to listen to the testimony. I think with the people here, the emphasis should not be upon the people. We have to make the decision, and we have to pass this on to the other legislators. So, speaking to your audience I think is doing them an injustice. You should not address them; you should address the Committee to impress the Committee, if you really want a good suggestion. I am just trying to be helpful.

MS. DRESSNER: Concerning the enforcement, we want enforcement of this to be in Municipal Court. We want there to be a standard of per se violations. We want there to be minimum mandatory penalties which are not discretionary with the judge. Just like the Motor Vehicle Code. If there is a violation, there is a fine, and let the corporation appeal it to Superior Court. We want there to be a simple complaint form, bilingual, with simple instructions available so that people can come in. When they come into the municipality to ask for the information, if it is not there, that is an indication of a per se violation. The resident or worker can then file a complaint without any filing cost. We do not want to deter people who do not have money, because it is often the poorest people who live near these factories. We want the complaint then filed in Municipal Court, which is often held at night when working people can attend, and not during the day. And, we want the judge not to have the discretion to decide how much money to give these corporations in penalties when they violate this law. We want this law to work; we do not want a law on paper that means nothing in reality. (applause)

SENATOR LaROCCA: You have already exceeded the time limit.

FROM AUDIENCE: How much more to you have?

MS. DRESSNER: A couple more minutes.

SENATOR LaROCCA: How many?

MS. DRESSNER: I said a couple more minutes. I think you took up some of my time, sir.

In addition, we want the costs, if the case is appealed to Superior Court -- we want the costs for attorneys and expert witnesses and filing costs; all to be borne by the corporations. They are the people who have the money. If they are going to appeal their violations, they can pay for the appeal. (applause)

In summary, we are very serious about this. This is a matter of life and death to us. To the corporations, it is a matter of money. This is what this is about. You are talking about people's health vs. the corporations' money, and it is the workers of New Jersey and the residents of New Jersey who in the long run make the products. When the industry understands this, then maybe they will think twice and they will think about their workers' health and the residents' health. That is what is important, not money. (applause)

MR. CONNELLY: The next witness is Mr. James Hardman from Hardman Incorporated.

SENATOR LaROCCA: Look, they have extended you courtesies, and so have I. So, please be fair.

J A M E S H A R D M A N: Gentlemen, Mr. Chairman, thank you for the opportunity to be here tonight. I am Jim Hardman. I am President of Hardman Incorporated of Belleville and Cedar Grove. We are formulators of epoxy adhesives. Perhaps you are familiar with epoxies. You mix Part "A" and Part "B" together, they harden by chemical reaction, and hopefully you stick what you are trying to stick. (disruption from audience)

SENATOR LaROCCA: I am running the chair here -- please. You have orchestrated the whole meeting. I have let you get away with a lot of things. Please proceed.

MR. HARDMAN: We are deeply concerned --

FROM AUDIENCE: We don't want an advertisement here.

FROM AUDIENCE: We don't want them advertising their products.

MR. CONNELLY: The previous witness just said that the people were not identifying themselves. So, he is identifying himself. (more disruption and screaming from audience)

SENATOR LaROCCA: Continue, please. May we have a little order so that the witness can complete his testimony, and everyone will be heard.

MR. HARDMAN: We are deeply concerned about portions of this bill as proposed. Our concern lies with the required disclosure of ingredients in the products we produce.

First, please understand that we have no objection to the disclosure of hazardous ingredients. Workers should be aware of the hazards -- and the toxicity -- of the materials they handle. And the people who use our adhesives should be aware of the hazards of exposure. And we believe that the local fire officials, safety and health officers should be aware of potential hazards.

What we object to is the required disclosure of non-hazardous ingredients. Our formulations are proprietary -- they are secret! Disclosure will help no one but our out-of-state competition -- and that will cost New Jersey jobs.

The NIOSH source document -- this big book -- is the wrong place to look for hazardous or toxic substances. The fact that a material is listed in this book simple means that it has undergone toxicological testing. It does not mean that the material is inherently dangerous or toxic or hazardous. Most of the materials listed in this document are benign and innocuous. Included are such materials as beach sand, sugar, table salt, calcium carbonate, a mine filler, an ingredient in candy. This is what we are concerned about.

If you are looking for toxic materials, go to the OSHA Safety and Health Standards (29 CFR 1910) "Z" tables. These are the bad actors, and these are the materials that should be disclosed.

Gentlemen, just because we are in the chemical industry is no reason to assign us a black eye and the role of a bad guy. There are hundreds of responsible chemical companies in this State, and we are proud to be one of them.

OSHA keeps track of the atmosphere inside our plant. The EPA keeps track of every vent out of our plant. We have to disclose compositions and volumes of every exhaust. The EPA also keeps track of everything we throw out. Even non-hazardous liquid waste has to be treated as if it were hazardous. We can't get rid of any liquid waste without compliance under the existing cradle-to-grave registration requirements of RCRA -- the Resource Conservation and Recovery Act.

Every raw material we use, and every product we produce, has a Material Safety Data Sheet (MSDS). This book is full of them. We instruct our employees about every hazard they face. Each employee is invited, in fact required, to review the Material Safety Data Sheets of the products we handle, and certainly the products we produce. We invite the fire departments and safety officials in, in both Belleville and Cedar Grove, to review our operations just in case of emergency.

Again, we do not object to the disclosure of these hazards. And OSHA lists these hazards in Section 1910 "Z" tables.

We object to the disclosure of non-hazardous ingredients. To do so would allow our competition to learn our formulations. This will help no one but our competition. What incentive will we have to develop proprietary technology if we have to give it away? Why should we have a technical director -- or an R&D staff? Anyone who chooses to compete would have only to read the PIDS, the MSDS or our label. And this will cost us jobs.

The thought of requesting proprietary or confidential status for every compound we produce is equally impractical. We develop perhaps 100 new compounds or specialty adhesives each year. Can you imagine the cost of convening a review board every week? The benefit would be minimal, but the cost to the taxpayer would be awesome.

In summary, I am here to ask for revision in the proposed law. Do not require the disclosure of non-hazardous ingredients. Our secret formulas give us our competitive edge. We are only one of hundreds, if not thousands, of chemical companies in this State who rely on proprietary technology for their well-being and livelihood. Speaking only for ourselves, we represent 100 families in Essex County whose jobs and incomes depend on our proprietary technology. We paid for this technology; it is ours, and we urge you not to force us to give it away. Thank you sincerely.

MR. CONNELLY: The next witness will be Patricia Howler.

P A T R I C I A H O W L E R: Good evening, my name is Pat Howler. I am from Sussex County, New Jersey, Franklin. You might not realize, but we are a very rural area. Despite that, we have chemicals up there. They dump them good. I would like to give you two examples. I would like to name the chemical companies involved. One is Metaltech, whose President was Charlie Fletcher. It was three years ago. He had a lagoon across the street. Three-quarters of a mile away -- no, I am sorry. One-quarter of a mile away from that lagoon is our city well, which we depend on for our water. He decided to dump trichlorethylene in 55-gallon drums into this lagoon, which spread to our city well, which today is now closed. I have, since 1972, drank trichlorethylene until the year 1980.

A more recent case was not quite a year ago. Accurate Forming was dumping trichlorethylene into the Wallkill Valley River. This is up in Hamburg, New Jersey. The DEP has not done anything so far that I know. Fines, to me, do not get us anywhere, especially -- I would like to point out one section here, Section 10.d. on Page 8 of the Right to Know Act. It says we should have fines up to $10,000 for the chemical companies. That should be the minimum, for a $10,000 fine, in my opinion, is a slap on the wrist.

FROM AUDIENCE: It is an insult to the human body.

MS. HOWLER: I definitely support the right to know bill for the community and the workplace, and I want to see it go through. I do hope that it goes through, and that you report a positive attitude for the Right to Know Act. I thank you.

MR. CONNELLY: The next witness will be Mr. Richard Heckman, who is from the New Jersey Business and Industry Association.

FROM AUDIENCE: This is not the Little People's world, I can see that.

R I C H A R D H E C K M A N: Members of the Senate Committee on Energy and Environment, good evening. My name is Richard Heckman. I am Manager of Industrial Relations for General Dynamics Electrodynamic Corporation located in Avenel, New Jersey. I am here today representing New Jersey Business and Industry Association. I am accompanied by William Bobsein, Chairman of the Environmental Quality Committee for the New Jersey Business and Industry Association. On behalf of our more than 12,000 member companies statewide, we appreciate this opportunity to present our views concerning Senate Bill No. 1670 sponsored by Senator Daniel Dalton. Inasmuch as this bill addresses the two broad areas of hazard communication to the employee and to the public, I will focus my remarks on those portions of the bill pertaining to an impacting on industrial relations, while my colleague will address some of the broader environmental and administrative concerns.

New Jersey is one of many states considering right to know laws, proliferation of which, in addition to Federal regulations, will inevitably impede the free flow of interstate commerce and will become unduly burdensome for employers operating in multiple states.

New Jersey Business and Industry Association supports the concept that employees should have the right to understand the nature of the substances to which they are exposed, the risks associated with exposure, precautions to be taken in handling such substances, and emergency procedures in the event of a mishap. Responsible industry members have recognized the need for a well-informed labor force and have voluntarily undertaken such educational programs.

State legislation mandating employee hazard communication is, however, a costly duplication of Federal efforts. The Occupational Safety and Health Administration (OSHA), charged with the responsibility of providing a safe workplace for all employees, has recently published proposed regulations governing hazard communication, specifically 47 F.R. 12092.

The proposed Federal regulatory scheme will insure the availability of pertinent information regarding hazards associated with chemical substances present in the work environment uniformly throughout the country. Inasmuch as OSHA has devoted many months of study to this issue, with input from the best technical minds in the country, we submit that additional State regulations will impose duplicate and/or conflicting requirements on New Jersey employers at great expense without providing similar benefit to employees. As an example, the definition of "hazardous chemical" as contained in the proposed OSHA standard is far superior to the definition contained in S-1670 -- "hazardous chemical" means any chemical which is combustible, a compressed gas, explosive, flammable, a health hazard, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive or water reactive).

Another example is the OSHA definition of "health hazard" which means a chemical which upon exposure may result in the occurrence of acute or chronic

health effects. A more precise definition is contained in the Appendix to the OSHA standard. The definition of "health hazard" as provided by N. Irving Sax is controversial and is not universally accepted by health professionals.

We also question the advisability of extending enforcement responsibility to two independent departments -- DEP and Labor. Employers would be subject to duplicate and overlapping inspections by the State and Federal governments. It can be anticipated that employers would perceive this law as a form of harassment by the State, as well as employees, and insist on application to the courts before they permit an inspection.

Furthermore, in 1970, the Federal government enacted the Occupational Safety and Health Act (OSHA). This law placed responsibility for the regulation of issues concerning workers' safety and health with the U.S. Department of Labor. This Federal law superseded all state laws pertaining to employee safety.

In 1973, the State of New Jersey, with the support of labor organizations and despite objections by the industrial community, relinquished its enforcement responsibility over these worker safety and health issues to the U.S. Department of Labor. By that action the power of New Jersey to enact worker safety and health standards has been preempted, except where OSHA standards do not address the issue in question.

A review of State legislative history supports this application of the preemption doctrine. On three occasions during the prior administration when the legislature enacted a law regulating employee safety, Governor Byrne vetoed the legislation on the grounds that New Jersey had delegated its responsibility for OSHA enforcement and was powerless to enter this legislative arena where OSHA standards already existed on the subject. In vetoing this legislation on April 7, 1975, Governor Byrne said: "The United States Department of Labor has recently informed my administration that, pursuant to the Federal Occupational Safety and Health Act of 1970, New Jersey has been preempted from exercising any statutory or regulatory authority in the area of occupational safety and health." As noted, at the present time Federal standards pertaining to "hazard communication" are awaiting completion of the public hearing process. It is anticipated that standards will emerge from the regulatory process and be in effect at the end of 1982. We submit, therefore, that if enacted, those portions of S-1670 which deal with worker safety will be preempted by Federal rule by the end of this year.

In summary, addressing the concept of State worker right to know legislation, we submit it duplicates Federal efforts and is therefore unnecessary.

New Jersey Business and Industry Association urges that you not enact the employee right to know legislation as proposed in S-1670.

With your permission, I will now turn the floor over to my colleague, Mr. Bobsein.

FROM AUDIENCE: Come and live with it. Come and live where we have to live. (audience expresses disapproval by booing)

MR. CONNELLY: Are you going to take another five minutes?

MR. BOBSEIN: I can cut it short.

MR. CONNELLY: We have to alternate. If you are a separate speaker, we have to alternate.

SENATOR LaROCCA: We will alternate. That is the rule, so you will be after the next speaker.

MR. CONNELLY: The next speaker will be Mr. Moshir Robinson.

M O S H I R R O B I N S O N: I have a few assistants, Matthew Gillam, Alex Hooper, Gail Gordon and Bob Cartwright. Can I have those people, please? Mr. Cartwright, Mr. Gillam and Alex Hooper are part of my team for presentation.

I am glad this gentleman just spoke a little bit about law and history, because I would like to refresh a few people's minds about history. My understanding is that the 17th century in America worldwide was known as the "age of enlightenment."

SENATOR LaROCCA: Will you please speak for the record, and also that we can hear.

MR. ROBINSON: My name is Moshir Robinson. I am Executive Director of New Jersey COSH. My training is in medicine, political economy -- I was Albert Schweitzer Scholar of Medicine at Oxford University. I am Professor of Political Economy at the State University Cornell, as well.

The 17th century was the "age of enlightenment." Our forefathers defeated all those who promoted all forms of ignorance and myths. This victory of the right of people to know the scientific basis of our society's evolution was essential to the 18th and 19th centuries' industrial development, the same development that these characters owe their profits to. The American Constitution embodies this notion of the right to know in two profound ways.

First, the right of people to freedom of the press - our guarantee in this democratic society that information pertinent to our rights of life, liberty and the pursuit of happiness be open to scrutiny in the public domain.

Second, the right of people to freedom of speech. Once we have the information from press, or government, which is supposed to seek to protect the public good, or from our own personal investigation, we have a right to agitate openly for what we see is in the best interest of the people. Without information, we cannot do this.

It is very odd to sit here tonight, and to be insulted by the very people who drap themselves in the American flag and the American Constitution. Industry opposes the right of people to be informed as to the extent of their culpability in the 20th century's most gripping question: Will we in our drive to meet the bottom line profit, destroy the environment, animal life and humanity itself? Yes, industry whose sin of avarice threatens what it has taken nature thousands, and perhaps millions of years to produce, is attempting to tell us that our 1000% rise in cancer since the Second World War has nothing to do with them; that the over 40,000,000 people who, according to Social Security, are disabled in the United States has nothing to do with them; that the estimated 80% of modern birth defects which are the result of damage to male sperm through toxic exposure has nothing to do with them; and, in New Jersey, where 20% of the U.S. chemical production takes place, where there are 10.2 billion pounds of hazardous materials produced each year -- that is 1.36 million pounds per square mile, or 1,393 pounds for every resident in the State. This is where, also, the world's highest cancer rate exists, and it's funny they would tell us they are not responsible, that they have nothing to do with this.

Well, the big lie goes on because they turn to you and I and say, "Prove it." Scientific proof is based on data collection, which these same industry forces would rise tonight and oppose. They will cry, "Trade secrets." Well, that

is a most foul, filthy lie. These companies have no right to protect any information. That information might be used to advance humanity's well-being and its protection in health and in other things. The only right these guys have is to produce stuff cheaper than the next fool, and to do it more efficiently. They have no right to protect any information. (applause)

Secondly, these guys have been crying that they can't afford it. Well, if you and I can't afford insurance on our car, we won't operate it. If you can't meet inspection requirements in the State of New Jersey, you can't operate it. If you won't drive at 55 miles an hour, the State Police might jail you. Well, it's about time we deal with the problem which is ten times worse than traffic injuries or fatalities. Ten times as many people die in New Jersey from exposure or death in plants than die on the highways.

This massive death and injury that industry is promoting in the workplace and toxic dumping areas of New Jersey has to cease. We not only from New Jersey COSH support this bill, but we think it needs to be strengthened, and I have six different recommendations.

Criminal liabilities should be legislated on the Board of Directors for any company violating our right to know. Senseless deaths like those from Picatinny Arsenal explosions could have been avoided with proper workplace control and regulation. The profit-hungry owners should rot in jail, just as muggers and drunk drivers should.

Secondly, no trade secrets. Concerns for public health override these people's drive for profit. Third, local filing as opposed to county filing. If you are someone who is working for $3.00 an hour in some unauthorized rotten chemical plant, you cannot get off, you cannot afford to take off to go file, maybe 30 miles away at the county seat. Also, most of us cannot afford attorneys to go ahead and process things in Superior Court which filing in the county means. So, we want filing in the local municipality where people -- (interrupted by applause) Now, people are going to say, "How are you going to pay for that?" It is not hard to pay for this, man. The way you have to pay for this bill is the same way we have to pay when we want to fix our houses. We have to have filing fees. The companies need to pay filing fees any time they use any of these materials, to pay for the enforcement of this law. Or perhaps we could also go to a tax on gross receipts. The State is not worried -- the State of New Jersey is not worried about losing its tourist trade. The State of New Jersey is not worried about losing its tourist trade because of traffic tickets. We should not be scared of losing our industries because we are regulating the health of our people.

My final two points are very short. First, universal identification. Regardless of the quantity, a toxic material is toxic. Most of these quantities we are talking about were in micro, mille, whatever, liters, not in the gallons of drums that they would like us to believe would be in our interest to have regulated, which they can afford to regulate. The fact is that in Philadelphia, these guys have been getting around the law by drawing down the quantity to 55-gallon drums and below. We do not want that. We want them, regardless of what size, to have to report it. All chemicals, anything, including water, when it is combined in some cinergistic form -- you know, some reaction causing a dangerous component of the whole. That is why we have to know what is going on, what is held in these plants, so that we can understand what kind of things they are putting together when they blow up our firemen

have some idea what the end product is they are fighting. If we don't have this information, we cannot do that.

Finally, we want fire fighters to have 24-hour access, not two years from now. Those guys are lucky to have gotten out of that fire the other night with their lives. We want the State to computerize not only traffic violations, we want them to computerize all of this other kind of data relating to toxic materials. Put some computer terminals in these fire houses so the guys can push a button and find out how they can save their lives.

MR. CARTWRIGHT: My name is Bob Cartwright --

SENATOR LaROCCA: The next speaker -- we have some rules.

MR. CONNELLY: The next speaker is Mr. William Bobsein.

SENATOR LaROCCA: They forced us to change after Mr. Heckman, and I am trying to be equal and fair -- (Chairman interrupted by audience)

MR. BOBSEIN: He can go next, that's okay. (as Mr. Cartwright continues to speak)

SENATOR LaROCCA: Please -- you forced us to change him. We are trying to be fair. No, he was allotted his five minutes. You forced us to change this. I don't want to change the rules as we go along. That's all. You will get your chance after this one. Yes, we are trying to count the time on it. I am trying to be fair. You people do not understand what fairness means. I wanted to let him continue; I would have let you, but you did not allow it. You cooked your own goose. Please, don't let me lose my temper.

W I L L I A M B O B S E I N: Senator, my name is William Bobsein. I am Chairman of the Environmental Quality Committee of the New Jersey Business and Industry Association.

I wanted to point out that the Business and Industry Association represents businesses of all kinds, from the largest corporations in the State down to the Mom & Pop retail merchants. It does not represent in large part the chemical industry of New Jersey, although some chemical companies do belong.

The impact of the proposed legislation would go far beyond the industrial relations areas that my predecessor, Mr. Heckman, spoke to. In fact, where the preamble to the bill speaks of "the proliferation of chemicals posing a growing threat to the health of employees," the bill may unintentionally foster more hysteria in regard to chemicals in general, regardless of whether or not there are toxic or hazardous components in those chemicals. To permit such misinformation to be disseminated from the legislative level would be a disservice to the thousands of beneficial compounds which serve not only our health needs, but our daily lives and we believe it is an affront to the successful programs which are underway in the State to allow this kind of thing to go on. New Jersey has become a national leader in pollution control. In fact, with the operation of the various State and Federal regulations and laws, we believe that the threat is being significantly decreased as time goes on.

The primary proponents of this legislation have given wide circulation to a pamphlet entitled "The Right to Know About Toxics in Our Workplaces and Communities." It is this publication which clearly demonstrates that S-1670 is at the most unnecessary and at the least overly broad, costly and burdensome to the State and also to the county, and particularly its government.

The arguments of the proponents read as follows:

"Without right to know legislation:

*Those of us living or working in New Jersey have no way of knowing the names of toxic substances we breathe daily.

*Unknown toxic substances are stored in our communities, making it difficult for us to protect ourselves against chemical leaks, fires, or emissions.

*Workers are denied access to the names of toxic substances they handle daily and are therefore unable to protect their own health.

*Government agencies cannot adequately protect the health of people living or working in New Jersey because they do not know the names of substances handled by industry.

*We cannot identify the hazards of many chemicals in the work-place and community before injury to health actually occurs.

*Fire fighters cannot safely extinguish toxic fires or fumes of chemicals unless they know the toxics involved in the emergency."

That is the end of the quote from the proponents.

Firstly, in all but one of these arguments the word "toxics" or "hazard" is used to describe the information which the New Jersey Right to Know Coalition claims is unavailable. The record shows that every supporting witness thus far has voiced their concerns in terms of toxic or hazardous chemicals. However, the proposal at issue talks about 125,000 materials that appear on the NIOSH list, most of which are neither toxic nor hazardous. As was stated before by another speaker, the preface to the NIOSH list warns against misuse of its contents. It says, and I quote: "The absence of a substance from the registry does not imply that the substance is non-toxic, anymore than the presence of a substance in the registry indicates that the substance is hazardous..."

The volume of information that would be required to be generated by the provisions of this law would literally flood the public with warehouses full of paper, most of which would be unwanted and unneeded by them.

Furthermore, the bill places the burden on the Department of Environmental Protection and county health departments to maintain and process this volume of information in such a manner as to be almost instantly accessible to public demands for any or all of the 125,000 listed materials. Substantial costs would be added to already hard-pressed State and county budgets in order to comply.

It goes without saying that the costs of the operations required to report under this legislation would be substantial. Virtually every manufacturing facility and many commercial non-manufacturing facilities in the State would be covered by these requirements. Even the 5,000 or so filling stations in the State of New Jersey would be required to file their requisite MSDS and PIDS for substances which are in common usage to service the family car.

New Jersey's economic climate is experiencing bad times. Layoffs and shutdowns affecting hundreds of employees are occurring weekly. Plans by companies to increase their manufacturing capacity in other states rather than New Jersey are being considered to the point where employees of one New Jersey company

have been solicited by an ad in a daily newspaper to consider housing possibilities in a sunbelt state where some of that plant's operations will be relocated.

Of further concern to the business community is the lack of respect which S-1670 affords trade secrets. If a manufacturer is required to report its use of each of the 125,000 substances on the NIOSH list, whether or not they are hazardous, that manufacturer will likely be giving away the keys to its product formula to competitors. This is not an unfounded fear. Recently, a snafu at the EPA resulted in the possession by a competitor of a phenomenally successful formula for a product that is estimated to contribute $450 million annually to the sales of the Monsanto Company.

The provision that puts the burden upon the manufacturers to establish a case for trade secret protection for each PID in the forum of an administrative proceeding is of little comfort to manufacturers of highly competitive products.

Now, I will skip to my final point. You will see from our written presentation that there are a great many Federal and State laws and regulations which already cover the subjects at issue here tonight. We urge you to oppose S-1670. The bill does not provide the public with one additional iota of pollution protection, nor does it provide them with a useable repository of information with regard to risk-related substances. If the Legislature wishes to establish an effective program in this area, we suggest that legislation be drafted to direct the State to centralize information already reported both to Federal and State authorities regarding toxic and/or hazardous substances within the State. The legislation should further direct that this information be made conveniently available to the public. We believe that the objectives of S-1670 can be met. Thank you.

MR. CONNELLY: Sir, do we have your name?

R O B E R T C A R T W R I G H T: Of course. My name is Robert Cartwright --

FROM AUDIENCE: And he can give his address too.

MR. CARTWRIGHT: Oh, I can give my address because I'm actually from here. I live in the Ironbound Section of Newark, home of many chemical plants, many hazardous waste sites, and air that has become just about unbreathable.

A century ago, American Indians were almost completely wiped out. Many of us have begun to ask ourselves, "Are we next?" Secrecy has always been the way of operating for those who make up a tiny minority, but who wish to control the vast majority. Hitler and the Fascists did not announce publicly in 1933 that they were going to kill six million Jewish people. No, they said that they were building progress and prosperity. Nor was there a democratic election to decide whether or not millions of people were to die.

About 90% of all cancers are environmentally caused. We have not had an election nor referendum to decide whether we wanted this fact to become part of the American way of life. Instead, it was forced upon us, without us knowing that anything was going on until it was much too late.

Tonight the chemical industry representatives, some of whom are leaving, even though they make up a minute proportion of the population, have demanded equal time to speak; a half hour to be allocated for the vast majority of the population who have to suffer the diseases, the cancers, the birth defects that these merchants of death rain down upon us, and a half hour for the industry representatives to whine about how they will all go bankrupt if the American people have the right to know and to find out about all the killer chemicals that they are exposing

us to. They will use one of their many excuses, that the poisonous gases that they expose their workers and people who live near their plants to are trade secrets. They figure that the best way to keep us powerless, to prevent us from requiring that we not be exposed to their toxic pollution, either at the workplace or in our neighborhoods, is to make sure that we do not know what is killing us. And they are right. Knowledge is power. So is organization. When the chemical industry speaks, it is with a unified voice and the money to back it up.

The rest of us came here tonight as free people trying to protect our health and that of our children. Nobody had to pay us to do it. (applause) On the other hand, the chemical industry is represented by their hired guns, lobbyists, consultants, public relations experts and employees whose presence is dictated by corporate executives and enforced with the threat of firing.

They try to convince us that the damage caused by their pollution is necessary, that the products that we use and consume cannot be produced without damage to our health. This is what is known as the "big lie technique." To give but one example -- industry spokesmen try to prevent the regulation of vinyl chloride by claiming that it would cost billions of dollars and throw millions of Americans out of work -- the exact figure was 2.2 million Americans were to lose their jobs, and $60 billion is going to be required if OSHA enforced the regulation on vinyl chloride. The reality is that nobody lost their job. OSHA went ahead with the regulation, and the corporations ironically actually made more money by recycling the vinyl chloride that they had previously wasted.

In 1975, Mr. Wheeler, Senior Technical Official at Union Carbide, expressed surprise as to how unexpectedly easy it had been for his company to comply with the new standard. But they don't tell us that when these hearings go on.

In order to counteract the corporate propaganda barrage, we must become as organized as they are. Only a unified, grass roots health and safety movement, including workers, community residents and health professionals can succeed in protecting our health and that of our children.

Government, as exemplified by the DEP in New Jersey, and industry, as exemplified by some of the characters here tonight, have not protected the people. At Love Canal they did not protect anyone, and they are not going to do it anywhere else. It is up to us. A right to know law is the first step. Next, we must demand the right to say "no" to toxic pollution at work and in our neighborhoods. (applause)

SENATOR LaROCCA: Is there anyone else here from industry? (no response) Then, we will proceed with the others on the list. Who is next? Proceed.

MR. CONNELLY: The next speaker will be Ms. Gail Gordon, Professor at Jersey City State College.

G A I L G O R D O N: Mr. Chairman, my name is Gail Gordon. I am Chairwoman and Assistant Professor in the Department of Health Sciences at Jersey City State College.

I am here today to tell you a bit about a study we conducted last Spring at Jersey City State College. We surveyed brake repair workers in brake repair shops in Jersey City, and I am here to tell you a little bit about the findings. In contrast to the industry spokespeople today who said that we don't need a right to know law, we interviewed workers in these brake repair shops and found that they do need this law, that they knew very little about the substances which they are working with.

What we did is, we based our study on some of the work done by Dr. Irving Selikoff of the Mt. Sinai School of Medicine, who is well known in this field.

We based our questionnaire and our survey on his studies. As you might know, asbestos is used in brakes, and brake repair workers are exposed to asbestos and are dying as a result of it. There are ways to reduce exposure, but most of these workers did not know how to reduce their exposure to asbestos.

We asked them, "Do you know you are working with asbestos?" and they did say, "yes." They do know that they are working with asbestos. However, when we explored what they knew about asbestos, we found that that is really where their knowledge stopped. That is all they knew, that they were working with asbestos. We asked them, "Are asbestos diseases curable?" The majority of them said, "Yes, they are curable," or they did not know. So, their information was inaccurate.

We also asked them, "Can your families be exposed to asbestos through your clothing?" Most of the workers said either "no" or they did not know. So, once again, their information was incorrect. We asked them if they knew about any laws that existed regarding exposure to asbestos and, once again, they said they either did not know or else they said there were no laws to protect them.

We asked them if there was anything that could be done about reducing their level of exposure to asbestos, and most of them said "yes," they were doing something to reduce their exposure. But then when we asked them what is being done, they said, "Oh well, we have fans blowing, we open the window, we sweep the floor to get rid of the asbestos." Well, this is not accurate information. They thought they were protecting themselves, when in fact they were not. Only a few knew about the vacuuming, the use of masks, and other protective devices.

Our study in Jersey City State College confirms the need for the right to know legislation. More specifically, from just taking off on what we found in our survey, we found that -- I believe that the MSDS, the Material Safety Data Sheet, would help workers because it would not only tell them that they are exposed to asbestos, it would tell them about the long-term effects and it would give them accurate information.

We also feel that the conducting of training sessions is very important, and we would recommend that some of the information be given both in Spanish and in English because many of the brake repair workers that we surveyed only spoke Spanish, and so we feel this could be an added part of this legislation.

In conclusion, we applaud the efforts of this Committee and, in particular, Senator Dalton, for giving leadership on this critical issue. If laws such as this are enacted, we should be able to reduce the incidence of occupational diseases. We feel strongly at Jersey City State College that this would benefit, not only the workers, but industry and society as a whole. Thank you.

SENATOR LaROCCA: For your information, I would just like to welcome to this hearing my colleague in the Senate, Senator Wynona Lipman. I welcome you to the hearing --

SENATOR LIPMAN: Thank you, Senator.

SENATOR LaROCCA: -- so that you also can hear, and be made aware of the pros and cons of S-1670. Please proceed.

MR. CONNELLY: The next speaker will be Joseph Mangella.

SENATOR LaROCCA: If there is no answer, we will proceed with the next one.

MR. CONNELLY: Mr. Joseph Schirmer from the CWA.

J O S E P H S C H I R M E R: Thank you, Senator, and Mr. Connelly. Friends in the audience -- if you don't mind, Senator, I am going to face the audience.

I am a representative from the Communication Workers of America. Our Union represents Bell Telephone workers, telecommunication workers, and State workers in New Jersey. We support this bill, and I would like to tell you, just briefly, why.

As Union members, we are committed to serve the public as State workers officially, and this legislation will allow us to do that. I want to just make perhaps two or three points here tonight. I think the most important one is this. Most employers and employees do not know what they are working with, not only the workers, but the bosses. The people who were here earlier this evening, in general, could not tell you the generic names of the chemicals in the factories in which they are working. Generic name information is not widely distributed, and it is crucial -- it is absolutely crucial that we have generic name legislation, not with trade name protection, but with no strings attached, because without that information you cannot get access to the scientific literature. That is the key to get into the scientific literature.

The head of NIOSH in 1976, that is the National Institute of Occupational Safety and Health, testified before Congress that, based on a survey of over 5,000 workplaces, at the majority of those workplaces, both the employers and the employees did not know the generic names of the chemicals in those workplaces. And that, I think, still stands today. He felt at that time in 1976 that that was a problem. He could not do his job with that being the situation. We feel today that that same situation exists and it is still a problem at the local level and at the national level.

There is an important distinction between trade names and generic names. The generic name will allow the workers, or their representative, or the community person, to get information on the toxicity of that chemical. Without that, they cannot get it. My personal job is as an Industrial Hygienist, and I work in the area of evaluating workplace hazards, rather than community hazards, but I think they are very closely linked. My job can be broken up into three phases really. It is to recognize, to evaluate, and to help control the hazards in the workplace.

Now, there are two sort of scientific subspecialties in this field which are important. There is Toxicology in Health on the one hand, and there is Air Sampling and Analysis on the other. Now, without knowing the names of the chemicals in a workplace, I can't do my job. I can't make an evaluation of the toxic risks in that workplace and, furthermore, I can't even do any air sampling. I can't set up instruments to do air sampling unless I know what I am looking for. It is like a needle in a haystack. You have to know what you are looking for in order to make it through to your job. (applause) Thank you.

I would like to just give some specific examples to illustrate these points. Right here in Newark there is an outfit on Blanchard Avenue that recently refused to tell one of our investigators the generic name of a solvent. When we did identify the air contaminants that were being released by this industrial process -- by the way they were methylene chloride and trichloroethlyene -- the company denied that these chemicals were in the product. Now, it took us a lot of time to establish these facts, and we could have operated much more efficiently and saved the State a whole lot of money if we had had this information in the form of a right to know legislation.

Similarly, sometimes instead of an outright denial, we get bad information. At the State House there is a library and there are films in that library. One of the solvents used to clean the film came under some concern by one of the employees. They wanted to know if it was dangerous to them. They asked if an investigator could evaluate it. It is an Illinois company that makes the stuff. The company's initials are R.T.I., and that company stated the generic name was trichlorotrifluoroethane. We did some air sampling and we were able to identify that they were wrong, that that in fact was not the chemical. The actual chemical involved was 1,1-trichloroethane. So, they were absolutely misleading us. I think they were deliberately trying to mislead us with regard to the toxicity of that chemical.

This legislation would help to prevent this kind of shenanigans. Sometimes, even from the so-called responsible actors, we get inadequate information. I have here with me some information I got from 3M, which is one of the better companies, but even they sometimes screw up, if you will. They refused to identify the generic names. They have a company policy that they will not identify generic names, and they sent us their own toxicological identification of a chemical called FC43, but they only told us in general terms what this chemical was. So we were again frustrated in our attempts to try to protect the workers involved. If we got the generic name information that this bill begins to let us get at, weak though it is, we could protect the public and serve the public more adequately.

The CWA feels that three groups would be served by this legislation. First, health professionals, many of whom are represented by CWA, would be better able to do their jobs and, more important and more wide, the workers throughout New Jersey would be able to do their jobs more safely and more efficiently if they had access to this generic name information. They would be able to make the proper decisions about how to handle the chemicals and how to protect their own lives.

Finally, as many of you here are from the community, this information is important to you because without this information you cannot make intelligent choices about zoning issues and other crucial things in this community. (applause) Thank you.

To sum up, I would say that without this kind of information, as members of the public we have two choices in how to respond to the reality around us. We can either become apathetic and hide our heads and try not to look at reality, or we can become frightened and hysterical to the point where we are absolutely panicked about what is going on. I think we have an alternative. The alternative is dependent upon information. If we can get information through this kind of legislation, we can make intelligent choices and we can control our environment. Thank you.

MR. CONNELLY: The next witness will be Professor Arthur Kinoy from Rutgers Law School.

P R O F E S S O R A R T H U R K I N O Y: Members of the Committee and members of the community: My name is Arthur Kinoy. I am a Professor of Constitutional Law at Rutgers University School of Law here in Newark. I am a member of the Bar of the Supreme Court of the United States and I have argued a number of cases to that Court successfully urging the protection of the fundamental Constitutional rights of the people of this country.

I am going to address myself to what I think is to be one of the most serious aspects of the bill, and that is the so-called trade secrets provision.

I have prepared a very full statement, copies of which I would like to submit to the members of the Committee for the record, and I would hope other members of the Committee will have the opportunity to read and study it. I would be very glad at a later date to discuss questions of the statement with the Committee.

At this moment let me address myself, because of our time, solely to certain of the critical and central aspects of this problem. I want to say that I was delighted that I was assisted in the preparation of this work by Miss Elizabeth Schneider and Judy Volkmann from the Constitutional Litigation Clinic of Rutgers Law School, by Adrienne Markowitz from the Health and Safety Committee of the Montclair Citizens' Party, and by Sid Harring from the John Jay College of Criminal Justice.

Let me put to the Committee, very directly, what I believe to be the center of the problem. The New Jersey Worker and Community Right to Know bill is absolutely essential to the health of the millions who live in New Jersey now, and to those who will live here in the future. Thousands of chemical substances are used in various manufacturing processes in our State. Presently, citizens of New Jersey cannot find out most of the risks that these chemicals pose. At a minimum, we all know that many of them cause cancer. We also know that many of the chemicals are potential hazards but we lack the results of long-term research to be able to be certain. Highly dangerous PCBs were freely used in the environment for 40 years before the health risk of even a small exposure was discovered.

Communities need to know what chemical substances are being used in their environs to protect the lives of the people who live there, and to allow public servants such as police and firemen to adequately deal with chemical emergencies. But, and this I call sharply to the attention of the Committee, the chemical industry remains insensitive to our concerns and dishonest in its statements to the public about the dangers of today's heavy use of chemicals. Fundamental to their objection to the communities' right to know is their assertion that they have "trade secrets" that must be protected at the expense of community health.

The proposed bill, which I support in almost every one of its aspects, has one dangerous provision in it. It provides so far -- and I will be confident and hope that the Legislature will eliminate this provision when it comes to the floor -- it provides that manufacturers may claim trade secrets as a basis for exemption from the bill and gives them a procedural vehicle by which they can prove their claim. Simply put, a manufacturer can claim that a trade secret is anything that is known only to them and gives them a competitive advantage over others in the industry. Under this statute, as presently written, a manufacturer's claim of trade secrets can effectively nullify the purposes of this bill, thus giving corporate profit priority over health and safety.

We believe that the "trade secrets" provision of this bill should be promptly eliminated. First of all, the notion of trade secrets, as understood in the law generally, is based on the secrecy of manufacturing processes, not a list of ingredients. The list of ingredients which companies would have to give over in the MSDS Sheet is not of a degree of specificity which would even qualify in ordinary law as a trade secret.

Second, the legal concept of trade secrets at the common law emerges from certain legal protection accorded manufacturers from former employees who want to divulge their employer's secrets, but under the common law, and under the cases of the State of New Jersey, and under the Federal cases themselves, this concept of

protection of trade secrets is never applied where there is a countervailing interest in what -- public health and safety. The law is crystal clear that the applicability of manufacturers' claims of trade secrets does not apply where public health and safety are at stake. Even the Federal Toxic Substances Control Act acknowledges this, and similar health and safety exceptions can be found in a number of other Federal statutes. Now, the Supreme Court of the State of New Jersey has totally acknowledged the dominance and importance of public health and safety over and above the private interest in trade secrets. I will not take the time, as this is not a court of law, to develop and explain that decision. I would be glad, members of the Committee, to meet together with you to explain in detail the Whitmore Bros. case which establishes the full law in the State of New Jersey on this question. Health and safety considerations, the Supreme Court of New Jersey says, are dominant over trade secret claims. Therefore, trade secret claims cannot constitute an exemption to disclosure under this Act.

Finally, the "trade secrets" provision must be eliminated because as spelled out in the bill, and we must face this frankly, it has the potential of effectively nullifying the Act. Even under the procedural provisions of the bill, manufacturers' claims of so-called trade secrets have the practical effect of stopping disclosure.

Industry's claim of so-called trade secrets, and we must face this, and the Committee must face this, raises a false issue, a smokescreen to protect the industry from the social consequences of publicly revealing what chemicals they use in the various production processes. All of us know, for example, that the modern science of analytical chemistry can, in fact, analyze any substance and determine with great accuracy exactly what ingredients are found in it and in what proportion. All chemical companies employ the services of these professionals to do exactly that, and consequently among themselves they all know that they virtually know all of each other's so-called trade secrets. If the whole idea of a trade secret is not necessary to protect the manufacturers from competition, in reality, what does it protect them from? It protects them from public scrutiny, from being publicly accountable for the chemicals they use. It is the opposite of a worker and community right to know bill -- it is a manufacturers' right to cover it up bill.

Now, we say and I have developed this position in full in the paper, and I am ready to meet in detail with members of the Committee and the staff to discuss this out very fully - we say that the position that we are putting forward here is what? -- is a moderate, reasonable, rational position. Every decent human being in this State and in this country agrees that the modern use of chemicals in industry poses a public health threat. Everyone would also agree that we do not now know the full extent of that threat, other than to say that it is deadly and that it has already killed people and will kill more. In this context, we believe that the public's need to know is absolutely compelling. It is, as we have said, a matter of life itself. It is protected by the most fundamental provision of the Constitution of the United States and the Constitution of the State of New Jersey. This country was founded on the concept of what? -- the protection of life and liberty. The industry's defense of the secret chemicals, whatever their merits, and we challenge their use of the concept of trade secret, is based solely on an argument about the property value of those alleged secrets. If there is one thing we have learned in the defense of American democracy and democratic Constitutional rights, it is

that the consideration of life must dominate over considerations of property. That is our American tradition; that is the common law legal tradition; that is our highest moral tradition; that is the common sense of the American people; and, that is the only conceivable policy which should be followed by this Legislature. Thank you.

MR. ROGERS: Senator Lipman, I am glad to see you here tonight. If you don't mind, I would like to address you. I would like to tell you what happened here before you came. You know me, I am Richard Rogers.

SENATOR LaROCCA: Will you address me please? I did not recognize you -- please --

MR. ROGERS: -- I am Richard Rogers, as you know. I represent the State workers in this area, as you know. I am really pleased to see you. I want you to know that wherever I go in the labor movement I will support you, and all of these people here know your record, but we have a real problem here. We have a man sitting here who allowed every one of the oil chemical employers to testify, repetitiously, just what they testified in Trenton. We were there too, as you know. Okay? And we had to listen to their poor excuses. And wherever I go in the labor movement, I am going to tell them what you did to us tonight because it was wrong and, whether you are a Democrat or a Republican, the workers know that you cannot do that to them over and over again. We have a Senator here -- if she had been here, she would not have let you do that to our people.

SENATOR LaROCCA: This was a very acrimonious meeting and I was trying to be sensible, but if he wants to say something --

MR. CONNELLY: The next speaker is Betty Suferdella.

B E T T Y S U F E R D E L L A: My name is Betty Suferdella. I am a resident of the East Ward in Newark; I have lived there all my life. I love Newark and I love the East Ward. Up until recently, it has been a very nice place to live. About four months ago a company moved in across the street from my house. The name of it is Resistol Co. About the same time they moved in, I started to notice some symptoms. It's too bad we don't have amplification because you could hear me wheeze. I started to experience sore throat, chest wheezing, irritated nasal passage, headache and nausea from whatever it is they are polluting the air with.

I tried calling the company and I got very little response. What response I did get was that they told me they are not allowed to divulge the information. They are not allowed to tell us what chemicals they are using. If we had a right to know law, they would have to tell me what we are being subjected to.

Earlier here tonight, the opposing members of the right to know said we have phobias. To clarify, a phobia is an unrealistic fear. Our fears are not unrealistic. Our fears are very real. The chemicals are real; the explosions are real; the chemical fires are real; and, our symptoms are real. I worry about myself; I worry about my family; and, I worry about my neighbors.

The company went on vacation for two weeks, and that is when I realized the relationship, because when they went on vacation, the symptoms stopped. After they came back from vacation, the symptoms reappeared. I started to contact my neighbors and I found out that I was not the only one experiencing these symptoms, but that irritated eyes, itchy eyes, irritated nasal passages, sore throat, wheezing, coughing, nausea and headache --

FROM AUDIENCE: (inaudible comment)

MS. SUPPDELLA: I have no idea because they will not tell us what we are exposed to. If we had a right to know law, they would have to tell us what we are exposed to. We need the accessibility to this information; we need to be able to get this information and enforce laws, enforce complaints. I'm sorry if I get emotional, but "Joe Average" needs to be able to go locally and make a complaint against a company, and know that his complaint is going to be followed through on. I'm sure that many of my neighbors don't even want to attempt to get involved with something like this because they know it is going to go nowhere. It needs to be enforced locally and the people need to know that their complaints are going to be heard and followed through on. Thank you.

MR. CONNELLY: The next witness will be Chris Marlow.

C H R I S M A R L O W: Senators Lipman and LaRocca, and Senate Committee on Energy and Environment, and those assembled: My name is Chris Marlow. I am a graduate student at the New Jersey Institute of Technology. Until seven weeks ago, I was an Industrial Hygienist with the Occupational Safety and Health Administration. Unlike some of those speaking for the chemical industry, I am a chemist. I worked for five years in Product and Process Development, and then Process Control on the Batch Floor. I know this situation from a worker, industry and a regulatory side.

Before I discuss the bill itself, I wanted to discuss a couple of technical notes. First, I agree with the representatives of industry in that I do not like the definition of chemical. Inclusion in the Registry of Toxic Effects of Chemical Substances is not an indication of hazard. It simply means that someone studied the chemical. Milk sugar is listed in this Registry; on the other hand, betanaphthol hydrazine, which is suspect as a carcinogen on two causes, is not listed because it is not common. Similarly, the "Z" 1, 2 and 3 tables in OSHA 29 CFR 1910 1000 is not a list of very hazardous chemicals. It is a list of chemicals that were popular around 1968; it is a historical list. It is not a list of the 400 most hazardous chemicals; it is a list of 400 of the most common chemicals. A better definition would get away from the question of whether or not a chemical is hazardous. I do not think it is desirable for us to stigmatize a particular chemical by creating information on it. A definition that might be considered by this Committee for inclusion in this bill might be: Chemical means any material traded in commerce not used as a food, clothing or structural material without further transformation. This means that bread would not be a chemical, but that cement, which has serious -- well, perhaps not serious, but which has real consequences of exposure, would be considered a chemical for the purposes of this bill.

Similarly, I do not understand why the reference to Sax's Dangerous Properties of Industrial Materials asks people to look and see what number he has assigned to chemicals. In his latest volume, 1979, the 5th Edition, there is no number characterizing the hazard of a chemical in this book, not a one.

Some of the testimony we have heard has suggested that workers already possess the rights this bill tends to give them. I wish to discuss my experience with such information. As an Industrial Hygienist with the Occupational Safety and Health Administration, I needed information like what we are discussing. First, I would ask the company. Sometimes they would tell me, and often they wouldn't have any idea what the chemical they were using was, as a chemical. Second, I would ask the supplier. Sometimes I received decent information. Often I received some vague

weasel answers where the supplier would sort of tell me what was in it, but not really, and he couldn't tell me some of it, and he could tell me some of it.

Now, it is important to point out at this point that the suppliers' cooperation with the Occupational Safety and Health Administration was not mandatory. There was no law that required a supplier to give the information to the Occupational Safety and Health Administration. The supplier's cooperation was strictly good will. So, I had to take whatever they chose to give me, in terms of cooperation. At that point, taking a bunch of vague information, I would apply all of my experience in industrial chemistry, industrial hygiene, and general industrial practice to the information I had. I would also include in my estimation of the chemicals in the product that we were discussing, the way it smelled, how it was used, and what the properties of the material were. Now, I want to point out, that in order to determine what the chemical was from the use and the properties, I had to make reference to a wall of books the size of the bench behind you.

Now, a Compliance Officer for the Occupational Safety and Health Administration gets a lot more cooperation than a normal worker, or a union would. Consequently, the fact that I had the problems that I had, testifies rather directly to the fact that workers are having even greater problems in getting any kind of information.

Perhaps these people who say that the information is available already are referring to the OSHA Standard 29 CFR 1910.20, which is the OSHA Standard for Access to Employee Exposure and Medical Records, which does require the employer to allow the employee to see the employer's records of the employee's exposure to hazardous chemicals. However, OSHA does not require that these records be generated, nor kept in the first place. Nor can OSHA assure that the employer can get a Safety Data Sheet from the supplier in the first place, because OSHA only regulates the relationship of employers and employees, not the relationship of sellers to buyers. To rely on 1910.20 for protection of worker information rights, for most workers is no protection at all.

I have worked in plants with chemicals that were called by codes, like 744010. It was toluene, but how could a blue-collar worker who was not at the center of the corporation like I was have known that. All he knows is that he is working with 744010. He might find out that it is great for removing stains from his clothes, and not know that he is getting an exposure to a hazardous chemical through his skin from cleaning his clothes while he is doing that. I have seen conditions where workers with a chemical that they thought was not hazardous, did things like that that anybody who knew what the chemical was would have realized was not intelligent. I have met workers who were told, "This stuff is safe." Even recently I have met people who all they know about the chemical is their boss tells them, "This stuff is safe." I have been in workplaces where a well-meaning management purchased a "safe grit," because silica sand was dangerous, only to expose their employees needlessly --

SENATOR LaROCCA: Will you please wrap up. You are exceeding your limit by quite a bit.

FROM AUDIENCE: Sir, what he has to say is important. We're willing, aren't we? (applause) Any objections? Then I think we will listen to him.

FROM AUDIENCE: We had to listen to that garbage twice from Trenton.

FROM AUDIENCE: Is there anybody who feels their rights are being abridged?

FROM AUDIENCE: Yes.

SENATOR LaROCCA: I am trying to run the meeting. I can't let 300 people run the meeting. Please --

MR. MARLOW: I have about a half a page left. It will take me about a minute.

It is also true that NLRB has held that the union can demand a list of chemicals, but management continues to fight that. This Committee, I hope, is not only interested with the rights of unionized workers. In any case, neither of these helps the concerned community resident at all, who currently has no information rights.

About the proposed OSHA hazards communication standard, it would be the same thing for the worker as this standard essentially, but there is no protection in the community, and this may be a proposed standard for as long as the noise control standard has been a proposed standard. That standard was first proposed in 1975, and it hasn't seen the light of day yet. Are we going to wait seven years for a right to know, or is the State going to give it to us soon.

FROM AUDIENCE: We want it now.

MR. CONNELLY: The next witness will be Matthew Gillen.

M A T T H E W G I L L E N: My name is Matthew Gillen, and I am an Industrial Hygienist for the Amalgamated Clothing and Textile Workers Union.

I would like to address a few questions. You notice that industry has been coming up and telling you that they are not basically against the right to know. They just have a different interpretation of what it really means. So, why don't I explain some of the differences between what workers see as the right to know and what industries have been presenting as what they are willing to do.

Workers need a State law to insure that all workers are covered. Employer groups have argued that State laws are unnecessary since they duplicate existing or proposed OSHA standards, and that this leads to unreasonable costs with no gains in worker protection. We need to clear this up. The Federal laws will not grant the right to know to all workers. For example, the OSHA labeling proposal applies only to manufacturing workers. New Jersey has 771,000 manufacturing workers, but they represent only 25% of the total of 3,085,900 non-agricultural workers in this State. The OSHA proposal does not apply to health service workers, air transportation workers and communication workers, even though NIOSH, in their workplace survey that was mentioned previously, found in their survey that these workplaces actually use more chemicals per facility than your typical manufacturing facility, yet they are not going to be included in the OSHA rule. We do not believe that this so-called preemption issue is a legal obstacle when the Federal law only covers 25% of the workers.

In addition, workers need the right to know for all chemicals. A State law is also needed to insure that the right to know is extended to all chemicals. Worker rights must allow them to keep up with the ever-increasing population of industrial chemicals. With a comprehensive law, workers are assured access to information on chemicals which are new or not well researched, but which may prove toxic later on. Our current knowledge about toxic chemicals is limited, and a narrower right to know law would drastically reduce the considerable public health protection intended by the law.

Industry prefers a narrower law. The complaints of the New Jersey Chemical Council at the Trenton hearings are typical. The Council argued that the over-broad NIOSH Registry includes innocuous items such as water, oxygen, table salt, and silicon dioxide. Such arguments against the broad scope of S-1670 may make for clever testimony, but they do not lead to constructive recommendations for the bill. Does the Chemical Council believe that these four items deserve exemption from the law? Does the Council have a list of other items, or do they refer in general to all common or all household products? The process of exempting so-called innocuous substances has numerous pitfalls, and should be avoided by the Legislature. For example, employers in New York used aspirin as an illustration of the need to narrow the New York right to know law. However, one source, the American Conference of Governmental Industrial Hygienists, states that, "Aspirin is a known respiratory and systemic allergen and can produce anaphylactic phenomena (which is like having an attack) even after small doses." The Dow Chemical Company informs its customers that, "Direct contact with the eye is painful and may cause a chemical burn." This is exactly the type of information the right to know law was intended to insure the workers. The fact that aspirin is a common household product is in no way relevant to the shop floor, where industrial quantities and strengths are used, and respiratory exposures can occur. So, we urge the Senate to retain the broad scope of S-1670.

It is important to point out that OSHA plans to sharply cut back the scope of its law in response to employer criticism. The New Jersey right to know law would cover these 39,000 chemicals, while for the Federal OSHA law, they want to reduce it from 39,000 to just 3,492 chemicals, which would be the only ones the workers would have the rights to. So that is quite a difference. They are doing this by superimposing strict toxicological definitions over the NIOSH Registry list. The dubious value of this effort is illustrated by the fact that the definition results in the loss of worker access rights for about 140 chemicals for which OSHA itself has existing exposure standards. Can you imagine how ridiculous that is? In other words, OSHA has air limits for some of these chemicals, but yet they are not even going to be considered ones that you can get access to. That is how ridiculous this is. So, New Jersey workers need S-1670 to insure that they have the right to know for all chemicals. Okay?

Workers need generic names. This is another big point -- differences. One of the most important features of S-1670 is that it gives workers the identity of chemicals that they work with. Many employer groups argue that the right to know obligation is satisfied by providing workers information about the chemical hazards, and that provision of the chemical name is unnecessary. The so-called "hazards communication" that you heard mentioned can be useful, but it is in no way a substitute for chemical identity, especially when the hazards communications are things like, "Do Not Use Without Adequate Ventilation." That really tells you a lot.

The chemical industry has repeatedly failed to warn workers and the community of health hazards associated with chemical exposures. It is not like they deserve the benefit of the doubt here. Powerful disincentives exist against dissemination of hazard information. Liability pressures from workers' compensation costs, engineering costs, and lost sales, all contribute to a tendency to withhold delicate information. Basically, what we are saying is, we don't think we can trust

employers' hazard warnings when they just put what the hazard is. We need to have the chemical name so we can get a second opinion for ourselves. Just as an example, the industry's own internal labeling guidelines established by the American National Standards Institute in 1976, only address acute health effects, things like eye irritation. They totally omit chronic effects. So, industry's decision as to how to label things is very down-place chronic effects, not the things that people are very interested in, things like cancer, lung disease. These are chronic effects that are very important to us. In general the way it works now, is that workers must rely on independent evaluation. They get the chemical name, and they have a local COSH group, an international union, or a local physician to help them out -- to find out what it is, because they cannot trust the warning on the label. That is why we need chemical names. Nothing short of that will suffice.

Workers need tough trade secret language. As an example, this NIOSH survey they mentioned previously. They found that 5.3% of the products encountered on their survey contained a carcinogen. Of these carcinogen-containing products, 42% were trade secrets. So, you know, it's a real problem. People need to know when they are working with something like that. It is going to come up.

In addition, the chemical manufacturers have not been able to document that the right to know gives them problems with trade secrets. In other words, there has been some sort of Federal law in effect now for two years, and the companies don't have any solid examples where they lost trade secrets. Okay? I just want to give one example, which is their only example that exists, and that is --

MR. CONNELLY: You will have to summarize the rest of it.

MR. GILLEN: Okay, I am going to finish right now. That is this one local requested information on the chemicals, and the company claimed that they couldn't give them any information at all because of trade secrets. This was a total of 700 chemicals -- the 3M case before the National Labor Relations Board. When they actually held a hearing on it, they got the company's patent liaison officer up on the stand and he testified that he could think of only five or ten of the approximately 700 items produced in the plant, and only one material used there, if known to a competitor, might damage their competitive position. So, you know, they were claiming all 700, when in reality it was much less. So, we think the trade secret really needs strict language there.

Just lastly, workers need ready access to the chemical information. The companies are concerned; they think 24 hours is too soon and that they can't get the information by that time. But the problem is that they are supposed to already have it. That is why we give them 120 days, so that they have the information there. If the companies are going to operate -- if they are going to refuse to recognize the general principle and only try to get information when we ask them for it, they are always going to fail. We want a law that is going to make them, as a part of their business, get this information and have it there. Once that is there, they don't need that much time. (applause)

MR. CONNELLY: The next witness will be Mr. Ed Rock from the Chemical Workers.

E D R O C K: Senators, ladies and gentlemen: I would just like to make a brief statement. My name is Ed Rock from ICW Local 527. As far as the company is concerned, my name is No. 558. I've worked on jobs No. 513, or 610, or any number you can think of. I've worked in the chemical industry for 20 years. I've worked with

chemicals such as trichloroethane, formaldehyde, monomers, methylene chloride, and hundreds of others. I have tried to protect myself as best as possible, even using what the company tells me to use -- something that I wasn't aware of 18 or 20 years ago when I started on that plant site. There are a number of your children who will be working in these factories who until they are 40 won't realize that the protection is needed now. I would like you to keep that in mind.

The company tells us that everything is under control. But how do you control M1141 or X1215, or any number of chemicals combined as such. The company says trust them, but will not agree to a joint health and safety committee. I'm not asking you; I'm telling you we need the right to know. I would like to live a normal life, but I feel that 20 years in the chemical industry may have limited that life already. One gentleman mentioned from the company side that he represented 100 families. I am speaking here today for 900 families from our plant. Thank you very much.

MR. CONNELLY: The next witness will be Mr. Alex Hooper.

A L E X A N D E R H O O P E R: My name is Alexander Hooper. I am a scientist; I am an urban planner; and, I am an educator. It would be ridiculous to take up more of your time to argue a point that has already been stated.

I come before this Senate hearing as a scientist to support "universal labeling," which is incorporated in the proposed right to know legislation. It is necessary for me to further support this overwhelming need for the community and worker right to know. The previously-stated facts would most logically stand on their own merits.

The question of trade secrets is historically 101 years old. The American Pharmaceutical Association has annually published a book called Pharmacopoeia, which clearly demonstrates that there are no trade secrets. All that is being requested of this body is to afford the people of the community, and the workers of the industrial community, the same information sources that each industrial place has at its hand. The method would be simple and cost effective. All that is needed, is to broaden the base of the existing 75 year old regulation to include the community and the worker. The horror stories could easily roll past this Board, but the simplistic approach cannot be glossed over without some intellectual consideration. All of the fears that have been voiced and all of the arguments against the bill cannot take away the simple logic that this bill is only a broadening of an already existing status, which previous universal lawmakers have deemed necessary for your safety, health, and well-being. Thank you.

MR. CONNELLY: The next witness will be Mr. Richard Rogers.

R I C H A R D R O G E R S: My name is Richard Rogers. I am President of CWA Local 1037. I represent most of the State workers in Area Code 201.

I am here tonight for a very specific piece of testimony, and a couple of points off to the side. The points off to the side are: Number one, I am very concerned about contagious disease in the workplace that we are not allowed to be told about. We must add this to the right to know legislation. It must be added in a competent fashion. You must not pass this legislation without it because once it is in the books, they are going to say you've got all you need. There is no problem.

At one of our job sites recently, the State of New Jersey refused to tell us that there was meningitis on the job site. The people were going home daily

back and forth to the New Jersey Job Corp. Afterward, sitting at the table with your representative, Mr. Reichman, he said, "We will determine whether you need to know as a management decision -- whether it is good for this place for you to know whether there is meningitis on the job site -- if that is the correct position." In fact, they didn't tell us until we extorted the information out of them after 12 days. Twelve days of going home possibly with meningitis, and spreading it to your family, your children, and not having any opportunity to get medical help if you need it, or want it, or to check out your own situation. They would make the decision. Meningitis -- three days of meningitis, and there is very little chance that you will live..

The way this happened, a student at the New Jersey Job Corp died, or effectively went to the hospital as good as dead at the end of 24 hours. She laid in a coma for seven days, but as they reported to the family she had no chance when she got there. Okay? So that is contagious disease, and there are many other contagious diseases.

The other point I want to make which has nothing to do with the structured testimony is that I am very upset. I represent the people in this area. I live in this area; I vote here; and, my people vote here. Where are all the people who were so concerned? They are not here; they don't live in this area. These are chemical companies from out of town, and what you did destroys the purpose of having hearings in a community. You came out here to hear what we had to say. These people came over from Brooklyn. They came up from North Carolina. I don't know where they come from, but I know one thing, if they were in Trenton to testify and they were here to testify, you let them destroy the whole purpose of the process. They are paid flacks, and you know it. You can play games, but it was wrong. If you go to Camden and you let them pull the same stunt, we are going to hold you accountable, Senator, because the next time you have a hearing, and at any other future hearings when you come back up here, I am going to know, my organization is going to know who testified in Trenton. Is every one of these people going to be able to go on the agenda again in Trenton, or next time you have a hearing? No. Could any of them vote here? No. So it was wrong ethically, and it was out of order, and you knew it was out of order.

SENATOR LaROCCA: I don't understand it; I'm sorry. We had an orderly procedure here, and maybe I'll let my colleague, Senator Wynona Lipman, tell you what our procedure is in fairness to everybody.

MR. ROGERS: I don't care about your procedure one way or another. If you don't do it right, you don't do it right, and you know what is right. What's right is, you came out here to hear these people and they have a right to speak.

SENATOR LaROCCA: We let them speak, and overtime.

MR. ROGERS: Senator, who went home? You know what the point is, don't play games with me. If you don't understand, we will discuss it in another forum. I'm sorry. Senator Lipman knows exactly; she has been nodding. She knows exactly what I'm saying. The people up here should have had the floor tonight. Those paid flacks should not have taken it, especially the same names and the same testimony, which we both heard in Trenton. That is unacceptable.

Let me tell you why you might think I am a little exercised. A week ago -- I represent State workers. A week ago I got a call -- two weeks ago -- will

you please come down to North Carolina, a state worker has been killed. A state worker was killed down there because a toxic substance was spread out along the sides of the road. When the state found out how bad this thing was, they had to get it up in a hurry, and ran the truck right over the guy. Now, where did that come from? That was PCB. Where do you think it was produced? In New Jersey. No one knew when they were manufacturing that, no one knew when it was put in the installation of phones, in the transformers, no one knows today whether the transformers out in your office or out in your shop -- how many PCBs are in there. The right to know that started before it was manufactured. Today, the people who produce those things don't know how to destroy them, so they dump them out on the side of a road in North Carolina.

They tell you about the economic effect if you put this bill in. They'll have to go someplace else. You know what they mean, they're going to go to North Carolina. Let me tell you, I got that call from North Carolina. The workers down there are ready for them. They are not going to North Carolina; they are going to stay here and do the job right if you tell them to do it right, and they'll pay the price, or pay for the funerals. You may not know, Warrenton, North Carolina -- Warrenton County.

Now, all of that arises out of a completely different point. I was asked to check out how to pay for the cost of cleanup and administration of this Act, and I have some expertise in this area. I would make the following simple suggestions: I would link the costs of administration to the activity that is being permitted, or fees charged, specifically, in order to avoid someone saying that the fines, or whatever comes along, can't be used to go into the General Treasury and can't link them to the violations. The renewal for a permit can be increased if the permit has been violated. The permit can be withheld if the terms of the permit have been violated -- very quickly. Transportation, for instance, administrated by the State Police. To transport toxic substances, you need some sort of permit. It could be tied into the bill of lading. On a spot-check basis, the police check. If the State Police find unlabeled products or hazardous products in the truck, or if they find that the bill of lading shows that they do not have the correct permits to transport that kind of thing, they immediately pull that truck off the road and, of course, they proceed with the correct fines and penalties. But, the next time that person applies for a permit, he should pay a higher fee. Then you have money you can directly pay for the enforcement.

Storage -- and I'll save a whole lot of obvious technical points. You have bulk storage, retail storage, wholesale storage, easily identified by quantities, by turnover, etc. Nonetheless, almost all storage is in an area that can be collected, so the permit to store hazardous toxic substances -- like you have a permit to operate a hotel -- can be collected by the same enforcement people, or the same level of enforcement, whether it be county or municipal, as are going to send out inspectors to check that site. Then they can use that money either dedicated by writer, or any other way they want to, but they will have that resource and it will be very direct because it is a permit and it is a fee. When the violation occurs, the administrative cost of renewing the permit can increase. That is not a fine or a penalty that has to go into the General Treasury by law.

I think that if the principle here is followed out, there will be no doubt that there will be adequate monies to do all of the inspecting that might be needed to be done.

I think, also, that if upon inspection you find a place where no permit has been obtained, you immediately require that person to get that permit at twice the normal cost. Again, there must be better legal minds than mine that can close all the loopholes. That is your job, I hope.

Manufacturing sites -- permit to manufacture or to use it in the process. That is the same thing. Most manufacturing sites have State inspection; that could be a State permit to use the process. The DEP has to approve any chemical process.

Fines and penalties -- and by the way, all of what I have said above can be applied to contagious disease. If you have a permit to have occupancy, that occupancy permit could be tripled, or whatever, if you failed to use right to know properly in a contagious disease situation.

Finally, the analysis follows through with the driver's license. You know, if you get too many points it cost you a huge fee to get your license restored administratively. It is the same thing. Revocation of the license, inability to renew the license, is as strong a weapon as going to court and bickering over fines.

I want to thank you for listening to me, and I want to apologize for being very upset, but if you think about the effects on people, and you think of that state worker, maybe you will think that this is worth fighting for. I do.

MR. CONNELLY: The next witness will be Ms. Naomi Faat.

N A O M I F A A T: My name is Naomi Faat. I am from District 65 UAW. I thought we would give you a little diversion at this point -- that I would try to bring the shop to the hearing because it is something that you don't have an opportunity, as Senators, usually to see. I am going to try to keep it within five minutes, even though there are four of us, but it is not me who is speaking. I brought with me members of our union who work in shops every day because I figured those are the people you would like to hear from in a public hearing. Brothers, would you please come up.

I would also ask them to bring with them some equipment that they get to wear all the time and, although often times people look at people in uniforms and they don't give them quite the same respect -- unless maybe it's a general, that they do people who aren't in uniform, I wanted you to have a general idea of what people get to work with every day. They work in this clothing as a normal matter of course. They can put it on to show you what it is like, but they are not going to wear it during the discussion because we can't talk if they wear the mask. The only thing else I want to tell you about these men before we start is that they all come from small shops. District 65 UAW represents mostly workers in small shops, although we do have a few larger ones. A small shop for District 65 is less than ten workers. Actually these workers come from larger shops; only one of them works in a shop that has less than 50 workers. All of them work in a shop that has less than 200. Right? Is that right, Elliott? Okay.

They are all rank and file -- they all work in the shop every day. They do not work on staff. They do not work for the union; they are not paid for by the union. I would like, very quickly, to ask each one to -- would you introduce yourself, give your name, please?

MR. ROBINSON: Elliott Robinson, Local Officer of District 65.

MS. FAAT: The Local Officer in the union. What type of work do you do, Elliott?

MR. ROBINSON: I work in the wire and cable outfit.

MS. FAAT: Do you work with chemicals there at all?

MR. ROBINSON: Yes, I do.

MS. FAAT: Can you give us a few examples of some of the chemicals that you work with?

MR. ROBINSON: I work with PBC, acetone, THF, and polyvinyl chloride.

MS. FAAT: Polyvinyl chloride, right. Are the chemical containers that these chemicals come in marked, labeled?

MR. ROBINSON: No, they are not.

MS. FAAT: Were they ever labeled?

MR. ROBINSON: Oh, approximately five years ago they were.

MS. FAAT: And they stopped labeling them?

MR. ROBINSON: Then they stopped labeling them.

MS. FAAT: Can you tell me about the PBC label that was no longer on containers, just to give people an idea, that you had mentioned?

MR. ROBINSON: Well, years ago, the PBC boxes came in and it was marked that it was a cancer hazard.

MS. FAAT: All right. But it is not marked that way anymore.

MR. ROBINSON: Today it is not marked.

MS. FAAT: Have you ever tried to get information on any chemicals used in your shop?

MR. ROBINSON: Yes. At one point I did, but I was unsuccessful.

MS. FAAT: This was something -- I'm trying to do this to speed it up because it is a story that we know because we went through this together. Would you tell them the name of the chemical because we did find out the name, right?

MR. ROBINSON: One chemical that we did find out about which the company refused to give us the name of was tetrahydrofuran ceria. One worker experienced nosebleed, respiratory problems and nausea. We checked it out and we found out it was a hazard to his health.

MS. FAAT: How did you find out it was a hazard?

MR. ROBINSON: We found out through the union.

MS. FAAT: Do you think your company would now give you information about chemicals in the shop?

MR. ROBINSON: We circulated petitions in the shop for the right to know and the company came to me and said, "Why are you passing out petitions. We can let you know what type of chemicals we are using now."

MS. FAAT: So, the law may have already been somewhat effective. But basically, slowly but surely in your shop, we are winning the right to know. Do you think though that that is happening for most workers and that therefore the law is not necessary?

MR. ROBINSON: I doubt very seriously -- for most workers, I doubt it. I think it is only a handful of workers because mostly Blacks and minority workers are working these jobs where they don't have the right to know anything about chemicals. If they try to inquire about them, they are either discharged -- Most of us are hired anyway on a discriminatory basis; we get the worst types of jobs.

MS. FAAT: Why haven't you been discharged?

MR. ROBINSON: Because I have a union, and they are backing me.

MS. FAAT: All right, thank you. Clark, would you please introduce yourself?

MR. LEE: My name is Clark Lee. I am also a Local Officer with District 65 of the UAW. I live here in New Jersey, right up in this area. I am a printer by trade.

MS. FAAT: Okay. Do you have the right to know the names and hazards of chemicals you use as a printer?

MR. LEE: Yes, we have the right to know. We negotiated in our contract the right to know. It was a hard fight, but the employer agreed to give us the right to know. He told us he would let us know the name of any chemicals we use that he buys. He has tried his damnest to comply, but he can't do it because when we go to him and we ask him, "What is this type wash we use?", he says, "Well, I'll try to find out for you." But he can't find out. The suppliers are right here in New Jersey, but he can't find out. He cannot find out any of the chemicals, unless they happen to come from out of state directly. He gets nothing. They tell him, "You're using "Strip-eze." Let me tell you about "Strip-eze." "Strip-eze" melts plastic. It takes the skin off your hands. But the supplier says, "It is a commonly used water soluable solvent -- no problems at all." I don't know. The boss tries, but he can't even do it.

MS. FAAT: You said most of the suppliers are in New Jersey?

MR. LEE: Yes, they are. He buys locally.

MS. FAAT: Where do you live, Clark?

MR. LEE: I live in Carlstadt, New Jersey. Carlstadt is a nice little town -- you've all heard of Carlstadt. I moved to Carlstadt about four years ago, it was nice -- no, three years ago, I'm sorry. It was nice. At that time, there were 12 houses, six houses on my side of the street, and six houses on the other side of the street. These are two and three-family houses now. At that time, there were three adult males, I was the third, still alive. Every other one -- every other one had died of cancer, Hodgkin's Disease, or something else. Well, since that time, one of them has died so now there are only two, but the other one -- they took his stomach out last year from cancer. And I don't know if I will live too long, living in this area. And I don't know, you know, whether my kids are going to live. But I think, regardless of what happens to me, my kids certainly have to know. They have to have the right to live. Unless I know, or can find out what the hell it is that they are putting in the air, and putting in the ground, and putting in the water, and putting in the food, and putting in the chemicals that I work with every day, there is just no way at all that I can even begin to protect my family.

MS. FAAT: Bill, would you please introduce yourself?

MR. McCABE. My name is Bill McCabe. I am a Local Officer in District 65 UAW.

MS. FAAT: And what do you do?

MR. McCABE: I work for a trailer corporation. We build trailers, repair them, and maintain them.

MS. FAAT: Can you tell us why you asked me if you could testify today?

MR. McCABE: Yes. Going back 35 years ago I was in dire need of a job, and I was fortunate, I applied to a chemical plant. By trade I am a welder and a mechanic. They said, "Fine, we need a welder and mechanic to do maintenance work."

I worked in the plant for five days, possibly six. They had a rule; for the first 30 days I worked in this plant I must report to the company doctor for a complete checkup. I complied with their rule; I reported to the company doctor. Also, they had a rule that I must wear dust goggles, or if I walk out into the plant I must have goggles on, a respirator, a pair of gloves, leggings -- completely buttoned up regardless of how hot the temperature might have been. I complied with this rule. At the end of about four or five days, the doctor advised me to quit the job and I asked him why. He said, "Taking a good look up your nose, behind your throat, and your skin, you have all the appearance of being here for 30 days." And I thought, 30 days -- I realized I had a rash. I realized the membrane in my nose was dry, but I thought it was a little drastic action. I later found out from some of the employees that the State gets ripped off. Within a five to six-month period they guaranteed I would have a hole up inside of my nose. When I asked the doctor about this he said, "All the indications are you might have a hole up inside of your nose within another two or three weeks, if you stay here."

I knew nothing about the chemical I was working with, except possibly one type of acid. I asked questions, but nobody told me -- nobody gave me an education of chemicals. Now, this is 35 years ago, and I would be dead if we sure didn't come a long way. We have thousands upon thousands more chemicals to contend with, and we as the American people -- the American public and citizens of New Jersey, know less about these chemicals than we did 35 years ago. The chemicals are having the same reaction on us, and I am very fearful of what they may do to us in another ten or 15 years.

MS. FAAT: You are very active in an organization that --

MR. LEE: Yes. For the past 18 or 19 years I have been working with Boy Scouts, both normal boys and handicapped boys. My heart goes out to a boy particularly if he is handicapped. To me he is an exceptional individual. He has suffered, he has paid a penalty that a good many of us have not paid. When I look at a normal boy -- what I am afraid of, in another ten or 15 years, at the rate the chemical companies are manufacturing chemicals and keeping everything secret, not telling us what may happen, some of these normal boys may never grow to be young men. This bothers me immensely, and I think definitely it is not a case whether we should have it, I think it is a case we have to have it. We have to have the right to know what is going on in our neighborhoods.

I work for a living; I can take a risk. I wouldn't want to see my young son, I wouldn't want to see my grandsons take the risk that I have taken. I want them to have an even chance, and a better chance than I have had. (applause)

SENATOR LaROCCA: We have exceeded our time, but we will continue. Next witness --

MR. CONNELLY: The next witness will be Mr. Andrew Arrington.

A N D R E W A R R I N G T O N: I am going to speak to the Committee, the members of the Committee, in a little different fashion than the other members that have reported to the Committee.

I am here because I think if the bill is to go into effect, and the bill is to go before the State Assembly, the bill should have power enough in it to put forth the actions that we are actually talking about. Of all the people I have heard speak here today, and in the bill itself for it to be effective, I have

heard everything mentioned in this bill about the chemical as such. The chemical as such, before it goes into the manufacturing process, has little or no emission or chemical reaction upon the man in the workplace or the community, because emission from a stable substance, or an element by itself, or a carbon by itself is nominal before it is put into the processes to manufacture another element or another chemical.

So, speaking of this, the Senate Bill 1670 as we so read it, when we look at Part 1, what the Act covers, or what the Act should say, I have written something the way I see it that should cover all individuals, and to be effective, to cover the people of the community and the people in the workplace. This is how it should read: "An Act concerning all hazardous substances and varying emissions, either from the storage of the chemical, or an emission resulting from the use of the chemical in the manufacturing process.." Now, that is the way I think the beginning of the bill should read, so we will cover the effectiveness of what we are talking about.

Emissions in the community do not come from the storage of a chemical; emissions in the community come from emissions from the chemical after using the manufacturing process which has either added a catalyst to it, or heat to it, to put it in a vaporization form, which is able to travel in a lighter state by the use or the emission of the air or the airstream itself. This is what we are concerned about in the workplace and, also, in the community. In the workplace it is so, because the manufacturer himself has seen far enough ahead to try to protect the employee by giving him workgloves to handle the chemical, giving him a plastic suit or a rubber suit, maybe putting shoes on his feet. When they dump the chemical into the process at that time, it is more or less at a stable state with an emission that is not too dangerous to the employee, and it is certainly not dangerous to the community. Until it is put into this process, heated -- or some of the chemical is used in the process and the balance of the chemical is emitted out into the atmosphere. When it comes to the atmosphere, being lighter than the chemical or the element itself, it tends to travel and come down into the cellar or somewhere else.

Therefore, I am saying because of this, in that bill we should have the emissions entered anywhere you are talking about a chemical -- as a result of the manufacturing process -- as a result of the manufacturing process. Part 1, Line 33 of the bill says: "The Legislature therefore declares that it is in the public interest for employees and community residents to have access to information about chemicals which are stored in or emitted from their workplace and communities." That is great, but that may mean storage, and only storage. You are not talking about anything but storage, which only has an emanating atmosphere of maybe two feet. It also has to be added in there: "resulting from operations within the workplace." That is the only way the bill can be a bill -- have teeth in it for the employee or the community. If you are talking about storage of a chemical of 55 gallons or 50 gallons before it goes into operation, you are not talking about anything because in a substance that is in a stable state, and one that stays in a stable state, emissions are very small until it goes into the vat, has a catalyst added to it, or another basic substance to it, or adding heat to it to make it more mixable so it will combine in the desired form to make another compound, or to break it down into simple elements.

Now, I have heard industry sit up here and talk about the cost of doing this, the cost of doing that. I asked myself only one question, "Tell me the cost."

When I look at the amount the industry says it would cost them to make this public, being I am employed by one of the largest chemical conglomerates in the United States, the DuPont Corporation, and I would not have been with them for 20 years if I did not do well in the beginning -- they spend more money, which is a known fact, keeping the information away from the individual than it would cost them to divulge the information to the individual. This is actually done, and this is the corporation for which I work. This is not just a plant site operation; this is a nationwide operation by DuPont Corporation in all of its identities because it comes out of the parent place, Wilmington, Delaware.

I wanted to ask the people before they left here why did the DuPont Corporation, with its size, and you know about it, buy up the rights of the book written by Nadar, "Behind a Nylon Curtain," which he published. I think there were 20, maybe 25 copies sold. Why did they buy that up, if the industry is not afraid of so and so and so and so? And that wasn't dealing with chemical processes as we are doing now.

I want to say one more thing and then I am going to get up from here. In the field we call "trade secrets," I want to ask the panel this and the Committee this. I would like to have an answer to this if I could. As an individual, and as a person, when you referred to law, to a corporation law that applies to this, you speak as a personal individual. Now, me or anybody else in this room as an individual, if we make or invent something, we have our patent rights to protect us, not trade secrets. Your patent rights is the way, and the means by which you make your product, not the raw materials you use in making your manufactured product. Now, all we have asked, and all the Committee has asked industry, which I think is fair -- because the Committee did not say that you have to name me all hazardous chemicals that exist -- but the Committee did require, the way I read the bill, that you supply to me all hazardous chemicals that you are using in your plant. Now, if you are not using all the hazardous chemicals that are in the manual, then you have no reason to report all hazardous chemicals as they exist in the manual. I think the Committee was very right in this respect, but I don't think the Committee is right with respect to covering as the bill should cover, because if you are talking about chemicals and not emissive chemicals activating in the manufacturing process, the bill is not worth the paper it is written on. I'm sorry I have to say this, but it is not worth the paper it is written on.

There is another thing here that I want to point out to you in the bill -- in your bill which might have been an oversight and maybe it was not meant to be said this way. It says: "Discharge means the emission of a chemical into the air or water, or onto the land, whether accidental or intentional..." -- but then you destroy the whole thing, because you go on to say, "...which is not part of a normal manufacturing process..." What are we talking about? Are we talking about the manufacturing process, or are we not talking about the manufacturing process? You say, "We want to know these things," and then you say, "Okay now, it is not caused by manufacturing." I'm saying that it is caused by the manufacturing process and what goes into that, and that is the only way this bill is going to -- so I am recommending that you move, not out of that part of your bill because it is a part and it is caused by the part of manufacturing. The emissions come from the normal manufacturing process. Therefore, it should not be in there whether it is discharge or emission. When you say

"discharge," I hope you are not just talking about when somebody willfully goes out and takes a 55-gallon drum of waste or something like that, and dumps it on the ground. That is not what we are trying to fight.

Another thing that should be in your bill that is not in your bill -- you say you wanted to know the hazardous conditions of the chemical. Your bill should cover the hazardous conditions of emissions of the chemical. Why? Because there is no emission that comes off a chemical once it goes in the process that comes off the same way it went in. It may be more toxic; it may be more basic; it may be an unstable element. Why? Because within the process you separate the elemental compound and use the amount that you want. Then you turn the stuff out into the atmosphere, maybe one iota more hazardous than it was when it went into the process, or maybe too basic when it went into the process. This is our problem. This is what we want to know. This is what the Committee has not addressed. It has not addressed emissions resulting from the manufacturing processes. I believe if the Committee will do that, that will be the full bill. I do support your bill.

SENATOR LaROCCA: There will be one more, the last witness.

MR. CONNELLY: Mr. Joseph DeBella.

J O S E P H De B E L L A: I want to thank the Committee for allowing me to testify here tonight. My name is Joseph DeBella. I am President of Local 461, representing Singer employees in Elizabeth, New Jersey.

My purpose in coming here tonight is to clear up something I heard all night where the people who represent industry claimed that they are taking care of their house and that they are afraid if the information would be divulged of the contents of the liquids, or the chemicals, that it would create a serious problem for them. I would suggest that what they are insinuating is that there are thieves among them, people who would steal the ideas of the chemicals, and maybe what they should be doing is trying to get legislation passed themselves so this wouldn't happen, if that is one of their fears.

But, in any event, some of the experiences that have occurred in my situation at the Singer plant, for example, where the company had hundreds of barrels of materials laying on the property. No one knew what they were, and we don't know whether or not the people who were exposed to those chemicals have developed cancer, will develop cancer, or some of them might have died from cancer. We'll never know. Only last year, if some of you read about it in the papers, we negotiated a contract with the company, one which was unusual in that they were claiming that in order for them to stay in business, we would have to give some things back. One of the things that we gave them relief in was workers' comp where they claimed that the incidents that had occurred at that plant were so great that they needed some relief in that area. We gave them what is called a "pension offset proposal." What that means is that when an employee leaves a company, unless he sues them within 90 days, and he has to know that he has something wrong with him -- unless he does this within 90 days after exit from the company, he will be offset in his pension if he sues them later.

Now, we know that they have found PCBs on that property. As a matter of fact, they came to me this year and told me that they were having some people come in to remove some old storage tanks. Those tanks have been on the property for many years. I have been working there for 41 years, and they have been there for 41 years. They said they had to remove these tanks because they were no longer needed, and

there were some chemicals in them, but there was no fear that they were toxic or that they contained anything other than just waste materials. They needed our permission to do this because our contract provides that, if they bring people from outside, they have to tell the union about it. We agreed that they did not have anyone in the plant who was capable of removing these old storage tanks, and they called in some outside people. From what I found out later, through the newspapers, they called in a company from out in the Midwest which was expert in removing toxic materials. On the front page of the Elizabeth Daily Journal, there was a picture there showing these people in spacesuits removing materials from the company plant. I didn't even know this, and they admitted that there were PCBs on the property.

Now, we don't know whether or not the people have been contaminated because of the PCBs being on the property and, in addition to that, we also learned that many years ago all the machines in that factory were belt driven. All the belts were up in the ceiling, and they have one common motor driving all these machines. Later on, all of the machines were motorized individually, and they changed the electrical system to do this. They put in boxes which contained PCB chemicals. Those boxes were on the premises for over 20 years. We never knew it. No one was ever advised that these boxes which were over our heads contained PCBs. All of them were removed when they found them to be leaking in work areas, and even in the fountains where the employees drank from. They finally removed them. Heaven knows, if that didn't happen, they would still be up there.

Again, here is a situation where the employees were never advised as to what the conditions were that they were working under. Even today, the people are working with caustics, solvents, and all kinds of chemicals, and we don't know what they are. As a matter of fact, only this past week, a woman came to me and showed me her hands. They were all broken out. I asked her what happened, and she said, "Well, now I have a new job and I am working with these chemicals, and my hands are all broken out." I said, "Did you go to the hospital?" She said, "I did." "And what did they do?" "They said it has nothing to do with your work." Now, she had never worked with these chemicals before. I went to the company doctor and talked to him about it, and they claimed that as far as we are concerned, the chemicals that she works with have nothing to do with it. So now what she has to do is go to her own doctor, and I suggested she take all of these chemicals and bring them with her, and have them analyzed to find out whether or not they were the cause of her skin eruption. If you look into the hospital record over the years, you will find that hundreds of people have gone through that hospital with all kinds of skin disorders over the years. They won't tell you what you are working with. You'll never find out, and, unfortunately, we find out when it is too late, and even then we don't know what we are dealing with.

I believe the right to know legislation is something that is needed and necessary so that the people will be able to know exactly what it is they are faced with when they are working in an environment with all these sophisticated chemicals. There are only nine states in the United States that have right to know laws, and some of them are states that aren't even industrial states. That puzzles me. I would think that if the legislators are seriously concerned about the good welfare of our citizens, this is a bill that should be passed unanimously by both Houses. This should be done as quickly as possible. I did remind people that I come from Elizabeth, and I am sure all of you remember chemical control. It is still

in my mind, and I can remember that no one knew what was on that property until after it was all over and done with. Almost 75,000 drums of chemicals laying on a property, and even the Department of Environmental Protection did not know what was on there and they were advised by the City Fathers to look into this situation, and they found out what was there -- mustard gas, some high explosive, but unfortunately, they didn't even have time to take action on this and, thank God, no one got hurt in the City of Elizabeth because of that.

Yes, we still have people who are complaining about respiratory ailments in the City of Elizabeth, citizens who were exposed to the dust from the explosions that littered the air. And even today we have firemen from the City of Elizabeth who never returned to work because of serious respiratory ailments. I think in that situation if somebody knew what was on that property, I don't believe it ever would have happened. I suggest to you people that you seriously consider passage of right to know legislation. Thank you.

SENATOR LaROCCA: Okay, are there anymore?

M A R G A R E T H O L L O W A Y: Yes. I am Mrs. Margaret Holloway, 209 Dukes Street, Kearny, New Jersey. I am Secretary to the Kearny Environmental Committee of Concerned Citizens. I also attend the meetings of the Hudson Regional Health Commission, which has cooperated with us in our Town of Kearny as to the pollutions we are getting from chemical plants, from smelting plants, from 200 barrels of toxic oil that was left on our land near our main artery now, and from the past chemical plants of Staly Chemical and three or four other chemical plants. Since then I found out from the Fire Department that we have about 100 chemical plants in town and no one knew it. We're asking to know every detail of every chemical they handle, and what the effects can be if these chemicals are mixed with what products, because in our town as in -- the people that I work with, New Jersey COSH and Ironbound Community people -- I found out that we are so dumb because we were made to be dumb by the companies, and we are not going to stand for that. We are going to stick up for the right that we have to a free, clean environment -- the air we breath, the water we drink, and the land we live on and I, as a grandmother of 69, want to protect the future of every child, every human being in this land, and I feel that we are going to work to make sure that this Senate Bill 1670 is going to be a bill that is not going to be tampered with by big companies who know how to wheel and deal, who know how to lobby, who know who to take out to lunch, who know who they can get around -- we're not going to stand for that anymore. We're going to pray that every man that is sitting in the Assembly, and woman, and in the Senate, will do what their responsibility is to the people of the State of New Jersey to protect their life, their limb, their right to have freedom of protecting their lives. This is why we put you people in office. This is the respect we expect you to give us, by us giving you our votes. We want that known. We want you to know that we have put faith in every Assemblyman and Senator, our faith, hoping that you will live up to your responsibilities. We are praying that you will make sure that no one will come in to you and lobby and say, "Oh, but we have to make a bundle of money or we are going to die. Our company is going to collapse," and what have you.

I say that if these companies feel that way, let them come into the Ironbound section with 70,000 population, let them come into Kearny where I live amongst smelting plants, chemical plants, and a garbage world of 150 feet high and

135 feet high, and now they are planning to put another mountain between us because of an organization called the HMDC, which is killing us. So, we ask you, please, to respect us and love us. We respect you. If we didn't respect you, we wouldn't have put you in office. So, please make sure this bill goes through. Make sure that everything that our young attorney, God bless her, said must be put in there is put in. You know the whole story from every member of this group who spoke that I work with, and God bless them, please listen to our words. This is what I ask you. Thank you.

B A R B A R A M A T E R N A: My name is Barbara Materna. I am employed as an Industrial Hygienist with the Occupational Health Care Consortium of Northern New Jersey. This state-supported program, which functions through the Paterson Health Department and the health departments of several surrounding communities, is a unique approach by the State of New Jersey to improve workplace health and safety conditions by functioning at the local level. It should be clear that health and safety professionals, both industrial hygienists who are trained to recognize the hazards of toxic substances, and occupational nurses and physicians who identify and treat the health problems which result from workplace conditions, cannot work effectively when they and all workers do not have free access to the information guaranteed by the right to know.

How is a worker, a resident, an emergency response team, or an industrial hygienist investigating a situation able to know whether a hazardous condition exists, when chemical substances in use are not identified? Chemical materials differ in their toxicities and properties, and a substance's identity must be known in order to specify the particular procedure involved in using it safely.

A common complaint from management is that disclosing names of toxic substances handled in a plant will create a climate of panic among workers, who may refuse to handle certain materials. It is my position that withholding chemical identities and refusing to provide information about potential health effects not only fosters fear and distrust in workers, but sets up a condition which increases the potential for health and safety tragedies. The informed worker who handles a material on a regular basis, and has been trained to know its chemical properties and potential hazards, is often in the best position to identify when conditions are unsafe, and hence may initiate action to prevent needless accidents or future health problems.

In my work, I constantly encounter unsafe or unhealthy workplace conditions that result from a basic ignorance about the identities, chemical properties, or health hazards of toxic substances. In some cases this ignorance extends to management as well, who have not obtained Material Safety Data Sheets for all in-plant raw materials or are not aware of current toxicity data on the substance they handle.

Here are some examples of situations I have seen in New Jersey firms:

*Chemical warehouses containing drums and bags of materials labeled only with trade names, with no warnings posted to instruct emergency personnel in necessary precautions.

*Areas where flammable solvents are handled that do not have "No Smoking" signs, explosion-proof machinery, and provisions for grounding to prevent static electricity sparks -- and the solvents are identified by numbers only.

*Storage yards, often adjacent to residential homes, containing hundreds of drums of completely unidentified, possibly hazardous waste materials.

*Workers cleaning their equipment or hands in toxic organic solvents that are absorbed readily through the skin to cause liver and kidney damage or other health problems.

*Maintenance people expected to clean up spilled chemicals without any idea of their identity or recommended safe procedures.

*Employees wearing respirators, thinking they are adequately protected, when the respirator is designed for a different type of chemical substance and is totally ineffective.

*Workers without any form of protection openly handling substances suspected of causing cancer in plants where management refuses to believe what is reported in current scientific literaturre.

We could go on here for hours, listing needless tragedies that all of us have heard of or experienced. My point is that where toxic substances have the potential for harming the health of workers, residents, or emergency personnel, it is only through the combined efforts of everyone -- management, workers, unions, health and safety professionals, scientists, the medical establishment, and the general public -- that we will have a fighting chance to protect ourselves and our environment. Free access to information about toxic substances is a critical factor in safeguarding our health and a basic right which I urge you, the legislators of New Jersey, to secure for every person in this State. Thank you.

SENATOR LaROCCA: I want to assure everyone here this evening that the Committee and myself will take everything that you have said into consideration when we come to our final decision. I am going to ask my colleague, Senator Lipman, to say a few words.

SENATOR LIPMAN: Thank you, Senator LaRocca. I had two long meetings tonight before this one, but I had heard so much about the enthusiasm and the emotion that was going to be generated by this bill, and I knew that the number of Senators present was not going to be right, so I was determined to come to hear what is happening because this is where I live too, and this is where I breath the air too, and it is very important.

I think this must have been one of the liveliest sessions you have had. Is that right?

SENATOR LaROCCA: It was.

SENATOR LIPMAN: It was the liveliest session. Well, we live in the middle of all this, Senator. I am not a regular member of this Committee, but I was invited by Senator Dalton to come and hear it. Unfortunately, Senator Caufield also had two other meetings, as I did. I really wanted to come because the Ironbound, especially, I am concerned about because that is the center of all our chemical plants, and so forth.

I appreciate your staying so late, and I am sure that we have everything you have said. When the Senate comes to sit on this whole question, you can be sure that I am on your side. (applause)

SENATOR LaROCCA: The meeting is adjourned.

(HEARING CONCLUDED)

CHEMICAL INDUSTRY COUNCIL
OF NEW JERSEY

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STATEMENT OF THE CHEMICAL INDUSTRY COUNCIL
OF NEW JERSEY ON S-1670 BEFORE THE NEW JERSEY
SENATE ENERGY AND ENVIRONMENT COMMITTEE - OCTOBER 13, 1982

Good evening Mr. Chairman, members of the Committee, I am Hal Bozarth, Director of Governmental Relations and Public Affairs for the New Jersey Chemical Industry Council (CIC). The CIC of New Jersey is comprised of 70 manufacturing and processing chemical companies. As I mentioned at the first hearing, the industry in New Jersey is the single largest, employing approximately 130,000 people in over 1,000 manufacturing plants and laboratories. New Jersey's chemical production accounts for approximately 12.5% of the nation's output. In fact, the chemical industry in New Jersey ranks as the second largest in the nation, behind Texas and with Louisiana steadily gaining ground in third place.

Although mentioned at the first hearing in our testimony, it is instructive to point out that we do all live in a chemical society. Fully 40% of all goods and services rely on chemicals in some way. In addition to being the base for life saving drugs, chemicals are the building blocks for comsumer products ranging from telephones to detergents.

The issue here tonight is hazards communications. The members of the CIC have long established programs for effective hazards communication. Our association, as well as the national trade association for our companies, the Chemical Manufacturers Association (CMA) has taken strong positions in favor of protecting workers health and safety. And that is the main concern here, effective hazardous materials communication.

For your information, the National Safety Council's 1981 report showed the chemical industry as the safest among the nation's 43 basic industries. This statistic reflects the lowest number of incidents of occupational illness and injury involving days away from work and deaths. We feel that this reflects our belief that workers in the chemical industry do not have to choose between a good job and good health.

I cannot stress strongly enough that the member companies which I represent are deeply committed to the informed use of hazardous substances in the workplace. This strong sentiment is reflected by our ongoing support for the soon to be promulgated federal OSHA Hazards Communication standard. This standard is a comprehensive strong national program which will guarantee that all industrial establishments provide an

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effective hazards communication program.

There are three things which we would like to cover tonight; specifically existing regulatory coverage, the added burden to employers, and a perspective on the cancer issue.

Up front, let me say that the New Jersey Department of Environmental Protection has asked for our help in assessing the overlap of regulatory requirements between various federal, state and local laws and S-1670. We are pleased to announce that we plan to work very closely with the department on this issue. For your information, these are the areas of federal, state and local regulation which address the concerns raised in S-1670. I will now provide this committee with an exhaustive review of these acts and regulations. (See Chart & Handout)

It is our opinion that after you have studied the presented information, you will recognize that the concerns addressed by S-1670 have been effectively dealt with.

In our last testimony, I indicated that there would be, under S-1670, a large paper work and cost burden imposed on all companies, both large and small, over and above the hazards communication programs already in existance and proven effective.

We could pick any one of the many specified requirements of S-1670 to discuss, but let's use as an example, the MSDS, which is recognized as one of the basic hazards communication tools.

OSHA has estimated that 60% of all hazardous chemicals are covered by MSDS's. Such MSDS's include most of the information which S-1670 would require. OSHA's soon to be promulgated standard should bring this figure up to 100%.

The current MSDS's and those prepared to meet the OSHA standard would have to be reworked to comply with S-1670 should it become law. Not only would there be no added benefit for effectively communicating hazards to employees or direct customers, but the economic burden placed on New Jersey industry will be severe.

Since S-1670 cannot mandate exact compliance on out-of-state suppliers, there will be an extra costly burden placed on New Jersey companies which cannot obtain MSDS's through good faith efforts. This might have the effect of forcing New Jersey companies to spend vast amounts of capitol in commissioning outside laboratories to test the materials to prepare their own MSDS's. Or, this could cause the companies to be in noncompliance, or to drop the product made by the company. Thus, loss of jobs in New Jersey, while doing little for effective communication of hazards.

If S-1670 affected only the chemical industry, one that has access to MSDS, that may be one thing, but is the committee aware that S-1670 will affect not only the chemical industry, but dry cleaning establishments, gas stations, labs, universities, hospitals and state and local government facilities (sewage plants, road repair, highway maintenance, truck terminals, breweries and soft drink companies - where chemicals are stored).

Federal OSHA has estimated the cost of their proposed standard at $41 ($80 for small companies, $34 for large companies) per employee. However, that standard is a performance based standard which recognizes that existing industry hazards communication programs are an effective base on which to build. Because S-1670 is a strict specification proposal, requiring all industries to establish new programs, over and above what is already in place, it will cost far in excess of $40 - 50 per employee. Again, the point, this added cost is an additional economic burden on the industrial segment of our state now deep in a "depression".

As we have indicated above, the burden will not fall only on our industrial community, but will include such diverse state entities as universities. It is instructive to note that during the discussion of "Worker Right To Know" legislation in that state, the University of Wisconsin estimated that their cost of compliance would be in excess of $1 Million per year. This is not surprising given the fact that all universities, including those here in New Jersey, handle literally thousands of chemicals on an ongoing basis (pilot plant work in engineering labs.).

Industry is willing to spend that $41 per employee to ensure that these workers not now covered by existing effective hazards communication programs will adequately be covered under the federal OSHA standard. We consider this a reasonable sum to assure protection for those workers.

However, we believe that to spend 3 or 4 times that sum for little or no benefit, makes little or no sense.

Also at the last hearing, I indicated that we would address the concern raised in others' testimony relating to the effects of occupational exposure and incidence of disease.

I have with me today, Marty Atherton of the American Industrial Health Council. He will present testimony predicated on empirical data which will put the cancer problem in the proper perspective. I am also submitting to the members of this committee a detailed analysis of the problem prepared by Dr. Elizabeth Whelan of the AIHC.

STATEMENT OF HUGH PATRICK TONER
THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

Before the
SENATE ENERGY AND ENVIRONMENT COMMITTEE
NEW JERSEY LEGISLATURE

October 13, 1982

Mr. Chairman and Members of the Committee. My name is Hugh Patrick Toner and I am an Assistant Technical Director of The Society of the Plastics Industry, Inc. (SPI). SPI is the principal trade association and spokesman for the plastics industry; its 1,200 member companies account for over 75% of the sales of plastics in the United States. Our members include processors, converters, raw materials suppliers and manufacturers of machinery and molds used to make plastics products. The plastics industry is a major force in New Jersey. According to a recent survey, plastics productions and usage involve 1,765 plants in New Jersey, with 82,000 employees. Dollar value shipments of these plants totalled $2,377,000,000.

SPI would like to comment on three aspects of Senate Bill 1670. First, a critical evaluation of the hazard of a chemical in the workplace must include an evaluation of important factors such as exposure, physical characteristics of the substance and physical conditions related to exposure. Identifying a substance as hazardous solely because it appears on the

National Institute for Occupational Safety and Health's (NIOSH) Registry of Toxic Effects of Chemical Substances provides a misleading indication of actual hazards in the workplace. Second, the Public Information Data Sheet (PIDS) requirements as set forth at Sections 3(c) and 5 of the bill threaten confidentiality of secret product formulations and therefore require revision. Third, the labeling requirements for chemicals set forth at Section 4(e) of the Bill may duplicate federal regulatory requirements. Moreover, the required information could more effectively be communicated by use of the American National Standard Institute (ANSI) Standard for Precautionary Labeling of Hazardous Industrial Chemicals.

Before turning in more detail to these specific points, I would like to note SPI's continued commitment to providing a safe and healthy workplace through the communication of health and safety information. We support legislation at all levels of government which seeks to provide workers and the community with appropriate health and safety information concerning chemical substances in the workplace. However, we are opposed to Senate Bill 1670 because in its present form it would impose unreasonable and impracticable demands upon an industry which has a proven record of cooperating with legislative bodies and government agencies to improve working and living conditions.

In the 1960's, SPI developed an industry guide for classifying and labeling certain plastic resins according to their hazardous potentialities. This guide is now ANSI standard K68.1-1978. SPI continues to review and update this standard.

SPI is now in the third year of an ongoing grant from the Occupational Safety and Health Administration (OSHA) to conduct a national program targeted specifically to more than 100,000 employees of plastics processing companies, and ultimately to about 2.5 million individuals who are part of the plastics industry. In carrying out this program, SPI voluntarily provides safety and health expertise to small businesses with largely non-unionized work forces that typically handle compounded plastic resins.

Further, in a recent policy statement issued by SPI, we spelled out our commitment to assist our more than 1,200 member companies in the continuing development of improved safety and health practices in the plastics industry. We urged our members to continue to communicate the constant need to maintain a safe and healthful workplace, which carries over into a safe and healthful community. We support and would be more than willing to initiate a similar dialogue with concerned citizens of the community.

Thus, we are not unaware of our industry's responsibilities to employees and the community. We will continue to cooperate with responsible agencies at all levels of government to accomplish the highest possible level of sound safety and health practices.

However, for several reasons, we believe that Senate Bill 1670, if enacted into law, could well work toward disrupting and possibly stagnating the economic health and vitality of our industry and the thousands upon thousands of individuals who depend on it for their livelihoods, without accomplishing its stated purpose of establishing procedures to protect employees of our industry and members of the community.

Hazard information of the type which would be required in the material safety data sheet (MSDS) regarding a particular chemical cannot be determined in a vacuum. In reality, there is no valid need to specifically identify each and every chemical in the workplace by chemical abstract service nomenclature. While a registry such as the NIOSH Registry of Toxic Effects of Chemical Substances provides a useful compilation of chemicals which <u>could</u> present a hazard, it is necessary to proceed to a second step and identify those chemicals or mixtures which do

in fact present a hazard. In those instances, the type of hazard should be identified so that proper precautions can then be taken. This point is exemplified by the fact that mixtures typically pose different hazard concerns than do their components. In the case of compounded plastics formulations, even substances with high toxicity are often at such low concentrations and so fully encapsulated by the polymer that their processing poses no hazard. For example, OSHA does not require labeling for asbestos-containing products in which the asbestos fibers have been modified by a binding agent, coating binder or other material so that during any reasonably forseeable use, handling, storage disposal, processing or transportation, no airborne concentration of asbestos fibers will be released.

SPI is also concerned that the commercial value of proprietary formulation information be safeguarded. Confidential information should always be limited to those with a need to know: employees who must work with a substance, and fire fighters and other emergency personnel who need sufficient information to handle emergency situations. The ability to prevent unauthorized dissemination of any chemical information is jeopardized by any statutory provision that requires employees to be provided with a complete package of data regarding a pro-

prietary formulation, or for such information to be made available to the general public. Statutory posting requirements should be limited to proper notification to employees that available information will be provided upon request.

In contrast, Senate Bill 1670 requires that Material Safety Data Sheets and Public Information Data Sheets be developed on all chemicals present in the workplace which are listed in the latest edition of the NIOSH Registry. The use of the NIOSH Registry for this purpose is inappropriate. The preface to the Registry states: "The absence of a substance from the Registry does not imply that a substance is non-toxic and thus non-hazardous any more than the presence of a substance in the Registry indicates that the substance is hazardous in common use." The Registry further states: "A critical evaluation of the hazard of a chemical in the workplace or environment involves much more than a determination of its toxic potency: no matter how complex the determination may be, a hazard evaluation must include such a determination of course, but toxic potency and degree of hazard are not synonymous. Identifying and defining the hazard of a chemical must also include among other factors the evaluation of the amount and duration of exposure, the physical characteristics of the substance, the physical conditions under

which exposure occurs, and the evaluation of interactions with other substances which may be present. All these factors may significantly alter the toxic potency of a substance which, in turn, may alter the health of the person exposed."

Senate Bill 1670 makes no provision for such an identification and evaluation process. Rather, it mandates the listing and provision of Public Information Data Sheets without establishing any procedure for defining the circumstances under which each substance could create hazards.

In addition to having the potential to provide misleading information to the public concerning the hazard of any particular substance, the Public Data Information Sheet requirement poses a great risk to the confidentiality of proprietary formulation information. Although an administrative review procedure is available for Public Information Data Sheets involving trade secrets, the procedure appears inadequate. For example, the legislation is silent on how long the administrative review procedure should take and whether employees may refuse to work without losing pay during the pendency of an administrative proceeding.

Further, the value of labeling is lost when labels proliferate to create a visual clutter. It must be recognized that other agencies now have in place cautionary labelling requirements. ANSI, state agencies and other federal agencies such as the Department of Transportation and OSHA already have labeling requirements in effect. The chemical labeling proposed by this legislation could therefore be considered at odds with the need for a single comprehensive federal standard for hazard communication recognized by the OSHA in its preamble to its proposed hazard communications standard, OSHA Docket No. H-022.

Lastly, Senate Bill 1670 would add another layer of reporting of chemicals already required by EPA and OSHA and would impose an unreasonable additional administrative burden on the plastics industry. In summary, the plastics industry must oppose the passage of Senate Bill 1670. For the above reasons, we respectfully urge that it be rejected by this committee.

Thank you.

STATEMENT OF JEFFREY PETERSON

MANAGER OF STATE LEGISLATIVE AFFAIRS

ECONOMICS LABORATORY, INC.

REPRESENTING THE

CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION

BEFORE THE

NEW JERSEY SENATE

COMMITTEE ON ENERGY & ENVIRONMENT

OCTOBER 13, 1982

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STATEMENT OF JEFFREY PETERSON
MANAGER OF STATE LEGISLATIVE AFFAIRS
ECONOMICS LABORATORY, INC.
REPRESENTING THE
CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION
BEFORE THE
NEW JERSEY SENATE
COMMITTEE ON ENERGY & ENVIRONMENT
OCTOBER 13, 1982

MY NAME IS JEFF PETERSON AND I AM THE MANAGER OF STATE LEGISLATIVE AFFAIRS FOR ECONOMICS LABORATORY, INC. I AM ALSO CHAIRMAN OF THE "RIGHT-TO-KNOW" TASK FORCE OF THE CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION. I AM ACCOMPANIED BY LARRY GALLO, ASSOCIATE DIRECTOR FOR STATE LEGISLATIVE AFFAIRS AT CSMA.

CSMA IS A NATIONAL TRADE ASSOCIATION WITH A MEMBERSHIP OF SOME 400 FIRMS THAT MANUFACTURE AND SELL HOUSEHOLD, INSTITUTIONAL AND INDUSTRIAL SPECIALTY CHEMICALS SUCH AS DISINFECTANTS AND SANITIZERS; DETERGENTS AND CLEANING COMPOUNDS; AUTOMOTIVE CHEMICALS; WAXES, POLISHES AND FLOOR FINISHES; AND HOME AND GARDEN INSECTICIDES. OVER 100 OF CSMA'S MEMBER COMPANIES, INCLUDING MANY SMALL BUSINESSES, ARE EITHER HEADQUARTERED IN OR MAINTAIN PLANTS AND FACILITIES IN NEW JERSEY. ECONOMICS LABORATORY HAS THREE OF OUR PLANTS HERE WHICH CONSTITUTES A MAJOR PORTION OF OUR MANUFACTURING WORKFORCE FOR THE UNITED STATES.

IN ADDITION, VIRTUALLY ALL OF CSMA'S MEMBER COMPANIES MARKET THEIR PRODUCTS IN THE STATE. FOR ECONOMICS LABORATORY,

THIS IS AN EVEN BIGGER CONCERN AS EVERY ONE OF OUR CUSTOMERS WHICH INCLUDE RESTAURANTS, DAIRIES, NURSING HOMES, HOTELS AND HOSPITALS, WOULD BE SUBJECT TO THE PROVISIONS OF THE CURRENT "RIGHT-TO-KNOW" BILL, S. 1670.

THE CHEMICAL SPECIALTIES INDUSTRY SUPPORTS THE BASIC "RIGHT" OF A WORKER TO A SAFE AND HEALTHY ENVIRONMENT. AT THE SAME TIME, EACH OF OUR COMPANIES IS COMMITTED TO THE PROTECTION OF THE COMMUNITY WHERE OUR PRODUCTS ARE MANUFACTURED AND USED.

THE GREATEST RESOURCE WHICH EACH COMPANY STRIVES TO MAINTAIN IS A HEALTHY, PRODUCTIVE AND SKILLED WORKFORCE. TO THOSE ENDS, OUR INDUSTRY HAS AN OVER-RIDING COMMITMENT TO KEEPING EMPLOYEES INFORMED REGARDING THE POTENTIAL HAZARDS FOUND IN THE WORKPLACE AND TRAINED IN THE SAFE HANDLING OF ALL POTENTIALLY HAZARDOUS SUBSTANCES. IN ADDITION, EACH OF OUR COMPANIES IS COMMITTED TO THE PROTECTION OF THE COMMUNITY IN WHICH IT IS LOCATED. THIS COMMITMENT IS REFLECTED IN THE MANY PROGRAMS THAT ARE ESTABLISHED TO HELP OUR NEIGHBORS UNDERSTAND OUR BUSINESS AND TO ASSIST THE COMMUNITY IN RESPONDING TO EMERGENCY SITUATIONS.

WE BELIEVE, HOWEVER, THERE IS A FUNDAMENTAL PROBLEM IN ATTEMPTING TO MERGE THE WORKER HAZARDS COMMUNICATION PROGRAM WITH THE COMMUNITY NEED TO RESPOND TO EMERGENCIES. THESE ARE TWO DIFFERENT ISSUES THAT REQUIRE DIFFERENT APPROACHES AND SHOULD BE ADDRESSED SEPARATELY. WHETHER YOU ARE LOOKING AT LEVELS OF EXPOSURE, THE STATUS OF MIXTURES OR THE LEVEL OF INFORMATION THAT HAS TO BE AVAILABLE, INTERNAL HAZARD COMMUNICATION AND SOME FORM OF EXTERNAL HAZARD COMMUNICATION NEED DIFFERENT APPROACHES.

WHAT IS REALLY AT ISSUE, AND WHERE WE HAVE THE MOST DIFFICULTY WITH THIS BILL, ARE THE MEANS REQUIRED BY S. 1670 TO REACH THE DESIRED ENDS OF WORKER PROTECTION AND COMMUNITY EMERGENCY RESPONSE CAPABILITIES.

WE BELIEVE THE FOLLOWING HAS TO BE CONSIDERED:

1) <u>WHAT IS A HAZARDOUS SUBSTANCE?</u> TO BEGIN WITH, WE DO NOT BELIEVE THAT EVERYTHING IN THE NIOSH REGISTRY, EVEN IN 55 GALLON OR 500 POUND AMOUNTS, IS NECESSARILY HAZARDOUS. AS YOU KNOW, THE NIOSH REGISTRY IS MERELY AN INVENTORY; A DESCRIPTION OF THE "TOXIC EFFECTS OF CHEMICAL SUBSTANCES," IF ANY. AS MOST OF THESE 40,000 SUBSTANCES LISTED DO NOT HAVE APPRECIABLE TOXIC EFFECTS, THIS LIST DOES NOT PROVIDE AN ACCURATE BASIS FOR A DEFINITION OF "HAZARDOUS" OR "TOXIC" SUBSTANCE.

SEVERAL STATES WHICH HAVE RECENTLY ENACTED "RIGHT-TO-KNOW" LAWS ORIGINALLY CONSIDERED USING THE NIOSH LIST TO DEFINE "HAZARDOUS SUBSTANCES," BUT RECOGNIZED THAT THE LIST DOES NOT ACHIEVE THE GOALS OF A HAZARDS COMMUNICATION PROGRAM. THE LEGISLATURES OF WISCONSIN (AB 615) AND CONNECTICUT (A 499) ENACTED "RIGHT-TO-KNOW" LAWS IN 1982. EVEN THOUGH THESE LAWS HAVE MANY SHORTCOMINGS, EARLY DRAFTS WERE AMENDED TO DELETE THE NIOSH LIST AND FOCUS THE PROGRAM ON POTENTIAL HAZARDS.

THE DEFINITION OF "SPECIAL HEALTH HAZARD CHEMICALS," BASED ON SAX'S DIRECTORY, DOES NOT ADEQUATELY ADDRESS POTENTIAL HAZARDS OR TOXICITY. INCLUDED UNDER THIS CATEGORY, FOR EXAMPLE, ARE SODIUM HYDROXIDE (CAUSTIC

SODA), IODINE, AMMONIA OR EVEN VINEGAR. IN THEIR PURE STATE, UNDER CERTAIN CONDITIONS, ANY OF THESE SUBSTANCES MIGHT BE DANGEROUS. BUT IT COULD BE AN ENTIRELY DIFFERENT STORY IF ANY OF THESE SUBSTANCES ARE DILUTED OR MIXED WITH OTHER SUBSTANCES. THUS, THE BILL'S DEFINITION, IF 8% OF A HOTEL LAUNDRY CLEANER IS CAUSTIC SODA, OR 3% OF A HOSPITAL DISINFECTANT IS IODINE, OR A SMALL PORTION OF A WINDOW WASHER'S SPRAY IS AMMONIA OR EVEN 20% OF A RESTAURANT'S SALAD DRESSING IS VINEGAR, THEN ALL OF THESE MIXTURES AUTOMATICALLY BECOME "HAZARDOUS" UNDER S. 1670.

THE FUNCTION OF A HAZARDS COMMUNICATION PROGRAM IS GREATLY DIMINISHED UNLESS IT FOCUSES ON SUBSTANCES WHICH ARE POTENTIALLY HAZARDOUS THROUGH NORMAL USE OR WHICH PRESENT ACUTE OR CHRONIC HEALTH HAZARDS. ADDITIONALLY, ANY PROGRAM MUST BE DESIGNED TO MAKE A DISTINCTION BETWEEN SUBSTANCES THAT INDIVIDUALLY ARE DEFINED AS HAZARDOUS OR TOXIC, AND MIXTURES WHICH MAY CONTAIN THOSE SUBSTANCES IN DILUTED AMOUNTS AND THUS, DO NOT PRESENT ANY HAZARD UNDER NORMAL CONDITIONS AND USE.

2) <u>IF A SUBSTANCE OR A MIXTURE IS HAZARDOUS, HOW MUCH DOES A WORKER HAVE TO KNOW TO BE ADEQUATELY PROTECTED?</u> THERE ARE NO EASY ANSWERS TO THIS QUESTION. FOR VERY HAZARDOUS SUBSTANCES, DETAILED INFORMATION MAY BE NECESSARY. FOR NUMEROUS OTHER PRODUCTS USED IN A WORKPLACE OR STORED IN A COMMUNITY WHERE ONLY A SMALL PORTION OF THE TOTAL FITS THE HAZARDOUS DEFINITION, THEN LESS INFORMATION MAY BE NECESSARY.

FOR CERTAIN PRODUCTS, NOT ONLY CAN VOLUMINOUS MATERIAL SAFETY DATA SHEETS BE CONFUSING IN A WORKPLACE OR IN AN EMERGENCY RESPONSE SITUATION, BUT REQUIRING VERY DETAILED INFORMATION CAN THREATEN CERTAIN PROPRIETARY INFORMATION AND TRADE SECRETS THAT ARE THE LIFE BLOOD OF THE CHEMICAL SPECIALTIES INDUSTRY. EVEN SMALL COMPANIES HAVE TREMENDOUS INVESTMENTS IN PRODUCT RESEARCH AND DEVELOPMENT. TO LOSE THIS INFORMATION TO A COMPETITOR BY UNNECESSARY DISCLOSURE WOULD IRREPARABLY DAMAGE A COMPANY'S ABILITY TO SURVIVE.

WITHIN THE LAST MONTH, THE EPA ANNOUNCED THAT IT HAS INADVERTENTLY DISCLOSED THE TRADE SECRET FORMULATION OF MONSANTO'S "ROUNDUP," THE LARGEST SELLING HERBICIDE IN THE WORLD. THIS UNFORTUNATE AND DISASTROUS MISTAKE COULD UNDERMINE THE MARKET POSITION OF THIS PRODUCT AND COMPROMISE THE TRADE SECRET INFORMATION THAT WAS SUBMITTED TO THE EPA. A COMPETITOR CAN ACQUIRE THIS DATA (LEGALLY) AND REGISTER IT IN A FOREIGN COUNTRY WITHOUT SPENDING A NICKLE FOR IT. CONSEQUENTLY, TRADE SECRET MATERIALS AND FORMULAS SHOULD BE PROTECTED UNDER BOTH FEDERAL AND STATE LAWS, AND STRICT REGULATIONS SHOULD BE PROMULGATED FOR THE RELEASE OF THIS DATA SO THAT THE MISTAKES WHICH LED TO THE RELEASE OF THE "ROUNDUP" DATA AT THE FEDERAL LEVEL ARE NOT REPEATED IN STATE AFTER STATE. FOR EACH REQUIREMENT THAT PROPRIETARY DATA BE REPORTED UNDER FEDERAL OR STATE LAWS, THE CHANCES OF THE INFORMATION BEING COMPROMISED EXPONENTIALLY INCREASES.

WE SHOULD NOT CONFUSE A REQUIREMENT TO REVEAL A COMPLETE PRODUCT FORMULATION WITH WHAT IS AN ADEQUATE

WARNING TO WORKERS. THEY ARE NOT NECESSARILY THE SAME.

3) IS A DETAILED MSDS THE BEST WAY TO PROVIDE INFORMATION ON A HAZARDOUS SUBSTANCE OR PRODUCT? NOT NECESSARILY. IN SOME INSTANCES A PRODUCT LABEL OR A WARNING DECAL MIGHT ADEQUATELY SERVE AS A SUBSTITUTE TO A MSDS. THE KEY HERE IS ALLOWING MANUFACTURERS, DISTRIBUTORS AND EMPLOYERS THE FLEXIBILITY TO GET NECESSARY INFORMATION TO WORKERS AND EMERGENCY RESPONSE SITUATIONS IN AN AS EFFICIENT AND USABLE MANNER AS POSSIBLE.

I WOULD LIKE TO BRIEFLY HIGHLIGHT SEVERAL OTHER IMPORTANT CONSIDERATIONS THAT IMPACT ON OUR MEMBERSHIP, OUR NUMEROUS CUSTOMERS AND OUR COMMERCIAL USERS.

THE NEED FOR UNIFORMITY -- SEVERAL OF OUR COMPANIES DISTRIBUTE ON A REGIONAL BASIS, BUT MOST MARKET THEIR PRODUCTS NATIONWIDE. IN ORDER FOR US TO PROVIDE THE MOST EFFECTIVE AND WORKABLE HAZARDS COMMUNICATION PROGRAM, WE BELIEVE THAT CONSISTENCY AND UNIFORMITY BETWEEN THE VARIOUS STATE AND LOCAL JURISDICTIONS IS CRITICAL. WHERE EXISTING LAWS HAVE DIFFERENT REQUIREMENTS, COMPLIANCE AND ENFORCEMENT BECOMES VERY DIFFICULT, PARTICULARLY WHEN EACH JURISDICTION IS REACHING FOR THE SAME GOAL.

TO THAT END, CSMA HAS SUPPORTED FEDERAL STANDARDS SUCH AS THOSE EMBODIED IN THE CURRENT FEDERAL OSHA HAZARD COMMUNICATION PROPOSAL. THE COMMENTS THAT CSMA SUBMITTED TO THE U. S. DEPARTMENT OF LABOR ARE ATTACHED FOR THE COMMITTEE'S CONSIDERATION.

EXEMPTIONS AND OVERLAPPING REGULATIONS -- AS WRITTEN, THE CURRENT BILL DOES NOT RECOGNIZE THAT MANY PROTECTIONS ALREADY EXIST IN FEDERAL LAW SUCH AS THE "FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT" (FIFRA), THE FEDERAL HAZARDOUS SUBSTANCES ACT, JUST TO NAME A FEW. THESE EXISTING REQUIREMENTS IN MANY CASES ARE MORE STRINGENT THAN THOSE CONTAINED IN S. 1670, AND THEIR DUPLICATION WOULD NOT CONTRIBUTE TO THE SAFETY OF THE WORKER OR THE COMMUNITY.

MANY PRODUCTS MANUFACTURED BY CSMA MEMBER COMPANIES ARE ESSENTIALLY CONSUMER-ORIENTED AND THEREFORE MEET VERY STRICT STANDARDS OF THE U. S. CONSUMER PRODUCT SAFETY COMMISSION. ALTHOUGH S. 1670 ATTEMPTS TO RECOGNIZE THIS BY EXEMPTING PRODUCTS SOLD IN "RETAIL STORES," THIS DOES NOT BEGIN TO ADDRESS THE WIDE RANGE OF PRODUCTS WHICH ARE USED BY AN EMPLOYER IN THE SAME FORM, CONCENTRATION, OR MANNER AS THOSE SOLD IN STORES, BUT, BY VIRTUE OF OTHER PROCUREMENT MECHANISMS ARE COVERED BY ALL THE PROVISIONS IN THE BILL; EXAMPLES INCLUDE ALL TYPES OF CLEANING AGENTS AND PACKAGING FORMS PURCHASED IN BULK BY AN EMPLOYER. ANY BILL SHOULD ALSO TAKE INTO ACCOUNT SUBSTANCES OR MIXTURES WHICH MAY BE HAZARDOUS BY DEFINITION, BUT WHICH PRESENT NO RISK IN THEIR EXISTING FORM SUCH AS ADHESIVE TAPES, ETC.

FINALLY, ANY BILL MUST TAKE INTO ACCOUNT EXISTING FEDERAL LAWS WHICH STRICTLY REGULATE THE CHEMICAL INDUSTRY AND ARE DESIGNED TO ACHIEVE HIGH SAFETY STANDARDS. FOR INSTANCE, FIFRA REGULATES PRODUCTS DEFINED AS "PESTICIDES." MOST PEOPLE DO

NOT REALIZE THAT THIS DEFINITION INCLUDES MANY HOUSEHOLD PRODUCTS SUCH AS CLEANSERS, DISINFECTANTS, AND SANITIZERS. IT ALSO INCLUDES MANY INDUSTRIAL AND INSTITUTIONAL PRODUCTS WHICH ARE USED BY SCHOOLS, HOSPITALS, NURSING HOMES, RESTAURANTS, GROCERY STORES AND DAIRIES WHICH REQUIRE CLEAN, HEALTHY AND SANITARY ENVIRONMENTS.

MANY EXISTING STATE "RIGHT-TO-KNOW" LAWS TAKE INTO ACCOUNT THESE MORE RESTRICTIVE FEDERAL LAWS AND EXEMPT PRODUCTS FROM THEIR PROVISIONS WHICH COMPLY WITH THE STRONGER STANDARDS.

COST IMPACTS -- CONSIDERATION MUST ALSO BE GIVEN BY THE COMMITTEE TO SEVERAL OTHER ASPECTS OF S. 1670 AND ITS IMPACT ON THE COMMUNITY. SPECIFICALLY, THE BILL AS CURRENTLY DRAFTED IS SO BROAD, THAT THE MSDS, LABELING AND TRAINING REQUIREMENTS APPLY EQUALLY TO INDUSTRIAL MANUFACTURERS BOTH LARGE AND SMALL, TO SMALL BUSINESSES WHICH ARE ONLY CATEGORIZED AS "EMPLOYERS," TO EVERY ASPECT OF THE AGRICULTURAL COMMUNITY INCLUDING FAMILY FARMS, AND TO ALL STATE AND LOCAL GOVERNMENT ENTITIES BY VIRTUE OF BEING EMPLOYERS.

THE COMMITTEE SHOULD TAKE INTO ACCOUNT THE TREMENDOUS COSTS OF COMPLIANCE WITH THIS LAW IN ALL SECTORS OF THE STATE'S ECONOMY. WE RECOMMEND THAT THE COMMITTEE THOROUGHLY REVIEW THE FISCAL IMPACTS OF THE BILL AS IT IS NOW DRAFTED BEFORE PROCEEDING FURTHER.

PENALTIES AND SANCTIONS -- PROVISIONS IN S. 1670 GRANT THE EMPLOYEE THE BROAD RIGHT TO REFUSE TO WORK IF ANY OF THE REQUIREMENTS ARE NOT MET BY THE EMPLOYER, AND PROTECTS THE EMPLOYEE FROM DISMISSAL UNDER ANY CIRCUMSTANCES. IN ADDITION, IT IS UNREASONABLE, IF NOT ARBITRARY OR CAPRICIOUS, TO REQUIRE A PIDS OR MSDS WITHIN 24 HOURS AND BE SUBJECT TO

A PENALTY OF NOT LESS THAN 30 DAYS IN PRISON OR A FINE OF NOT LESS THAN $2,500. IT IS QUITE LIKELY THAT LITERALLY HUNDREDS OF VIOLATIONS COULD EASILY OCCUR BECAUSE OF THE PHYSICAL IMPOSSIBILITY OF PROVIDING A MSDS WITHIN THE UNREALISTIC TIME FRAME OF 24 HOURS. TO THREATEN A SMALL BUSINESS PERSON WITH THOSE KINDS OF SANCTIONS BECAUSE HE DIDN'T HAVE A MSDS FOR A 55 GALLON BARREL OF CORN OIL OR 500 POUNDS OF SUGAR, DESTROYS THE CREDIBILITY OF NOT ONLY THE LAW BUT THE AGENCY RESPONSIBLE FOR ENFORCING IT.

LEGAL -- FINALLY, THE GRANTING OF A PRIVATE RIGHT OF ACTION TO ANY PERSON, UNDER SECTION 9 OF THE BILL, WITHOUT REGARD TO WHETHER THAT PERSON WAS ADVERSELY AFFECTED CONFLICTS WITH THE RULES OF STANDING. THIS JEOPARDIZES THE EQUITABLE SETTLEMENT OF DISPUTES BY ALLOWING PARTIES WITH NO DIRECT INTEREST TO INTERJECT THEMSELVES INTO CASES. IN ADDITION TO CREATING A GREAT RISK OF HARASSMENT, THE BURDENS THAT THIS PROVISION COULD PLACE ON THE JUDICIAL SYSTEM ARE OVERWHELMING. WE RECOMMEND THAT THE COMMITTEE CONSIDER DROPPING THESE PROVISIONS.

CONCLUSION

A NUMBER OF STATES AND JURISDICTIONS HAVE ALREADY ENACTED SOME FORM OF "RIGHT-TO-KNOW." BECAUSE OF THE COMPLEXITY OF THE ISSUE, MOST HAVE NOT YET BEEN FULLY IMPLEMENTED. EXPERIENCE WITH OTHER RIGHT-TO-KNOW LAWS MAKES IT INCUMBENET UPON ALL OF US TO EXAMINE CAREFULLY THE MISTAKES MADE ELSEWHERE AND BORROW WORKABLE LANGUAGE WHEN IT IS TO THE BENEFIT OF EVERYONE CONCERNED.

WE URGE YOU TO MOVE WITH CAUTION IN FASHIONING WHATEVER FORM OF "RIGHT-TO-KNOW" IS DEEMED TO BE NECESSARY. WE UNDERSCORE THE NEED FOR FLEXIBILITY IN DETERMINING WHAT IS HAZARDOUS AND TRANSMITTING THAT INFORMATION TO THE EMPLOYEE OR IN EMERGENCY SITUATIONS WITH A DANGER TO THE GREATER COMMUNITY.

BEFORE ANY "RIGHT-TO-KNOW" LAW CAN BE ENACTED, ADEQUATE CONSIDERATION MUST BE GIVEN TO THE THOUSANDS OF EMPLOYERS IN THIS STATE WHO UNDER THIS BILL, FACE THE SAME LEVEL OF RESPONSIBILITY AS ANY MAJOR MANUFACTURER OR CHEMICAL COMPANY. WHAT IS NECESSARY AND POSSIBLE FOR A LARGE INDUSTRIAL PLANT MAY BE IMPRACTICAL, IMPOSSIBLE AND BURDENSOME TO A GAS STATION, DRY CLEANER, MEDICAL CLINIC OR ANY NUMBER OF SMALL BUSINESSES.

WE APPRECIATE THIS OPPORTUNITY TO COMMENT ON S. 1670 AND WILL BE AVAILABLE TO DISCUSS THE ISSUES RAISED ABOVE IN GREATER DETAIL. THIS IS CLEARLY AN INSTANCE OF ALL PARTIES BENEFITING FROM DISCUSSION IN THE SPIRIT OF COOPERATION. WE ARE PREPARED TO ASSIST YOU WITH YOUR DELIBERATIONS IN THAT SPIRIT.

THANK YOU.

Founded 1914

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202/872-8110

CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION

PRESIDENT
RALPH ENGEL

May 14, 1982

Docket Officer
Docket H-022
U.S. Department of Labor
Occupational Safety and Health
Administration
200 Constitution Avenue, N.W.
Room S6212
Washington, D.C. 20210

Re: Notice of Proposed Rulemaking on Hazard Communication published in the Federal Register of March 19, 1982 at 47 Fed. Reg. 12092

Dear Sir:

The Chemical Specialties Manufacturers Association (CSMA) is a voluntary, nonprofit membership association consisting of over 400 companies engaged in the manufacture, distribution, and marketing of chemical specialty products such as: automotive chemicals; detergents and cleaning compounds; disinfectants and sanitizers; insecticides; and waxes, polishes, and floor finishes. A decision by the Occupational Safety and Health Administration (OSHA) to promulgate a standard on hazard communication would greatly affect CSMA member companies.

I. The Legal Basis of an OSHA Standard

When promulgating a standard under Section 6 of the Occupational Safety and Health Act (the Act), 29 U.S.C. §655, OSHA must establish that the standard is "reasonably necessary and appropriate to remedy a significant risk of material health impairment." Industrial Union Department, AFL-CIO v. American Petroleum Institute, 448 U.S. 607, 639 (1980). This requires OSHA to determine, first, that a significant risk exists and, second, that the standard would eliminate or reduce that risk.

We are not convinced that OSHA has shown that current manufacturing practices present a significant risk to workers. Industry has long recognized the need for hazard communication, and has adopted a voluntary consensus standard under the auspices of the American National Standards Institute (ANSI). ANSI Standard Z129.1-1976, "American National Standard for the Precautionary Labeling of Hazardous Industrial Chemicals," has been followed by a great number of chemical companies and has served as an effective guideline despite OSHA's criticism of the standard in the preamble to the proposal. Given the ANSI standard and the efforts by individual companies to protect their workers, we doubt that a significant risk justifying a standard exists. We also wish to point out that this ANSI consensus standard is in the process of revision, with a modified standard expected by the end of the year. With industry and other interested parties working on this project, the need for a federal standard is especially open to question.

However, CSMA fully agrees with OSHA's assessment that a uniform system of hazard communication would be in the best interest of both industry and workers. The recent proliferation of laws and ordinances on the state and local levels has disrupted interstate commerce and threatens to place an undue burden on manufacturers, distributors, and marketers. It is very important for OSHA to recognize explicitly the needless and onerous conflicts between states as part of any action the Agency takes.

To this end, we urge that if OSHA promulgates a standard, the Agency clearly declare its intention to occupy the field and preempt state and local regulation. This preemptive power would come from Section 18(a) of the Act, 29 U.S.C. §667(a), which states:

> Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

Shortly after the passage of the Act, OSHA promulgated a regulation interpreting this section and expressing the implicit corollary:

> Section 18(a) of the Act is read as preventing any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which a Federal standard has been issued under section 6 of the Act. 29 CFR Part 1901.2

Since OSHA published this interpretation just after Congress created the Agency, the finding of preemptive power in Section 18(a) carries a presumption of validity. Udall v. Tallman, 380 U.S. 1, 16 (1965).

In addition, OSHA's interpretation of Section 18(a) is borne out by a review of the legislative history. Throughout the discussions over what would become Section 18, members of Congress considered the state role to follow one of two scenarios. If OSHA did not have a standard, then states would have a free hand to regulate. If OSHA did come out with a standard, then states would regulate, if at all, pursuant to an OSHA-approved state plan. In fact, Congress rejected an approach which would have preserved most state action following the issuance of an OSHA standard. The companion bills S. 2788 and H.R. 13373 contained identical language for what would have been Section 14(b):

> (b)(1) No State safety or health standard in effect upon the effective date of this Act or which may become effective thereafter, shall be superseded by any standard promulgated under this Act except insofar as such State safety or health standard is in conflict with this Act.
>
> (2) Any State safety or health standard in effect upon the effective date of this Act, or which may become effective thereafter, which affords employees significantly greater protection than a safety or health standard promulgated under this Act shall not thereby be construed or held to be in conflict. S. 2788 and H.R. 13373, 91st Cong., 2d Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 58 and 706 (1971).

The limited role for state regulation under Section 18 and its vulnerability to preemption provoked this minority comment to the Senate Report:

> The scheme of enforcement established by the bill effectively discourages positive State and private initiative. Private initiative is encouraged only through the strong negative incentive program . . . The role of state governments in the regulatory scheme is also limited. A state may assume responsibility for regulation only on the submission of a stringent state plan. The Secretary must monitor the plan and has authority to revoke it if he finds it does not meet the strict requirements of the plan. Id., at 201, "Minority Views of Messrs. Dominick and Smith of Illinois", Senate Report No. 91-1282, 91st Cong., 2d Sess. 62 (1970) (emphasis added)

Thus, we find that OSHA's conclusion expressed in its regulations that an OSHA standard preempts state activity except under an approved state plan is fully in accord with the legislative history of the Act.

Therefore, OSHA should recognize in its statement of basis and purpose of the standard on hazard communication that differing state requirements are impractical, unnecessary, and undesirable. The Agency should make administrative findings of fact and law that a pervasive, dominant federal scheme would minimize conflicts, promote uniformity, avoid a disproportionate impact on small business, minimize excessive and redundant labeling, prevent an undue burden on interstate commerce, and override any particular state or local interest. However, states would still be free to implement the federal plan pursuant to OSHA supervision under Act Section 18(b-h), 29 U.S.C. §667(b-h).

II. Benefit Evaluation

CSMA strongly feels that OSHA's evaluation of the potential benefits of this standard is flawed, and the results both misleading and erroneous.

Of particular concern is OSHA's estimate of a $2,314.4 million increased production and medical cost savings resulting from a lower cancer incidence. Reasonable estimates of the fraction of present cancer incidences which may be attributable to exposure to occupational carcinogens range from 1% to 4%. See, e.g., Doll & Peto, "The Causes of Cancer: Quantitative Estimates of Avoidable Risks of Cancer in the United States Today", 66 Journal of the National Cancer Institute 1193, 1245 (June 1981). OSHA's estimate of 20% occupational cancers, and the assumption that this standard will eliminate all cancer incidence attributable to occupational exposures within ten years, are both greatly exaggerated. Id., at 1241.

The National Occupational Hazards Survey (NOHS) data upon which OSHA relies to document the need for and calculate the benefits of this standard are not currently relevant if they ever were. It is erroneous to assume that conditions in the workplace ten years ago are still present, given the changes in chemicals used, developments in engineering controls, and advances in hazard communication practices. For example, material safety data sheets (MSDS's) did not come into use until 1970, and NOHS's failure to find them in widespread use in a survey published in 1972 is not surprising.

III. Cost Analysis

OSHA's estimate of the costs the proposed standard will impose is far too low. OSHA projects a cost of $41.00 per employee for the initial cost and $16.00 per employee total annual cost.

This estimate is less than the cost of a training program alone, and does not come close to indicating the costs for a smaller company. One CSMA member has fifteen employees in its manufacturing plant. This company estimates that a training program would take at least three hours per employee as the initial cost, with one-hour brush-up courses perhaps twice a year. At an average of $21.00 per hour per employee, the initial cost would be $63.00 and the continuing cost $42.00 per year per

employee. However, even this estimate is low, since the company would probably have to hire an industrial hygiene consultant to help conduct the training.

This also does not include the costs of preparing the MSDS's. This small company has 2200 formulations, all of which currently have MSDS's. In order to comply with the proposal, however, the employer would have to revise all 2200 MSDS's. At $25.00 to $30.00 per MSDS just for preparing the sheets, the paperwork expense would be over $50,000. The cost would be greater for those formulations for which the company has to conduct an extensive search of the toxicology literature.

In addition, if OSHA grants designated representatives of the employee access to trade secret information, the manufacturer would have to incur the expense of preparing confidentiality agreements. Again, this is a company with only fifteen employees in its manufacturing facility.

CSMA has documented the effect federal regulation has on innovation and small business in a January 1982 study prepared by the Regulatory Research Service entitled "Impact of the Toxic Substances Control Act on Innovation in the Chemical Specialties Manufacturing Industry". This study, which CSMA would be pleased to present to OSHA, shows that small companies in the chemical industry bear an inordinately large share of the regulatory burdens.

IV. Substantive Changes Needed in the Proposed Standard

The standard proposed by OSHA needs a number of substantive changes to be useful and operable. We will discuss the provisions presenting problems in the sequence they appear in the proposal.

Scope and application - OSHA should clearly state at some point in this section that the proposal does not apply to hazardous waste. The Environmental Protection Agency (EPA) regulates such waste under the Resource Conservation and Recovery Act (RCRA). EPA's RCRA regulations require the manifesting and labeling of hazardous waste, which serve as a hazard warning and obviate the need for MSDS's. In addition, treatment, storage, and disposal facilities must satisfy certain training requirements for their employees. Since Section 4(b)(1) of the Act, 29 U.S.C. §653(b)(1), requires OSHA to defer to the authority of other federal agencies regulating special working conditions, and since disposal facilities may not even be in SIC Codes 20-39, OSHA should exempt hazardous waste from coverage.

1910.1200(a)(2) - OSHA should recognize that to require employers to provide information on every "foreseeable emergency" would be impractical given the virtually endless number of possible incidents. Emergencies are special case situations and are handled by companies in special ways. In many emergency situations, employees would be needlessly endangered if they tried to deal with a problem better left to specially trained experts. Under such circumstances, detailed hazard communication could induce workers to remain in the area for too long a time. We recommend that OSHA amend this paragraph to delete the reference to emergencies.

1910.1200(a)(3) - CSMA strongly urges OSHA to drop the presumption that any mixture comprised of at least one percent of a hazardous chemical is hazardous. As OSHA correctly recognizes in the preamble to the proposal, there is no scientific evidence showing that above a certain percentage, a mixture automatically assumes the hazardous characteristics of one of its ingredients. A product with a small amount of a hazardous chemical as a constituent may have completely different characteristics than the chemical in its "pure" form, particularly where the only hazard is combustibility or flammability. The one percent cutoff is completely arbitrary and ignores the problems of defining even a "pure" substance. A chemical generally considered as pure, such as a technical grade material, may have one percent of one or more impurities, intermediates, or side-reaction products.

OSHA's exemption where "the mixture has been evaluated as a whole and the data indicates (sic) it is not hazardous" is not sufficient to alleviate the problem. This forces the manufacturer to test or be regulated despite OSHA's insistence that testing is not required under the proposal. In the preamble OSHA notes, "for a mixture to be exempted from the ingredient listing requirements specified, the employer will have to rely on available specific test data, not subjective assessments". It is puzzling why OSHA allows subjective assessments to determine whether a "pure" chemical is hazardous and therefore subject to the standard, but will not allow the employer to use the same judgment in dealing with one-percent of a chemical in a mixture.

We believe that companies should be allowed to make the same evaluations for mixtures as they do for pure chemicals. In their evaluation, manufacturers should be allowed to use all of their knowledge of their products in the most economical fashion. The testing requirement, which could include extremely expensive testing for chronic hazards, is especially burdensome for formulators, who may have many different products with similar formulations. Small companies in particular cannot afford this wasteful expense.

OSHA should permit the extrapolation of data or the use of analogous data as part of an informed evaluation, rather than automatically mandating testing for mixtures. It is important not to limit the data solely to those obtained directly from the chemical product, single substance, or mixture, but to acknowledge the value of collateral data as well. Employers should be allowed to evaluate mixtures rather than being forced to conduct expensive and pointless testing to establish a foregone conclusion.

Even if OSHA retains the requirement for identifying components, the employer should have to comply with the standard only for those constituents of a mixture which contribute substantially to the hazard of the mixture. There is no safety or health justification for going through the expense of complying with the standard for those components which do not significantly increase the mixture's hazard.

1910.1200(a)(5) - CSMA believes that any standard should not cover research laboratories or quality control laboratories. OSHA recognized the unique characteristics of the laboratory as a work-

place when it sought comments on a possible laboratory standard in the April 14, 1981 Federal Register at 46 Fed. Reg. 21785. OSHA acknowledged that a major argument against federal regulation is that:

> Laboratory workers and/or their supervisors are usually highly trained concerning the properties and proper handling of chemicals and decisions relating to protection of workers should be left in their hands. 46 Fed. Reg. 21786

As CSMA noted in its comments of July 15, 1981 to OSHA on this matter:

> Laboratory scientists have a high degree of training and respect for the chemical substances which they use. Supervisory scientists understand the chemical properties, the potential hazards, and the proper safety precautions and are cognizant of safety in planning and conducting laboratory work. In fact, well-meaning federal involvement could be counter-productive if the regulations, in attempting to standardize safety procedures for all laboratories, are too rigid to allow trained experts to tailor their programs to their specific needs or divert scarce resources from more important safety activities. It is also worth noting that superfluous monitoring or other unnecessary measures would place a greater drain on employee time in smaller companies, an important consideration under the Regulatory Flexibility Act, 5 U.S.C. §601 et seq.

In order to avoid unnecessary regulation, OSHA should not only exempt "chemicals being developed and used only in research laboratories" as suggested in the hazard communication proposal, but also exempt from coverage the laboratories themselves, both research facilities and quality control operations. We are concerned that the present wording would impose excessive and perhaps unintended requirements for laboratories.

An integrated facility, often the case with a small company, may include a research and development or quality control laboratory, management offices, and a manufacturing unit in the same building. That building is a single "workplace" containing several "work areas". The standard would cover the entire "workplace", including the offices and laboratory. The office workers would be exempted because the definition of "employee" excludes "office workers, grounds maintenance personnel, security personnel or non-resident management." The workers in the laboratory, however, might be covered as "employees" in the "workplace" despite the language of 1910.1200(a)(5). In order to clarify this situation, we urge OSHA to amend the definition of "employee" so that it specifically excludes workers engaged in research and development or quality control activity, since they are technically qualified individuals.

Definitions - 1910.1200(b) - "CAS number" - OSHA should drop the reference to the Chemical Abstracts Service (CAS) number for the reason developed later in these comments that OSHA should not require the use of the CAS number on the MSDS.

"Chemical" - We interpret OSHA's definition of "chemical" not to include articles or living organisms, although a literal interpretation would include them. OSHA should re-word this definition in order to clarify the coverage.

"Chemical manufacturer" - Anyone who mixes two "chemicals" and is listed under SIC Codes 20-39 is a manufacturer under this definition, and therefore subject to all of the requirements of the proposal. OSHA must restrict this term in order to make it meaningful. We propose defining "chemical manufacturer" to mean "an employer engaged in the production or processing of chemicals for sale or distribution." This definition would not cover persons such as janitors who only prepare a use-solution from a concentrate for which the MSDS is available in the work-place. It would also define "chemical manufacturer" in terms of the employer, rather than the establishment, since it is the employer who has certain duties under the proposal.

"Chemical name" - OSHA should recognize that the useful terminology for hazard communication is the common chemical name and not the nomenclature systems used by CAS and the International Union of Pure and Applied Chemistry (IUPAC). The CAS and IUPAC systems are not commonly used in the workplace and are not widely understood. If OSHA relies on CAS and IUPAC, it will experience the same difficulties confronted by EPA in implementing the Toxic Substances Control Act (TSCA) inventory.

"Combustible" - This definition does not agree with the definitions used in existing labeling systems. In particular, OSHA should make this definition consistent with ANSI Standard Z129.1-1976 and the Department of Transportation's (DOT) regulation, 49 CFR Part 173.115. This will eliminate the need for listing Class II or Class III liquids, which are not relevant to OSHA's proposal.

"Container" - We support OSHA's deletion of pipes and piping systems from this definition. However, the inclusion of reaction vessels is unnecessary as well and will have an inordinate effect on companies, particularly small ones, which use the same equipment for different purposes and would face a formidable job of labeling. Reaction vessels are usually part of a closed system with constantly changing contents and with no exposure hazard to employees. OSHA should exempt reaction vessels from coverage under the proposal. We also recommend the deletion of small containers such as vials from the definition. Tank trucks, rail cars, and barges should not be covered, since DOT regulates their normal uses.

"Designated representative" - This term appears in two places in the proposed standard -- first, in giving a designated representative access to MSDS's and, second, in giving a designated representative access to trade secret information. In both cases,

access should be restricted to the employee, his treating physician, and OSHA. This modification would go a long way in protecting property rights while still seeing that preventive and therapeutic purposes are still served. OSHA should eliminate the term "designated representative" from the proposal, since it could lead to harassment from any person with written authorization from a present or former employee, as well as misuse of disclosed information by the designated representative.

"Emergency" - We repeat our comments that provisions for emergencies should be deleted from the proposal.

"Employee" - CSMA has numerous concerns regarding the potential scope of OSHA's definition, which includes all workers "who may be exposed under normal operating conditions or foreseeable emergencies" (emphasis added). We believe that the term "employee" should be limited to personnel who may be routinely exposed to hazardous chemicals during normal operating conditions. Requiring extensive training for personnel whose potential exposure would occur only in emergency situations would be burdensome. OSHA further states that, "Office workers, grounds maintenance personnel, security personnel or non-resident management are generally not included, unless their job performance routinely involves potential exposure to hazardous chemicals". We believe that this statement concurs with our view, and encourage OSHA to articulate this concept in the main body of the definition. As mentioned earlier in the comments, we urge OSHA to exempt laboratory workers from coverage.

"Explosive" - This definition should be amended to comply with the DOT regulation, 49 CFR Part 173.50, which considers an explosive to be a chemical compound or mixture "the primary or common purpose of which is to function by explosion."

"Flammable" - OSHA should modify this definition to comply with the approach taken by DOT, 49 CFR Part 173.115, and ANSI Standard Z129.1-1976.

"Hazardous chemical" - This term includes any chemical which presents a safety hazard or a "health hazard", which OSHA defines without regard to the amount or route of exposure. Virtually any chemical could be considered hazardous under this approach, a result which would lead to over-labeling and less protection for workers, who would be tempted to ignore all labels and therefore become desensitized to meaningful risks. OSHA should redefine "hazardous chemical" to take into account the amount and route of exposure.

"Hazard warning" - This definition supplies vital flexibility by allowing the use of words, pictures, or symbols to convey hazard warnings. CSMA supports OSHA's performance-oriented approach.

"Health hazard" - We believe that OSHA's definition of a "health hazard" as "a chemical which, upon exposure, may result in the occurrence of acute or chronic health effects" is a misuse of terms. A hazard should not be defined as a chemical, but

rather as a significant risk of an adverse health effect presented by a situation wherein there is sufficient exposure to a chemical.

OSHA's explanation of this term in Appendix A states that "the employer shall consider the scientifically well-established evidence of any type of health effect which may occur in any body system of his/her employees." Similarly, Appendix B instructs employers "to demonstrate that they have adequately ascertained the scientifically well-established hazards of the chemicals produced." To this end, OSHA should require employers to show how they made the necessary evaluations but should not require extensive documentation. In other words, employers should have to show what steps they routinely go through but not have to provide evidence of what actually happened in a given case. To require such written documentation for each chemical assessed would create an enormous amount of paperwork with little or no tangible benefit.

"Trade secret" - Although OSHA uses this term in the proposal, no definition is offered. We urge OSHA to rely explicitly on the widely accepted definition from the Restatement (Second) of Torts §757, Comment b, that a "trade secret" is ". . . any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers."

"Use" - This term should not be defined to include "transport", since that takes OSHA into the area regulated by DOT.

Hazard determination and communication program - 1910.1200(c) - The producer of a chemical or mixture should have the responsibility to evaluate the hazards associated with that substance. This should not involve going through a checklist of sources, such as those in Appendix B, since some of those authorities will be inapposite in certain circumstances and sources of information not listed should be consulted in other cases. As previously mentioned, the employer has the responsibility to provide a safe workplace and should have the flexibility to develop the appropriate method of hazard evaluation to that end.

The proposal also would require the employer to maintain "a list of the hazardous chemicals known to be present in the workplace." We interpret this to mean that a list of MSDS titles is sufficient to satisfy this requirement, and that an employer need not compile a list of constituent chemicals.

Labels and placards - 1910.1200(d) - We question whether OSHA has the authority to require labels on containers once the goods have left the workplace. Section 4(b)(1) of the Act, 29 U.S.C. §653(b)(1), expressly precludes OSHA from regulating working conditions of employees with respect to which other federal agencies "exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." Since DOT regulates the shipment of containers, we reserve judgment on whether the requirements in 1910.1200(d)(3) are valid.

More specifically, the provision for putting the telephone number of the manufacturer on the label conflicts with most present practices. Compliance would be extremely costly since companies may have thousands of labels for their products and since telephone numbers are subject to change. OSHA should delete the telephone number requirement.

Finally, OSHA should allow the use of process sheets or mix sheets as a visual warning system as mentioned in the proposal's preamble. It is particularly important for small companies and formulators in general who use the same equipment for many different processes to have the flexibility to post a mix sheet rather than engage in constant placard or label changing. Many companies have relied on this system in the past without experiencing increased injuries to their employees.

Material safety data sheets - 1910.1200(e) - OSHA should delete the requirements to place the following information on the MSDS: (1) CAS numbers; (2) disclosure of hazardous ingredients present in quantities greater than one percent; (3) comprehensive signs and symptoms of exposure; (4) medical conditions which may be aggravated by exposure; (5) procedures for decontaminating equipment; (6) engineering controls recommended; and (7) the statement "no information found" rather than leaving a blank space.

Placing the CAS number on the MSDS does not communicate any meaningful information to the individual employee and its presence on the MSDS could give away confidential data to competitors of the employer. If necessary, the employer could supply the information to OSHA under a confidentiality agreement or to a treating physician.

OSHA does not define the term "hazardous ingredients" in mixtures. Again, we urge OSHA to drop its proposal on mixtures, but as a second, less desirable alternative, limit the coverage to those constituents of a mixture which contribute substantially to its hazard.

The comprehensive signs and symptoms of exposure and medical conditions which may be aggravated by exposure are too extensive to fit neatly on an MSDS. It is not practical to list every conceivable symptom or medical condition, although an employer could list the general symptoms.

The procedures for decontaminating equipment are user dependent rather than manufacturer dependent, so it makes little sense for the manufacturer to give recommendations when he does not know the exact end use of the product. Similarly, the manufacturer cannot give good advice on engineering controls since they pertain to the user's process.

There is no value in placing "no information found" on an MSDS rather than leaving the space blank. In fact, a blank space is more accurate where the employer may have found conflicting information or scientifically unsound information and decided to omit its mention from the MSDS because it would be misleading.

We also wish to point out that OSHA's requirement in 1910.1200(e)(5) that "manufacturing purchasers" receive an MSDS is not necessary where consumer products are concerned. There is no need for an MSDS if the product is labeled in accordance with the Federal Hazardous Substances Act (FHSA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or is sold in the same form, approximate amount, and concentration as to consumers, and there is no significantly greater worker exposure. Therefore, OSHA should exempt consumer products from the MSDS requirements under these circumstances.

Finally, OSHA should recognize that in some special instances, a file of information such as operating instructions together with a summary of that file should be allowed to satisfy the MSDS requirements. For example, site-specific operational material, such as decontamination instructions, could be evaluated and summarized by the manufacturer and reviewed by his employees without reliance on an MSDS form. The summary might not have all of the information normally present on an MSDS, but could be the best way to communicate hazards to specially trained employees in that situation. For instance, an employer with a physician on-site might feel that for a particular manufacturing operation, it would be better for an injured worker to seek immediate medical attention rather than attempt to follow first-aid instructions on the summary sheet. OSHA should allow for this sort of flexibility for those unusual cases where a file and a summary might be preferable to a normal MSDS.

Trade secrets - 1910.1200(g) - Section 1910.1200(g)(1)(ii) exempts carcinogens, mutagens, teratogens, and chemicals causing significant irreversible damage from trade secret protection other than allowing the employer to condition access upon acceptance of a confidentiality agreement. This section raises numerous significant questions including: (1) what is a "carcinogen", "mutagen", "teratogen", and "cause of significant irreversible damage"; (2) whether a chemical, mixture, formulation, or process could lose its trade secret protection regardless of the ingredient percentage (including the presence of a contaminant) or exposure level, and whether OSHA would ever acknowledge a threshold level below which there could be trade secret protection; (3) whether OSHA has attempted or will attempt to balance the employer's need to protect proprietary information against the employee's need to have access to trade secrets; and (4) whether an employer would have to disclose all information on a formulation or process or just the data relating to the substance presenting a carcinogenic, mutagenic, teratogenic, or other risk.

The present language in this proposal does not make clear the intent of this exemption and may extend far beyond any legitimate need to make trade secret information available to employees. We urge OSHA to clarify the provisions and repropose the section for further public comment to allow the issues we have noted to be properly addressed.

In addition, OSHA should recognize that a contract conditioning employee access to confidential information is essentially unenforceable. The small manufacturer has an especially significant problem since the disclosure of a trade secret to a larger competitor could put the smaller company out of business. With this very real danger in mind, OSHA should limit accessibility to the employee, his treating physician, or OSHA under a confidentiality agreement. The employer should not have to disclose such information to a designated representative.

Effective dates - 1910.1200(h) - The varied schedule for phasing in the proposed standard is well-intentioned but more confusing than helpful. First, there is no clear distinction between "pure" substances and mixtures, especially given OSHA's arbitrary one-percent mixture rule. Second, OSHA does not take into account that small companies often sell products to larger companies in addition to the reverse. Therefore, a large manufacturer who is subject to a standard at an earlier time would pressure its suppliers, including small companies, into complying with the hazard communication requirements. OSHA would be better advised to adopt an effective date of three years for all employers for both pure substances and mixtures that are released for shipment. OSHA should accomplish this by establishing a date after which any shipment must comply with the standard.

Unfortunately, even under this simple approach, some manufacturers will not be able to comply with the standard through no fault of their own. A formulator may have to depend on a supplier for information in order to prepare an MSDS, but the supplier might not provide that material until the deadline. Although one alternative is to give formulators more time to comply than manufacturers of basic materials, the distinction begins to break down when one realizes that one company's formulation is another company's raw material. Also, employers will frequently be both producers and formulators, both suppliers and purchasers.

With this in mind, OSHA should recognize that all companies will not be able to be in compliance by the effective date and may need additional time to assimilate the information received from suppliers. In enforcing the standard, OSHA should issue warnings rather than citations in those cases where a company is trying to comply but misses the deadline due to circumstances beyond its control. This should not be taken as an argument that OSHA should be lax in its enforcement, but simply that a rigid adherence to the rules without a consideration of extenuating circumstances will punish some conscientious employers.

V. Need for Greater Flexibility

ANSI Standard Z129.1-1976 - Many companies are currently following the ANSI standard in order to communicate hazards in the workplace to their employees. To the greatest extent possible, OSHA should fashion its standard so that it is compatible with that of ANSI, so that these employers will not have to make major changes in their operating procedures.

Compliance with other statutes - Other federal statutes such as FHSA and FIFRA require labeling for consumer products and pesticides, respectively. Although OSHA does not have jurisdiction over consumer products and pesticides as such, it does regulate these substances when the same formulations are used in the workplace. In order to avoid conflict with FHSA and FIFRA, OSHA should specify that a substance labeled in accordance with another federal statute would be deemed to be in compliance with the OSHA standard. The logic of this approach is particularly apparent in the case of consumer products and industrial and institutional products with the same or similar formulations. If the instructions and warnings on the label are adequate for general consumer use, then industrial workers should be able to use the products safely. OSHA should also allow employers to rely on FHSA labeling requirements for products which are not technically consumer products, but which present the same or similar hazards.

Enforcement policy - As mentioned earlier, there are some contexts, such as enforcement of the effective date, where OSHA needs to be flexible and rely on warnings rather than citations. Another instance is where the employer and OSHA disagree on whether a particular substance is hazardous under the standard. Recognizing that legitimate differences of scientific opinion will occur, OSHA should try to settle the dispute through discussions with the employer. Where OSHA remains convinced that an employer erred in failing to consider a given substance as hazardous, OSHA should issue a warning that a failure by the employer to rectify the situation will lead to a future citation. In this way, OSHA can avoid issuing citations where an employer in good faith and with justification disagrees with a subsequent OSHA determination. Once on notice, however, the employer is bound to follow OSHA's direction or else pursue an appeal through administrative or judicial channels.

VI. Summary and Conclusion

CSMA questions whether OSHA can demonstrate a significant risk justifying a standard, but agrees with OSHA that uniformity is vitally needed in the area of hazard communication so as to avoid an undue burden on interstate commerce. Therefore, should OSHA proceed with a standard, it should seek to maximize its preemptive effect by clearly stating its intention to occupy the field.

OSHA has, however, overestimated the benefits of a standard and seriously understated the costs, particularly for small businesses.

We support the performance-oriented features in the proposal, but urge the Agency to make the substantive changes outlined in Part IV.

Finally, we urge OSHA to increase the flexibility of the proposed standard so as to allow conformance with the ANSI standard and regulations under FHSA, FIFRA, and other federal laws, and allow the settlement of differences of opinion through discussions and warnings rather than automatic citations.

CSMA appreciates this opportunity to comment on the proposed OSHA standard and is available to discuss the issues raised at greater length.

Sincerely,

Ralph Engel
President

RE/kms

Suite 1120
1001 Connecticut Avenue, NW
Washington, DC 20036

CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION

202/872-8110

PRESIDENT
RALPH ENGEL

September 8, 1982

Mr. Tom Hall
OSHA, Division of Consumer Affairs
Room N-3635
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: OSHA Proposal on Hazard Communication

Dear Mr. Hall:

The Chemical Specialties Manufacturers Association (CSMA) appreciates the opportunity to supplement the Association's written comments of May 14, 1982 and testimony of June 24, 1982 on the subject of hazard communication. We wish to clarify one point which seems to have created some confusion during the hearings.

The application of the proposed rule to consumer products presents special problems OSHA needs to consider. While consumer products used in the workplace would come under OSHA's jurisdiction, the labeling of those products would be dictated in virtually all cases by the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Consumer Product Safety Commission (CPSC) under the Federal Hazardous Substances Act (FHSA) or the Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic Act (FFDCA). This labeling communicates the necessary information to consumers, and should also serve the needs of workers without resort to material safety data sheets (MSDSs).

CSMA represents the manufacturers and formulators of household pesticide products such as disinfectants and home and garden insecticides. Before selling these products, companies must register them with EPA under FIFRA, a process which involves submission of a substantial amount of testing data as well as detailed approval of the label by the EPA product manager. EPA staff approves the exact language on the label, as well as the type size, the color contrast, and the layout of the label. This assures that the consumer will have access to all the information needed to use the product safely.

Under OSHA's proposal, a manufacturer might still have to provide an MSDS to those purchasers who will use the pesticide in the workplace. Since this is "labeling" as defined by FIFRA §2(p)(2), 7 U.S.C. §136(p)(2), EPA would have to approve the MSDS. In addition, the manufacturer would not be able to target those purchasers who intend to use the product in the workplace, and might have to include an MSDS with every package. This would lead consumers to question whether the label itself was adequate, despite EPA's extensive review. In short, extra effort would be wasted, since industry and EPA already go to great lengths to communicate all important information on the label.

A similar situation would exist with products labeled according to FHSA under CPSC's jurisdiction. Although CPSC does not exercise pre-marketing approval, the FHSA regulations explicitly set out the necessary warnings. As with pesticides, we believe there is no reason why a product whose label is approved for general consumer use should require an MSDS when used in the workplace.

We do not believe that OSHA intended these potential consequences, but the proposal leaves open these possibilities. Therefore, we urge OSHA to specify that when a product is labeled in accordance with a federal statute such as FIFRA or FHSA, this would satisfy the OSHA standard. If other agencies have established instructions and warnings to meet a standard of care adequate for general consumer use, then industrial workers should be able to use the products safely. OSHA has already recognized this principle in proposing that foods, drugs, and cosmetics labeled under FFDCA be exempt from the requirements of the standard.

In addition, we urge OSHA to allow employers to rely on FHSA labeling requirements for products which are not technically consumer products, but which present the same or similar hazards. The Department of Transportation (DOT) has provided a precedent for this approach by exempting industrial materials as well as consumer products under the category of ORM-D. DOT originally created the ORM-D category to exempt small consumer packages from regulation because their form, quantity, and packaging present a limited hazard during transportation. DOT found that the same logic justified exemption of small industrial packages. Similarly, OSHA should allow industrial products labeled in accordance with FHSA to satisfy the standard if the products' hazards are similar to those presented by consumer goods.

We appreciate this opportunity to supplement our comments. If you have any questions about the labeling of pesticides or consumer products, please do not hesitate to contact us.

Sincerely,

Ralph Engel
President

RE/kms

STATEMENT OF RALPH ENGEL

PRESIDENT

CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION

BEFORE THE

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CONCERNING

HAZARD COMMUNICATION

JUNE 24, 1982

WASHINGTON, D.C.

Chemical Specialties Manufacturers Association
Suite 1120
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 872-8110

STATEMENT OF RALPH ENGEL

PRESIDENT

CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION

BEFORE THE

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CONCERNING

HAZARD COMMUNICATION

JUNE 24, 1982

WASHINGTON, D.C.

I AM RALPH ENGEL, PRESIDENT OF THE CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION. CSMA IS A VOLUNTARY, NONPROFIT MEMBERSHIP ASSOCIATION CONSISTING OF SOME 400 COMPANIES ENGAGED IN THE MANUFACTURE, DISTRIBUTION, AND MARKETING OF CHEMICAL SPECIALTY PRODUCTS, SUCH AS: AUTOMOTIVE CHEMICALS; DETERGENTS AND CLEANING COMPOUNDS; DISINFECTANTS AND SANITIZERS; INSECTICIDES; AND WAXES, POLISHES, AND FLOOR FINISHES. WE REPRESENT A NUMBER OF SMALL BUSINESSES, WHICH FACE SPECIAL PROBLEMS UNDER THE PROPOSED HAZARD COMMUNICATION STANDARD.

TO THIS END, I AM ACCOMPANIED THIS MORNING BY MR. WILLIAM GULLICKSON, JR., THE GENERAL MANAGER OF MCLAUGHLIN GORMLEY KING COMPANY, A SMALL BUSINESS LOCATED IN MINNEAPOLIS, MINNESOTA. AFTER I HAVE SUMMARIZED CSMA'S MAJOR CONCERNS, MR. GULLICKSON WILL DISCUSS THE PROBLEMS HE WOULD HAVE AS A SMALL BUSINESSMAN IN TRYING TO COMPLY WITH THE PROPOSAL.

FIRST, LET ME STATE THAT CSMA IS COMMITTED TO THE PRINCIPLE THAT EMPLOYEES ARE ENTITLED TO A SAFE WORKPLACE. THE ISSUE BEFORE OSHA IS NOT WHETHER WORKERS HAVE THIS RIGHT, BUT WHETHER THE OSHA PROPOSED STANDARD WOULD MOST EFFECTIVELY AND ECONOMICALLY REDUCE ANY SIGNIFICANT RISKS THAT MAY EXIST. IT IS IMPORTANT FOR OSHA TO RECOGNIZE THAT INDUSTRY HAS WORKED TO CREATE A VOLUNTARY CONSENSUS STANDARD TO COMMUNICATE HAZARDS VIA LABELING, AND MANY COMPANIES ARE FOLLOWING THAT STANDARD. CSMA AGREES WITH OSHA IN TAKING A PERFORMANCE-ORIENTED APPROACH SO THAT CONSCIENTIOUS EMPLOYERS USING THE AMERICAN NATIONAL STANDARDS INSTITUTE'S STANDARD Z129.1 CAN CONTINUE TO DO SO WITHOUT HAVING TO MODIFY THEIR PROGRAMS.

PREEMPTION - IF OSHA PROMULGATES A UNIFORM, PERFORMANCE-ORIENTED SYSTEM OF HAZARD COMMUNICATION WITH NATIONAL APPLICATION, BOTH INDUSTRY AND WORKERS COULD BENEFIT. NO ONE'S INTEREST IS SERVED BY THE CONFUSING AND CONFLICTING APPROACHES BEING UNDERTAKEN AT THE STATE AND LOCAL LEVEL. THEREFORE, IT IS ESSENTIAL THAT OSHA MAXIMIZE THE PREEMPTIVE EFFECT OF ITS STANDARD BY MORE CLEARLY DECLARING ITS INTENTION TO OCCUPY THE FIELD. THE LEGAL BASIS FOR SUCH PREEMPTIVE AUTHORITY IS SET OUT AT LENGTH IN OUR WRITTEN COMMENTS TO THE AGENCY.

COST-BENEFIT ANALYSIS - IN EXPLAINING THE BASIS FOR A STANDARD ON HAZARD COMMUNICATION, OSHA MUST RELY ON REASONABLE ESTIMATES OF THE COSTS AND BENEFITS INVOLVED. WE FEEL THAT THE PROPOSAL IS DEFICIENT IN THIS REGARD. THE PROPOSAL FAILS TO PROVIDE SUPPORT FOR THE EXTREMELY HIGH ESTIMATES OF OCCUPATIONALLY RELATED CANCER AND THE NUMBER OF CASES WHICH COULD BE AVERTED

THROUGH THE ADOPTION OF AN OSHA HAZARD COMMUNICATION STANDARD. THE REAL NEED FOR SUCH A STANDARD IS TO PREEMPT CONFLICTING STATE AND LOCAL LAWS, NOT TO AVERT SIGNIFICANT WORKPLACE RISKS WHICH ALREADY ARE BEING ADDRESSED ON A VOLUNTARY BASIS BY RESPONSIBLE MANUFACTURERS. AS FOR THE COSTS, MR. GULLICKSON WILL GIVE YOU A MORE ACCURATE IDEA OF WHAT THE BURDEN WOULD BE FOR SMALL BUSINESSES LIKE THE MCLAUGHLIN GORMLEY KING COMPANY.

I WOULD LIKE TO TOUCH BRIEFLY ON SOME OF THE MAIN AREAS OF CONCERN TO CSMA IN THE PROPOSED STANDARD ITSELF. WHILE WE HAVE A NUMBER OF SUGGESTIONS TO MAKE, LET ME EMPHASIZE THAT WE DO SUPPORT THE PERFORMANCE-ORIENTED FEATURES IN THE PROPOSAL AND FEEL THAT THEY REPRESENT A SIGNIFICANT IMPROVEMENT OVER THE ORIGINAL APPROACH PUBLISHED IN JANUARY 1981.

MIXTURES - PERHAPS THE MOST SIGNIFICANT CHANGE OSHA COULD MAKE WOULD BE IN THE REQUIREMENTS RELATING TO HAZARDOUS CHEMICALS PRESENT IN MIXTURES. THE PROPOSAL CREATES THE ASSUMPTION THAT A MIXTURE IS HAZARDOUS IF IT HAS AS AN INGREDIENT A HAZARDOUS CHEMICAL AT A CONCENTRATION OF ONE PERCENT OR GREATER. THE ONLY EXEMPTION WOULD BE WHERE THE EMPLOYER HAS ACTUALLY TESTED THE MIXTURE AND FOUND IT TO BE NOT HAZARDOUS.

THIS APPROACH CONTRADICTS THE REASONING IN THE CURRENT PROPOSAL WHICH ALLOWS THE EMPLOYER IN THE CASE OF A "PURE" CHEMICAL TO ASSESS THE HAZARD BASED ON EXISTING DATA. THE PROPOSAL DOES NOT PERMIT THE EMPLOYER TO ASSESS THE HAZARD OF THE SAME CHEMICAL PRESENT AT ONE-PERCENT IN A MIXTURE. DESPITE OSHA'S STATEMENT THAT NO TESTING IS REQUIRED, THIS FORCES A MANUFACTURER TO TEST OR BE REGULATED, WHICH IS ESPECIALLY BURDENSOME FOR FORMULATORS,

WHO MAY HAVE MANY DIFFERENT PRODUCTS WITH SIMILAR FORMULATIONS. TO SUBJECT THESE FORMULATIONS TO EXPENSIVE REGIMENS OF UNNECESSARY TESTING WOULD BE EXTREMELY WASTEFUL. THIS REQUIREMENT WOULD RESULT, FOR INSTANCE, IN CHRONIC INHALATION TESTS FOR FORMULATIONS WITH VIRTUALLY NO VOLATILITY, AND ACUTE TOXICITY TESTING FOR HUNDREDS OF SIMILAR FORMULATIONS WHOSE ACUTE EFFECTS CAN BE EASILY EXTRAPOLATED FROM EXISTING DATA. ANOTHER EXAMPLE IS A HAZARDOUS SUBSTANCE DILUTED TO A ONE-PERCENT SOLUTION IN WATER WHERE THE MIXTURE IS CLEARLY NOT HAZARDOUS. THE ONE-PERCENT RULE RUNS COMPLETELY CONTRARY TO THE SCIENTIFIC PRINCIPLES OF HAZARD AND RISK ASSESSMENT. WE THEREFORE URGE OSHA TO ALLOW COMPANIES TO MAKE THE SAME EVALUATIONS FOR MIXTURES AS THEY DO FOR PURE CHEMICALS.

NARROWING THE PROPOSAL'S SCOPE - ANOTHER MODIFICATION NEEDED IS FOR OSHA TO NARROW THE SCOPE OF THE PROPOSAL. OSHA SHOULD CLEARLY STATE THAT THE STANDARD WOULD NOT APPLY TO HAZARDOUS WASTE, SINCE THE ENVIRONMENTAL PROTECTION AGENCY (EPA) REGULATES THE MANIFESTING AND LABELING OF SUCH WASTE UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT. SIMILARLY, OSHA SHOULD SPECIFY THAT WHEN A PRODUCT IS LABELED IN ACCORDANCE WITH ANOTHER FEDERAL STATUTE, SUCH AS THE FEDERAL HAZARDOUS SUBSTANCES ACT, HAZARDOUS MATERIALS TRANSPORTATION ACT, OR THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA), THIS WOULD SATISFY THE OSHA STANDARD. THIS WOULD AVOID CONFLICTS WITH OTHER FEDERAL STATUTES. UNDER FIFRA, FOR EXAMPLE, EPA TAKES GREAT CARE IN APPROVING LABELS BEFORE THE PRODUCTS ARE MARKETED, AND OSHA SHOULD RECOGNIZE THAT MATERIAL SAFETY DATA SHEETS (MSDS'S) ARE NOT NORMALLY NEEDED UNDER SUCH CIRCUMSTANCES. IN THIS REGARD, CSMA AGREES WITH OSHA'S DECISION

TO LIMIT REQUIRED DISTRIBUTION OF MSDS'S TO MANUFACTURING PURCHASERS.

Exemption for laboratories - OSHA should also exempt both research laboratories and quality control laboratories from coverage, as there is no clear evidence that laboratory workers have high injury or illness rates. This exemption would apply directly to the laboratories rather than to only the chemicals being developed and used in such facilities. As OSHA has recognized in the past, laboratory workers are highly trained or supervised by individuals who are highly trained concerning the properties and appropriate handling of chemicals. Federal involvement in this area could be counter-productive if the result is to standardize procedures and make them too rigid to allow trained experts to fashion their programs to their specific needs or divert resources away from more important activities. In addition, laboratory workers handle many different chemicals in small quantities resulting in low exposure under controlled circumstances. This makes hazard communication under the proposal especially unnecessary, impractical, and burdensome for laboratories. As with many of the other problem areas in the proposal, excessive regulation would place a greater drain on employee time in smaller companies.

Definition of "container" - We are also concerned about the inclusion of reaction vessels under the definition of "container". We strongly support OSHA's intent to delete pipes and piping systems from the definition, and recommend that reaction vessels should be excluded for much the same reasons. Reaction vessels are usually part of a closed system with constantly changing

CONTENTS AND NO EXPOSURE HAZARD TO EMPLOYEES. SMALL COMPANIES IN PARTICULAR WOULD FACE A FORMIDABLE JOB OF LABELING REACTION VESSELS, SINCE THEY ARE MORE LIKELY TO USE THE SAME EQUIPMENT FOR DIFFERENT PURPOSES. WE ALSO SUGGEST OTHER DEFINITIONAL CHANGES IN THE PROPOSAL, AND HAVE SET OUT OUR RECOMMENDATIONS IN OUR WRITTEN SUBMISSION TO OSHA.

TRADE SECRETS - IN THE TRADE SECRET AREA, OSHA PROPOSED EXEMPTING CARCINOGENS, MUTAGENS, TERATOGENS, AND CHEMICALS CAUSING SIGNIFICANT IRREVERSIBLE DAMAGE FROM CERTAIN TRADE SECRET PROTECTION. OSHA NEEDS TO CLARIFY NUMEROUS SIGNIFICANT AREAS INCLUDING: (1) HOW SHOULD THE TERMS "CARCINOGEN", "MUTAGEN", "TERATOGEN", OR "CAUSE OF SIGNIFICANT IRREVERSIBLE DAMAGE" BE DEFINED IN THE STANDARD; (2) WHETHER A CHEMICAL, MIXTURE, FORMULATION, OR PROCESS COULD LOSE ITS TRADE SECRET PROTECTION REGARDLESS OF THE INGREDIENT PERCENTAGE (INCLUDING THE PRESENCE OF A CONTAMINANT) OR EXPOSURE LEVEL, AND WHETHER OSHA WOULD EVER ACKNOWLEDGE A THRESHOLD LEVEL BELOW WHICH THERE COULD BE TRADE SECRET PROTECTION; (3) WHETHER OSHA HAS ATTEMPTED OR WILL ATTEMPT TO BALANCE THE EMPLOYER'S NEED TO PROTECT PROPRIETARY INFORMATION AGAINST THE EMPLOYEE'S NEED TO HAVE ACCESS TO TRADE SECRETS; AND (4) WHETHER AN EMPLOYER WOULD HAVE TO DISCLOSE ALL INFORMATION ON A FORMULATION OR PROCESS OR JUST THE DATA RELATING TO THE SUBSTANCE PRESENTING A CARCINOGENIC, MUTAGENIC, TERATOGENIC, OR OTHER RISK.

THE PRESENT LANGUAGE IN THIS PROPOSAL DOES NOT MAKE CLEAR THE INTENT OF THIS EXEMPTION AND MAY EXTEND FAR BEYOND ANY LEGITIMATE NEED TO MAKE TRADE SECRET INFORMATION AVAILABLE TO EMPLOYEES. WE URGE OSHA TO CLARIFY THE PROVISIONS AND REPROPOSE

THE SECTION FOR FURTHER PUBLIC COMMENT TO ALLOW THE ISSUES WE HAVE NOTED TO BE PROPERLY ADDRESSED.

IN ADDITION, OSHA NEEDS TO LIMIT ACCESS TO CONFIDENTIAL INFORMATION TO THE EMPLOYEE, HIS TREATING PHYSICIAN, OR OSHA UNDER A CONFIDENTIALITY AGREEMENT. ANY FURTHER DISCLOSURE WOULD JEOPARDIZE THE COMPANY'S COMPETITIVE POSITION, REGARDLESS OF WHETHER THERE IS A DISCLOSURE AGREEMENT CONDITIONING ACCESS TO DATA. SUCH A CONTRACT IS ESSENTIALLY UNENFORCEABLE AND IS OF PARTICULAR CONCERN TO SMALL MANUFACTURERS FOR WHOM A SINGLE TRADE SECRET MAY BE THE BASIS OF THEIR BUSINESS.

EFFECTIVE DATES - AS FOR THE EFFECTIVE DATES OF THE STANDARD, WE FEEL THAT OSHA SHOULD ESTABLISH A SINGLE DATE THREE YEARS FROM PROMULGATION AFTER WHICH ANY SHIPMENT MUST BE IN COMPLIANCE. THE DISTINCTIONS BETWEEN PURE SUBSTANCES AND MIXTURES AND BETWEEN DIFFERENT FACILITIES BASED ON THE NUMBER OF EMPLOYEES WOULD CREATE SIGNIFICANT CONFUSION. SINCE MANY SMALL COMPANIES ARE SUPPLIERS AS WELL AS PURCHASERS, THEY WOULD NO DOUBT HAVE TO ADJUST TO THE STANDARD THE SAME TIME AS LARGER MANUFACTURERS ANYWAY DUE TO THE PRESSURE OF THE MARKET.

ENFORCEMENT - HOWEVER, OSHA SHOULD RECOGNIZE THAT SOME MANUFACTURERS WILL HAVE TROUBLE COMPLYING WITH THE STANDARD THROUGH NO FAULT OF THEIR OWN. THESE WOULD BE THE COMPANIES DEPENDENT ON SUPPLIERS FOR INFORMATION WHO DO NOT RECEIVE THE DATA IN TIME TO PREPARE THEIR OWN MATERIAL SAFETY DATA SHEETS. THEREFORE, IN ENFORCING THE STANDARD, OSHA SHOULD ISSUE WARNINGS RATHER THAN CITATIONS IN THOSE CASES WHERE A COMPANY WOULD IN GOOD FAITH COMPLY BUT MISSES THE DEADLINE DUE TO CIRCUMSTANCES BEYOND ITS CONTROL.

ANOTHER ENFORCEMENT CONSIDERATION FOR OSHA IS THAT THERE WILL BE INSTANCES WHERE THE EMPLOYER AND OSHA DISAGREE ON WHETHER A PARTICULAR SUBSTANCE IS HAZARDOUS. RECOGNIZING THAT LEGITIMATE DIFFERENCES OF SCIENTIFIC OPINION WILL OCCUR, OSHA SHOULD TRY TO SETTLE THE DISPUTE THROUGH COOPERATIVE DISCUSSIONS WITH THE EMPLOYER. BY WORKING TOGETHER, EMPLOYERS AND OSHA SHOULD BE ABLE TO RESOLVE DIFFERENCES MORE QUICKLY AND LESS ACRIMONIOUSLY THAN BY OPERATING THROUGH A FORMAL ADVERSARY PROCESS. WHERE OSHA REMAINS CONVINCED THAT AN EMPLOYER ERRED IN NOT CONSIDERING A GIVEN SUBSTANCE AS HAZARDOUS, OSHA SHOULD ISSUE A WARNING THAT A FAILURE BY THE EMPLOYER TO RECTIFY THE SITUATION WILL LEAD TO A FUTURE CITATION.

CONCLUSION - I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY AND SUMMARIZE CSMA'S CONCERNS. I WOULD NOW LIKE TO CALL ON MR. WILLIAM GULLICKSON, JR., THE GENERAL MANAGER OF MCLAUGHLIN GORMLEY KING COMPANY, WHO WILL DISCUSS HIS CONCERNS AS A SMALL BUSINESSMAN. AFTER THAT, I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE ABOUT CSMA'S POSITION.

Comments on Proposed Bill S.1670

Dr. Elizabeth M. Whelan
Executive Director
AMERICAN COUNCIL ON SCIENCE AND
HEALTH
47 Maple Street
Summit, New Jersey 07901

I am Dr. Elizabeth M. Whelan. I reside at 3109 Ocean Blvd. in Brant Beach, New Jersey. I hold a Master's Degree in Epidemiology and Public Health from the Yale School of Medicine and Master's and Doctoral Degrees from the Harvard School of Public Health. I am the author of fifteen books including Preventing Cancer (WW Norton, 1977) and numerous professional and popular articles on the subject of the relationship of cancer to the workplace and the environment. Currently I am Executive Director of the American Council on Science and Health (ACSH), a consumer education association directed and advised by some 80 physicians, scientists and policy advisors, and dedicated to the promotion of balanced, scientifically based evaluations of chemicals, the environment and human health.

The American Council receives 70% of its $750,000 budget from individual consumer contributions and grants from noncorporate foundations. The balance of the budget is derived from a variety of small grants from U.S. corporations ranging from Allied Corporation to Continental Insurance.

I strongly object to the contents of S.1670 and I feel it should be rejected. While I am in favor of providing useful information to the consumer, on food and drug labels, for example, I object to providing information which will only serve to confuse and/or unnecessarily alarm the consumer.

American consumers are poorly educated on the subject of chemistry. Chemical names make them uneasy, simply because they "sound funny." They have heard a great deal about chemicals causing cancer -- but don't really know what that means.

First, while there are a number of cases of known occupational carcinogens (like asbestos, vinyl chloride and others), occupationally-

induced cancers are relatively rare. Current estimates from the scientific community suggest that workplace carcinogens account for no more than 1% to 5% of all cancer deaths in the United States. This percentage is likely to fall over the next decade given that intensive efforts in the area of prevention commenced during the 1960's. While there is an obvious need to monitor for the presence of potentially dangerous chemicals in the workplace, informing workers of each and every chemical being used in processing is not the way to accomplish that goal. Monitoring exposure levels and planning strategies for worker protection should be the job of a scientifically trained individual.

To inform a worker that a strange sounding chemical is used in processing is about as useful as informing him that the potatoes he eats for dinner contain arsenic (a naturally occuring toxin and human carcinogen at high doses). This is a classic case of a little knowledge being a dangerous thing.

Second, the proposal that the community be aware of chemicals being used in neighborhood plants seems to be based on the premise that the whole community is at risk of effects of the industrial chemicals. I know of no evidence that this is the case.

In conclusion, I feel that this bill would only further the dilemma of what I call "chemical-cancer phobia". One might argue that while the bill might not help the problem of cancer in New Jersey, it wouldn't hurt -- I believe that, in fact it might do great harm. First, the continued emphasis on occupational chemicals as a cause of cancer only further serves to distract the citizens of New Jersey from known causes of cancer, particularly cigarette smoking which accounts for approximately one third of all cancer occuring this year.

The problem of "cancer phobia" seems particularly rampart in New Jersey given its unfortunate designation of "cancer alley." The designation apparently was derived from an analysis by the National Cancer Institute which calculated mortality trends in every state during the period 1950-1969. New Jersey ranked high in cancer mortality for a number of different body sites. However, a closer analysis of the data from New Jersey, including the most recent mortality information clearly shows that New Jerey has approximately the same cancer death rate as does any urbanized area.

The most dangerous aspect of S.1670, however, lies in its ability to distort health priorities. The few rare carcinogens of occupational importance are dwarfed in comparison to the well-known risks due to smoking -- alone responsible for nearly 325,000 premature deaths each year. In addition, smoking increases the cancer risk of worksite agents like asbestos by at least threefold.

Furthermore, in terms of overall job-related health risk, new evidence indicates that 40% of all occupational fatalities are directly caused by vechicular accidents involving trucks, taxis, cars, trains and planes. With 50,000 annual deaths attributed to on and off the job accidents, the current cancer focus on occupational health and safety laws is callously negligent in light of the stunning death toll due to job-related accidents.

Worker protection priorities have thus been aborted entirely by the S.1670 proposal. Though no doubt well intended, S.1670 is not the kind of environmental legislation that New Jersey workers can afford.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
THE TOWN OF IRVINGTON, NEW JERSEY
MUNICIPAL BUILDING • IRVINGTON, N. J. 07111
Anthony T. Blasi, Mayor

LEPHONE 372-2100
J. FERRAIOLI, DIRECTOR

OFFICE HOURS, 8:00 TO 4:30
MONDAY TO FRIDAY

Testimony on the Right to Know Legislation

Historically, the Health Officials of New Jersey have been leaders in the fight for the Right to Know. Legislation enacted in the Public Laws of 1947 and thereafter required labels on food, drugs and cosmetic devices. This, in effect, was the consumers right to know about these commodities. In 1972, again legislation was passed allowing the consumer the right to know about the sanitary conditions of food facilities. This legislation was enacted as Chapter 12 of the New Jersey State Sanitary Code.

I believe, therefore, it is inherent in my profession geneology to give wholehearted support to this proposed legislation and to provide this testimony on its behalf.

Let us consider why it is necessary for health professionals to support this bill. First of all, the National Institute of Occupational Health and Safety estimated an annual toll of some 390,000 disabling occupational diseases resulting in 100,000 deaths per year. None of these are accidental deaths. This reflects a rate of death twice that faced by United States troops in the Viet Nam conflict. The Bureau of Labor Statistics, U.S. Department of Labor in 1979, showed 149,000 illnesses related to occupation. Diseases of the lung accounted for 1.1%. poisonings for 4%, 9% for respiratory illnesses due to toxic agents, and 15% to traumas, 10% due to physical agents, 46% due to skin diseases, 16% due to all other factors. They also show a total work days lost of 906,000 for these total illnesses. Accredited agencies such as the National Cancer Institute, the National Institute of Environmental Health Sciences, National Institute for Environmental Safety and Health, and the International Agency for Research on Cancer all expressed opinions that cancer has environmental causes. In 1977, a publication by the National Institute of Occupational Safety and Health entitled "The Right to Know", documented that in 70% of cases of worker exposure, workers in petro chemical areas had no idea of what chemicals they were exposed to and industry failed to divulge such information.

It is realized that there are many stresses in the workplace, such as heat, high and low temperatures, radiation, mechanical stress and sound pressure, chemical exposures, dusts, fibrous glasses, heavy metals, gasses, etc., etc. The most classic cases of workplace hazards are exemplified in the 1962 study by Dr. Irving J. Selikoff of Mount Sinai School of Medicine and Dr. E. Cuyler Hammond of American Cancer Society. Their study showed after twenty years since first exposure some 632 asbestos workers with an anticipated 195 deaths (due to standard mortality rate) had, in fact, exceeded that

by 58 deaths for a total of 253 deaths due to asbestosis and asbestos related cancer. In a similar study, Paterson asbestos workers had seven times the expected death rate from lung cancer and twice as many deaths from gastro-intestinal cancer, all attributed to the materials that they worked with.

Exposure to industrial hazards transcends the workplace and can often pose a public health as well as environmental hazard. Dr. Selikoff has shown in many studies of asbestos workers how this fiber was spread to household members by work clothing containing residue from the workplace. The results was an increase in mesothelioma among the families of asbestos workers. ~~these lines~~. Mesothelioma also occured among laundry workers handling clothing sordid by asbestos workers. Another study of some 326 relatives of asbestos workers with first exposure 25 to 30 years ago showed, through x-rays, that 35% of those relatives have asbestos related diseases. Four suffer with mesothelioma. In other studies, wives of vinyl chloride workers have higher miscarriage rates and stillbirth rates than the national average. Higher rates of lung cancer among men and women in a Montana copper mining and smelting area of various cities are attributed to the arsenic from these processes. Cases of lead poisoning have been noted among family members of junk yard workers who handle car batteries. There are other documented cases of such industrial hazards causing illness to people whose only exposure to the substance is through that of a family members who works with these industrial contaminant.

The environmental consequences of industrial materials has been all too apparent and when one names such places as Love Canal, Chemical Control, Kem Buc and Jackson Township, we become quickly reminded of how polluted our environment has become. The Environmental Protection Agency has identified 638 chemical dumps in the United States and labeled those as posing imminent public health hazards. It is estimated that 30 to 40 million tons of hazardous waste and hazardous materials are produced and 80% to 90% are disposed of unsatisfactorily according to the Environmental Protection Agency.

The only way that we can safeguard ourselves against these dangers is to be aware of what it is ~~you~~ are handling. What precautions we must take to protect ourselves and our environment and what, in fact, we need to do to limit the effects should we become exposed.

The National Safety data sheet approved by the U.S. Department of Labor is a recognized means of providing this type of information. however, this may or may not be available in the workplace and if it is available it may not be readily available to the workers. Education of the workers as a preventive measure has been advocated in the 1981 pamphlet by the Soap and Detergent Association entitled "The Prevention of Occupational Skin Diseases." The Right to Know Legislation is the means of assuring the workers education.

A seventeenth century physician, Bernardino Ramazzini (the father of occupational medicine) stated in his credo some 275 years ago that "medicine like jurisprudence should make a contribution to the well being of workers and see to it that, so far as possible, they should exercise their calling without harm." He also stated, "Tis a sordid profit that's accompanied by the destruction of health."

In conclusion, I ask therefore the legislators, the physicians, the public health officials, the workers, the industry itself to join in this fight with the Unions and the workers to guarantee the passage of this 'Right to Know' legislation. To pass this 'Right to Know' bill would guarantee the public's health ~~in~~ and well being whether in the workplace or in the community.

Respectfully submitted,

John J. Ferraioli, H.O.
Director
Irvington Department of Health
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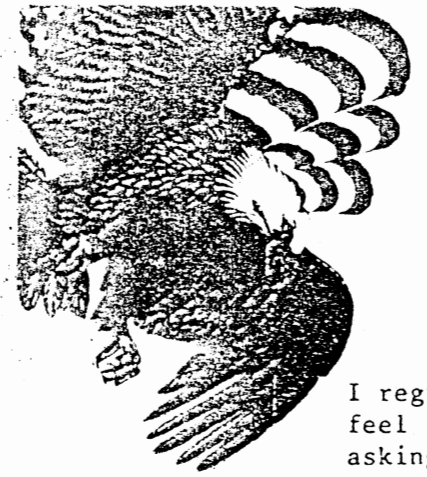
JJF:ejf



C.W.A.
STATE WORKERS UNION
LOCAL 1037

I regret that I am not available to address this group in person. I feel that the issue of the "Right to Know" is so important that I am asking Charles Lee to read my statement to you.

Recently I went on a leave of absence from my job to work for CWA full time. Prior to my leave, I worked at the New Jersey Job Corps as an instructor.

On July 22, 1982, a 19 year old student was taken from Job Corps to Mulenberg Hospital. She arrived at the hospital in a comatose state. On July 28th the young woman died.

July 29th the director of the Job Corps Center held a meeting with students and staff members and told them that the student died of "massive heart failure". Later the young woman's roommates told me that the student involved had been sick for sometime. They told me that she had a high fever and was vomiting and had in fact begged hours earlier to be taken to the hospital. They also told me that the night that the student was taken to the hospital,they were given medication and were not told what it was.

After consulting with representatives of CWA and several doctors it became apparent that the student had not died of "massive heart failure" but of meningitus.

On July 30th CWA verified that the student died of meningitus. The director of the center still refused to disclose thenature of the student's illness. On August 2nd, only after the public was notified through the written news media, the director of the center admitted to students and staff that they had been exposed to a communicable disease.

Not only am I in favor of the Right to Know legislation as it stands now, but I feel that it must be broadened to include communicable diseases. Essentially, any potential danger to workers that management is aware of, must be disclosed. The management at the New Jersey Job Corps risked the health and safety of workers and students in order to avoid embarrassing questions. Presently, the law condones this action. I hope that you will see your moral obligation to pass this bill and that you will each take a stand to protect the safety of workers through the state of New Jersey.

Hetty Rosenstein

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