

PUBLIC HEARING

before

SENATE ENERGY AND ENVIRONMENT COMMITTEE

on

COMMUNITY RIGHT-TO-KNOW AND CHEMICAL SAFETY ACT

Held:
April 30, 1985
Room 114
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Daniel J. Dalton, Chairman
Senator Catherine A. Costa, Vice Chairwoman
Senator Peter P. Garibaldi

ALSO PRESENT:

Mark I. Connelly
Office of Legislative Services
Aide, Senate Energy and Environment Committee

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SENATOR DANIEL J. DALTON (Chairman): This is a public hearing on the Community Right-to-Know and Chemical Safety Act. Joining me is Senator Cathy Costa from Burlington County, and I suspect the other members of the Committee will be coming in and out as the day progresses.

I have an opening statement I would like to read, and then, if I may, I would like to outline some basic ground rules for today's hearing.

The proposed legislation which is the subject of today's public hearing is a direct result of the United States District Court's ruling on January 3, 1985 holding that the 1983 New Jersey Worker and Community Right-to-Know was preempted insofar as it applied to the manufacturing sector by the hazardous communication regulations adopted by the Federal Occupational Safety and Health Administration.

In his ruling, Judge Debevoise preempted both the worker right-to-know and the community right-to-know components of the act because they were, in his words, "inextricably intertwined." But, the Judge further noted that if the Legislature were to enact community right-to-know legislation addressing "the non-workplace objective," such legislation would not be preempted by OSHA. Judge Debevoise encouraged the Legislature to untwist the pretzel, so to speak, and that is the purpose of this legislation.

Sections 1 through 26 of this proposed legislation thus established a community right-to-know program for the manufacturing industries. These sections are virtually identical to the community right-to-know sections of the 1983 law, but they are now framed in a non-occupational context. If enacted, these sections would recapture a substantial portion of New Jersey's Right-to-Know Program which was lost in the wake of the United States District Court's decision.

This bill would require manufacturing industries to report those hazardous substances present at their facilities to the Department of Health, to report to the Department of Environmental Protection basic information concerning storage, treatment, and emission into the environment of hazardous substances, and to provide this information to local fire and police departments and county health departments.

Members of the public would be able to obtain this information at county health departments or from the Department of Health in Trenton. The bill has been drafted in such a way as to allow both the Departments of Health and Environmental Protection to use the regulations and lists of hazardous substances they developed to implement the original act and would, therefore, entail little additional work or expenditure of funds.

The bill also requires, as did the 1983 law, manufacturing industries to label containers with the chemical identity or hazardous substance contained in them, and later with the chemical identity of all substances in the container. I believe that container labeling is important for emergency response personnel, who must respond to emergencies involving hazardous substances. I also believe that based upon this rationale, the labeling provision in this bill comports with the Debevoise ruling.

The bill also makes a number of amendments to the 1983 law, which is still in effect for non-manufacturing industries. First, these amendments would both subtract and add to the non-manufacturing employers covered under the act.

I would like, if I may, to skip a recitation of those industries which have been included in or out, and allow people just to review the bill to make that determination for themselves.

In carefully examining the non-manufacturing CITCO group numbers, I also determined that certain industries which were not covered under the act when it was enacted, should be covered. Again, I would leave you to read the bill and to make that determination for yourselves.

The second major amendment to the existing law would remove the partial exemption from compliance with the provisions of the act accorded research and development laboratories. As a review of the legislative history of the act shows, research and development laboratories were at one point exempted from coverage under the act, then covered under the act, and finally partially exempted from the provisions of the act. During the time since the act took effect, I have had time to rethink the issue of special treatment for research and development laboratories, and I am now proposing that these

laboratories not be treated differently than other parts of the facility of which they are a part.

The third major change to the existing law which I am proposing would remove the fee imposed on industries covered under the act, and would fund the program through an appropriation from the General Fund. When the legislation was developed in 1983, it became clear that the Departments of Environmental Protection and Health would both require funding above their current levels to carry out their responsibilities under the act. The choice at that point, obviously, was between an appropriation from the General Fund or the creation of a new source of funding. Based on what were then tight budget constraints and the recommendations of the Department of Environmental Protection and the Department of Health, the Committee decided to fund a new program through a fee imposed on businesses on a \$2.00-per-employee basis.

While I obviously supported the imposition of the fee and the act, I never felt philosophically comfortable about it. I realize that a fee structure is often necessary for the processing and review of permits or other applications, or that special funding sources are often necessary for specific purposes. However, I believe that any major State program -- and I believe the Right-to-Know is a major State program -- should be funded by an annual appropriation from the General Fund which is approved and reviewed by the Joint Appropriations Committee of the Legislature. In addition, many businesses, especially small businesses, have felt that complying with the act within itself was a heavy burden, and they resented the added burden of the fee. The entire New Jersey Right-to-Know Program, both the original act and the proposed legislation, should cost about \$3.4 million per year, an amount which should decline after the first several years of relatively high start-up costs. I believe that this program, at such a relatively modest cost, can be funded from the General Fund.

I will also propose another significant change from both the 1983 law and the proposed legislation for the manufacturing sector. Both contain what came to be called two years ago "a universal labeling provision." This provision, which was due to take effect in September, 1986, would require the labeling of containers to identify many

substances which were not on any hazardous substances list developed by either the Department of Environmental Protection or the Department of Health. I still believe that ideally all substances should be labeled for many of the reasons which were discussed two years ago, but I have decided it would probably be unworkable for a single state to require universal labeling. I believe there is a compelling reason to require the labeling of substances which the State has deemed to be hazardous, but I also believe that except for those industries which manufacture and package substances in containers in New Jersey, most industries would find it incredibly difficult to comply with universal labeling. Therefore, at some point as this bill moves through the Legislature, I will propose that the universal labeling provisions be modified. Some may argue that this will weaken New Jersey's Right-to-Know Program, but to them I reply that as a legislator, I have a responsibility to develop laws which I firmly believe can be implemented and obeyed. I have changed my mind on the issue of universal labeling and, as I have said, I will be seriously looking at alternatives.

This concludes my statement. What I would like to do is work the hearing this way: We have attempted to reach out to both proponents and opponents of the bill, and I have set aside 90 minutes for both the proponents and opponents. The Committee has recently, I guess, established this type of format via Senator Lesniak's pesticide bill. We found it to work fairly well. We would like to get out of here, if possible, at approximately 3:30 this afternoon. I am going to take a very short lunch break, also. The way the hearing will be conducted is, again, we will allow the administrative departments to come up to testify, and then we will ask opponents and proponents to utilize their 90 minutes. There are several people here to testify who do not come under the classification "proponent or opponent." I don't know what the heck we are going to do with them, but we are going to allow them the opportunity to speak. We are going to try to make sure that their testimony is as concise as possible.

I would like to get the hearing started by calling on Mr. Tom Burke from the Department of Environmental Protection. Tom, do you have a group that you would like to bring up with you?

THOMAS A. BURKE: Yes, Senator. With me today is Hank Garie, my Assistant Director, who is in charge of implementing much of the Right-to-Know. Also, as resource people, Ed Stevenson and Caron Chess will be here throughout the day to answer any questions that may arise.

First of all, I would like to thank you for enabling us to be here. As a little bit of *deja vu*, I guess, almost three years ago, DEP appeared before you and pledged our strong support for the Community and Worker Right-to-Know. Here again today I would like to express the Department's deep-seated support for this important piece of legislation. We feel -- and I personally feel -- that this Right-to-Know bill is perhaps one of the most important public health bills that I have seen. To make it work, we need the manufacturing sector.

I would like to try to offer today -- since I feel we have expressed our support for all of the basic technical points throughout the bill -- some practical know-how on what it has been like to implement this and what it means to an environmental decision-maker to have this kind of information. Imagine, if you will, being charged with the overall responsibilities of the Department of Environmental Protection, protecting air and water, identifying dump sites, setting standards for drinking water, and not having any information, or having limited information about the sources of environmental contaminants. This is basically the situation we were faced with back in the mid-1970s, when the whole toxic movement became such a vital part of environmental protection in New Jersey, as well as in the rest of the nation. I feel the Right-to-Know is a vital part of our decision-making powers and our ability to make intelligent decisions to prioritize things. Such environmental programs as our clean-up efforts, as the new A-280 Safe Drinking Water Act, really depend on us having a thorough knowledge of the sources, emissions, and uses of these hazardous substances and their potential impact on the environment. As you know, under the Safe Drinking Water Act, we recently released results which showed that although most of our water supplies are clean, there are hazardous chemicals present in a given percentage of our drinking water supplies. Part of our responsibility is to understand the impact of that and to come up with standards, but

to also prevent that kind of thing from happening. Obviously, to do this you need to know about the sources.

So, the overall program of DEP in our efforts to combat toxics in the environment really depends on a good data base to make intelligent decisions. Take away information about the sources, emissions into the air, discharges into the water, in this comprehensive cross-media approach, and you take away a fair amount of our ability to understand how to approach the problem. What is important about Right-to-Know is that it is a preventive bill. It allows us to plan rather than react. Much of our environmental program now is making up for past problems, and environmental cleanup is too late. With this kind of information in hand, we are allowed to see problems, perhaps, before they arise. Right-to-Know gives us this mechanism for tracking and understanding.

Now, to put it in perspective, I would like to talk about the roots of the Right-to-Know, really, in DEP, and that is the industrial survey. As you know, much of the Right-to-Know Program is modeled upon a program that was started in 1978 by DEP called the Industrial Survey Project. This project, although at that time a research project with a staff of five, undertook, for really the first time, a careful evaluation of the sources, emissions, discharge, and use of a selected group of hazardous substances throughout New Jersey. Since then, that program has grown to be a vital part of our enforcement activities and our decision-making, and has also served as a model not only for our Right-to-Know, but in my contacts with other states, as a model for any number of their programs because they realize that effective control of health hazards in the environment needs this kind of information.

Some examples of the uses we have had for that data, which are now a very important part of our environmental program-- We have used that information to identify a good number of our cleanup sites, our hazardous waste dump sites, because we asked a simple question of industry: "Where did you put things?" We didn't really have a way to do that. What appear intuitively as some very simple questions, such as where does it go and how do you discharge it through the permitting system and the existing Federal laws, did not provide us with that information. So, the industrial survey in this right-to-know approach

has been the backbone of our cleanup program, as well as some of our more specific investigations, such as our dioxin investigation, that historical profile which allowed us to identify those types of hazardous sites.

In addition, as we move forward into new programs, such as the Safe Drinking Water Act, it will become an important cog in identifying potential sources of drinking water contaminants and ground water contaminants, so that we can prevent problems before they arise.

Now, I would like to try to give an overview of what it has been like running Right-to-Know since the implementation of the bill, which I think is important for the Committee to understand. First of all, although the industrial survey has been important, Right-to-Know gave us certain ingredients that were vital to making this work and, also, added a degree of protection which New Jersey clearly did not have. I do not know of any states in the country which can boast of the kind of protection that we would have under this bill. For instance, although we had a very comprehensive data base on 155 substances, we didn't really have an approach to emergency response that we needed. Under the Right-to-Know, obviously, we will have a whole wealth of information which will enable us to react to environmental accidents in a much better way than we have been able to. I have only to point to the tragedy in Bhopal, and also to New Jersey, where we average, probably, one incident per week of a release of a hazardous or toxic substance. It's obvious that an environmental decision-maker must have this kind of information to react to. The initial industrial survey did not include things like methyl isocyanate. Under your new legislation, the expanded emergency services survey will allow us to have this kind of information. From a practical point of view, this has been a broad expansion of the survey, but as the manager I have to tell you it has been smoothly implemented and has had broad support from the fire fighting and emergency response community. It is, perhaps in the acute sense, the most lifesaving provision of Right-to-Know, and it has certainly been important to us.

I would also like to talk about the development of our data base and the implementation of that. Obviously, we have to push a lot of paper to make Right-to-Know work. We have been able, through the

program, to establish a computerized data base which allows us to do exactly what this bill should do, and that is to get the information to where it is needed, not in file cabinets, but on computer data base where we can analyze it, quickly approach that data, and disseminate it. This has been successful, and we now have in place a sophisticated computerized data base which will allow us, I think, with the expansion, again, into the manufacturing sector, to smoothly implement our responsibilities under Right-to-Know. This will give us a statewide municipal level data base so that we can observe chemical uses and identify problems before they become major. Not only that, it will enable us to easily provide to the communities the types of information they need to do their planning or to make intelligent decisions.

I might also add that although with the preemption there has been some confusion about who is covered and who is not covered -- and most of our efforts have been geared up toward clearing up that confusion and reaching out to affected groups -- compliance has been excellent. We have had any number of groups comply with the bill very well. I submit to you that if a small auto mechanic shop has no problem filling out the forms, then, obviously, the manufacturing sector will have no problem filling out the forms.

Now, as you know, we submitted our suggestions to you on some of the SIC codes we feel should be included. We had a certain amount of flexibility under the initial legislation which enabled us to target certain groups to get information. We would somehow like to maintain that flexibility. For instance, one of the groups which was perhaps most vocal in bringing to our attention their concerns about Right-to-Know was the school community. We were able to do a targeted survey of primary and secondary schools to see just what kinds of hazardous substances might be there. In fact, our survey showed that elementary schools perhaps need not be covered by Right-to-Know, but, indeed, in secondary schools you do have the presence of hazardous substances and we would like to see them covered. This is the kind of flexibility that allows us to target certain groups to answer these questions when they arise. We think that is an important part of our information gathering and research component of Right-to-Know to make it work.

I would like to avail myself to you to answer any questions you might have about implementation and ask you if you would like us to go through the simplicity of compliance with Right-to-Know. Hank Garie is prepared. We have handed out a Right-to-Know package and forms just to demonstrate that this is not the cumbersome, impossible, bureaucratic form that is hard to understand, but, in fact, is something that has been proven doable and something that we can manage.

SENATOR DALTON: Okay, thank you. Is that in your testimony?

MR. BURKE: Would you like us to run through the form?

SENATOR DALTON: Why don't you do that. I think that would be helpful to the members of the Committee.

MR. BURKE: I think it is important to realize the simplicity of the approach and, also, as you see, the practicality.

HENRY GARIE: Okay. One of the real important features of trying to understand our approach to the Right-to-Know survey process is to take a look at the intent of DEP gathering information. We have two primary objectives through our Right-to-Know survey process. The first of these is to gather information for emergency response personnel and to gather the types of information we feel they will need to be better prepared to respond to emergencies and to protect their health as they, in fact, do respond to these emergencies. We have accomplished this objective through what we term the "Emergency Services Information Survey," or the ESI Survey. Now, the second major objective, as Tom as aptly pointed out, is to gather information on the environmental release and use of specific toxic substances and to gather information to help us to understand potential community and public health impacts. This is being achieved through what we term the "Environmental Survey."

Now, if you take a look at the package you have in front of you-- I would like you to just take a look at the package that is colored blue. It is labeled the ESI Survey. You will see that our intent here is to gather very practical and useful information. The other important point is to look at the end recipients of the information, those being the local police and fire departments. So, first of all on the form, you will see that we are asking for certain types of information, a description of the hazardous material. The ESI

Survey is based upon the U.S. Department of Transportation's Hazardous Materials Table. This is a table that is very commonly used by fire fighters and police departments, and it consists of approximately 1,500 substances that have the potential for some sort of acute health or safety type of impact.

So first we ask for a description of the material; then we ask for the hazard class of the substance, whether or not it is an explosive, a flammable, or what have you, and an I.D. number. This I.D. number is the U.N. identification number. If you look through your packet, you will see that a copy of the DOT list is included. Basically all of the information to this point is available directly off the included table.

Now, the types of information we really feel are important to the fire fighters include hazard class information and then some basic information about the types of container that a material is stored in, whether that be an aboveground storage tank, an underground storage tank, or what have you, whether the material is present as a mixture, and very importantly, an estimate of the range of inventory of a particular substance that is at the facility. This type of information, from what we have seen on the surveys we have had returned to us, is readily available. As I mentioned before, if you look at the bottom of the survey form, we are requesting the employer to mail copies directly to the police and fire departments, as well as to DEP.

Okay, let me now move into the Environmental Survey. That is included as the black printed package you have. What we have done with the Environmental Survey is break the survey process into two parts. There is a real logical reason for this. Under the law, we are required to really ask a lot of detailed information on particular hazardous substances. These substances are a list of 155. The types of questions that can be asked include emission rates, disposal practices, and discharges, and can really require quite a bit of effort on behalf of the employer. What we have tried to do here is to first develop a screening mechanism, and this is denoted as Part 1 of the Environmental Survey. If you look at this form, it is very similar to the ESI Survey. It only asks for basic information. This Part 1 of the Environmental Survey accompanies the ESI Survey and goes to each

covered employer. The employer then fills out the basic types of information -- the name and the CAS number -- as well as those questions involved with container types and inventory ranges, and returns the form to DEP where we do a scientific review of the Part 1 form. Based upon those results, we determine whether or not an employer should receive a much more detailed Part 2 form, of which you have a draft in your packet.

This Part 2 form is where we really gather the detailed information on emissions and discharges. This is the type of information that is going to enable us to develop a data base on the use and environmental fate of toxic substances. We felt that the Environmental Survey Part 2 was not necessarily needed for each covered employer. Therefore, Part 1 gives us the mechanism to screen out and to target the Environmental Survey Part 2 to the employers we feel should really provide us with detailed information. Then, the Environmental Survey is returned to DEP, and it also goes to the county health departments.

I have a little table that might help to clarify this for you. One of the potentially hardest things to understand about our approach to Right-to-Know is just where information ends up. I think this really clarifies it (referring to table he is holding). For the ESI Survey, the employer sends copies of the form directly to DEP and directly to the local police and fire departments. The information is, in fact, currently available to the public through the Department of Environmental Protection. Again, I would ask you to take a look at the intent of the ESI Survey. The intent is to give that information directly to emergency response personnel.

Now, with the Environmental Survey, the employer sends the form directly to DEP and directly to their county health department, and then it is available to the public either through the county health department or through the State.

That pretty much summarizes our approach. Again, I would like to stress the intent of our approach, as well as the civil nature of asking for practical information on the survey forms themselves.

MR. BURKE: I would just like to close by saying that this bill is the cornerstone of a new preventive approach. For the past

decade, through environmental programs, we have been playing catch-up for past environmental problems. This provides us with a way to have an informed citizenry and a preventive approach. It really marks a departure from our old ways. With this we can have intelligent environmental planning and decision-making, and we feel, obviously, it is an important part of our future in New Jersey.

SENATOR DALTON: Thank you very much, Tom. Just for everyone's knowledge, we have been joined by Senator Garibaldi, who is a member of the Committee from Middlesex County.

Are there any questions from the members of the Committee? Senator Costa, do you have any questions?

SENATOR COSTA: Nothing more than that I like their survey. I think it is a very nice, simplified version, and I think it will be very productive.

MR. BURKE: Obviously, we worked very hard with the Right-to-Know Council to make it as simple as possible, but yet to provide us with the important information as necessary.

SENATOR COSTA: Even I can understand that, and I am not a chemist.

SENATOR DALTON: Tom, if I may, I would like to ask you to address yourself to some of the key provisions in the above. The first key provision, obviously, is labeling -- the labeling of hazardous materials. Now, everyone's lawyer has an opinion on this. What does your lawyer say?

MR. BURKE: I'm not my lawyer; I'm my epidemiologist.

SENATOR DALTON: Okay.

MR. BURKE: Obviously, I do have an opinion on this. I feel that the hazards of the substances are not always known beforehand. There is a long history of this in public health. With much debate, you can think of asbestos or dioxin, or many of the things to which people have been exposed, and at the time, the knowledge, the toxicological data base wasn't there. I am experiencing this firsthand right now trying to establish standards for drinking water. The fact is, we don't know much about the chemicals that are in our environment. I think labeling provides us with an important public health tool to enable us to understand who is exposed to what, even though we may not know the ultimate public health end point.

So, as an epidemiologist, I obviously wholeheartedly support "universal labeling." As a practical manager of a large environmental program, I understand the difficulties with that; however, I feel that jointly we can work through many of those difficulties and provide the type of knowledge which our public health practitioners in New Jersey may need to understand occupational and environmental disease. One of our biggest problems in environmental protection right now is not being able to measure the large majority of the compounds we are exposed to in our environment. We know so little about these compounds that even just to know the name is often the first critical step in understanding the potential impacts.

SENATOR DALTON: One of the concerns which I am sure will be raised is the bill's treatment of research and development facilities. What are your thoughts about those facilities being included in the new bill?

MR. BURKE: Well, obviously, we support the bill being as comprehensive as possible. Having spent -- and I'm sure Ed Stevenson or people who have been in these facilities will address this -- a good deal of time in facilities existing around the State, or even in my own training having spent a lot of time in labs, there is a potential for exposure and there is a potential for hazard and contamination at these facilities. However, once again on the practical side, there are very often practical difficulties in the research and development mode or the research part of DEP, which would make it more difficult to comply. But, we very much support the inclusion.

SENATOR DALTON: One of the important things, and I'm glad you brought it up, is the whole issue of compliance. That is going to be, and will continue to be, a focus of this Committee, assisting people with compliance, or making sure that the apparatus is in place to ensure effective compliance.

You mentioned the fact that you push a lot of paperwork around in ensuring compliance. If you talk to small business people, they will also tell you that they push a lot of paperwork around. One of the concerns I have, as you become a real lead agency on this whole issue under this new program, is the need to reach out to assist people in compliance. One of the concerns that has been raised again, and

again, and again to me was that under the old program -- I hate to call it old, let's say the previous program -- there was a real problem, particularly with small- and medium-sized businesses attempting to obtain information as to how to effectively comply, from, "The 800 lines are always busy at Health" to "I have to go out now and hire a specialist -- a chemist -- to comply with this bill."

The concern I have, particularly with small- and moderate-sized businesses, is that we in State government have to do a much better job in this whole area. I would like you to give me your comments about the possibility of establishing a unit, whether it be under you or through the Department, that would literally go out, possibly on a contractual basis with the private sector, to set up services to help people to comply with the bill.

MR. BURKE: I think that is a very important question; it is a critical issue in the successful implementation. Although from the Industrial Survey we have some experience with visiting facilities, sitting down with plant managers, and going over and helping them to fill out the forms, I can honestly say that the major part of our implementation has been the educational part, answering the questions and the doubts, and meeting with different groups covered by the law to try to explain the program to them. Obviously, the successful implementation will need that kind of a focus. I don't know if it was possible to anticipate the kind of manpower needed to do this. I think one trip down a quarter mile of an industrial corridor in New Jersey, with the variety of businesses and the types of complexities-- We'll let you know, though, that we need to have that kind of a specialized approach. So, I would support that. In fact, we have done just that and have spent a good deal of our time -- the majority of our manhours -- since implementation of Right-to-Know, in the kind of educational process that is needed.

On the other hand, I don't think that things have been so complicated that we haven't been able to have that accomplished. We have seen through all of the groups covered that you can successfully approach that and get the good information you need.

SENATOR DALTON: What do you think is a proper approach to this whole outreach to assist people and employers in complying?

MR. BURKE: Well, because of the somewhat different approaches of the Department of Health and DEP, I think we would have to sit down and kind of agree to an approach that would help both sides of that. However, our experience at DEP has been to be there, to make a plant visit, to do the walk through, and to verify the information, in addition to being available on the other end of the phone to walk someone through a form. It is not all that difficult when you walk through it; however, it may be difficult to identify certain situations at a facility, and I think we should be available to make the visits to do that.

SENATOR DALTON: What type of manpower do you think you will need in order to accomplish that?

MR. BURKE: It is really hard to project. I know that probably better than half of the staff is doing this kind of informational program now, but you also need engineering staff to understand processes and emissions, and to provide that kind of information. I could provide you with a more accurate estimate if we would be able to kind of sit down with the information we have and project.

SENATOR DALTON: Yes, I think that is what I would like you to do. Another concern I have is-- I appreciate your willingness and the Department's willingness to really get out, roll up your sleeves, and assist people in compliance. One of the things that was occurring, however, throughout the State, was that literally there weren't enough of you to go around when the compliance deadline came. I would really like you to take a detailed look at how we can make compliance much more effective. In other words, you can assume that many of the employers in New Jersey who are covered under the bill want to comply. The question then becomes, how do we help them, without purchasing a \$300 booklet, without bringing in the services of a consultant, and without bringing in a chemist or some technical person for the identification of materials within the workplace?

MR. BURKE: That is very important. Also as we implement, I think you have to kind of understand the phased approach. Because this bill is so new and so comprehensive, we are learning as we go along. Having been with State government for a while, a historical problem

with State government is our ability to computerize and access information. We have approached that hurdle and we now have that kind of a system set up. That was a major need for manpower in the beginning. Secondary to that, as we went along the developmental stage, was having the type of personnel and a number of people such as you refer to now, to help people to supply us with that information in an accurate form.

Now, the next thing, which is also difficult to anticipate, and which is perhaps the real spirit of the Right-to-Know and the most important phase of the whole thing, is to have available personnel to work with community members, and explain to them: "What does this mean? There is a plant here, a part of the New Jersey industrial complex. Here are the emissions and now you, community group, need to know about them. Let me explain to you what that means in terms of our entire data base and what we know about these substances."

So, as we grow into this program, you will see emerging needs and emerging emphases that I think, although we tried our hardest to anticipate, were somewhat impossible to understand the scope of three years ago.

SENATOR DALTON: I agree.

MR. BURKE: Hank wants to say something.

SENATOR DALTON: Okay.

MR. GARIE: Senator, one of the things we attempted to do in our public outreach program was target the audiences we have been addressing, so we will speak to a group of small businesses one day, and a group of school administrators the next day. That has enabled us to really understand some of the unique problems that employer groups have. The fact that DEP was unable to do a phased approach to mailing really gave us the flexibility to get out there beforehand to understand some of those problems, and then we could tailor our survey package, with a cover letter, to try to help the employers fill out the survey forms. That seemed to be a very effective approach.

SENATOR DALTON: What we are trying to do here is provide the parameters and the framework to allow you to work in an effective way. That assumes that you have the people, that you have the expertise on board to really assist in compliance. If you would come back to this

Committee and really give us that type of detailed analysis of your needs -- I realize that a lot of this is obviously going to be crystal-balling -- I would be very appreciative.

MR. BURKE: Sure, we will provide that to the Committee. Although we will be somewhat crystal-balling, I think that we now have enough of an established track record and program, and enough things in place, that we can make some decent projections about the types of questions that are out there and the manpower we will need to address them.

SENATOR DALTON: Okay, thank you.

SENATOR GARIBALDI: Mr. Chairman?

SENATOR DALTON: Senator Garibaldi.

SENATOR GARIBALDI: In your testimony you stated that this is an important part of your preventative program. How long would it take the agency -- or whomever is responsible -- when the data that is submitted to the agency based on these reports to be filed in the event there is dangerous, or hazardous, or toxic materials that are being utilized or are a part of the manufacturing operation of a particular firm-- How long would it take for someone to acknowledge what is on these reports and to begin to take some action?

MR. BURKE: Depending on the action, some things could actually happen immediately. Let me give you an example of a somewhat overly common occurrence in DEP, and that is a fire, although our strongest data base now on industrial practice is the Industrial Survey and the preemption somewhat inhibits our ability under Right-to-Know to do that. Right now, when we are made aware of an industrial accident -- a release or a fire -- we can immediately pull information on what is stored there and what type of process is used, and provide our emergency responders with that information, which is not available elsewhere.

SENATOR GARIBALDI: No, I mean to notify the local authorities that a toxic or hazardous chemical or compound is being utilized in a manufacturing operation within their boundaries. Do you--

MR. BURKE: (interrupting) Concurrent with our receiving information, the local authorities will also be receiving the same information.

SENATOR GARIBALDI: In the event that one community which has a manufacturing operation that is ongoing, and has in its manufacturing operation known toxic and hazardous materials as defined under both State and Federal acts-- How is a neighboring community, which may be impacted or affected by some pollution that may emanate from that operation, either through the aquifer or through the air -- you know, these things know no boundaries-- How are the other towns, neighboring communities which may be affected either downstream or downwind from the community in which the operation is actually situated, notified?

MR. BURKE: Okay. That would have to be on a somewhat case-specific basis, but let me stress that the type of information generated under this legislation would be available to all. It is public information, and that is the right-to-know. So, if the information were to be requested by a neighboring community, we certainly would make it available to them. Not only that, we would have a program to try to make the potential implications understood by the neighboring community. So, that information would be available.

SENATOR GARIBALDI: There is no mechanism within this legislation to actually provide for that notification process, either on the part of DEP or anyone else. Is that what you're saying? The reason I ask this question is because that happened in one of our communities. There is -- without being specific -- a manufacturing operation, a chemical operation, ongoing, and there is a spill, ongoing, of chemicals which the manufacturer has refused to give the formula for because of the privacy aspects of it; that is, not to give away their formula to the competition. Nevertheless, this had been ongoing for some period of time, three to four years. The neighboring communities are not-- The community in which this is situated is aware of the circumstances, and DEP is aware of them, but yet the surrounding towns are not aware of them, and the surrounding towns are now being impacted because there is a plume that has developed as a result of that contamination. It is within a short distance of their water supplies, etc.

Now, what are you going to do to alleviate that circumstance from ever happening again, so that all communities are involved in this Right-to-Know, so that they can be prepared? There were artesian

wells. The Municipal Utilities Authority of the surrounding communities had developed their additional water supplies and had driven new wells. Had they known what the prospect was for the future of this plume and this contamination of the underground aquifer, they would not have invested the millions of dollars they had, and perhaps some other action would have been taken to clean it up before it got to that point.

So, you know, there is a great deal of concern. When you say "Right-to-Know," it is one thing to know, but then to do something with that information-- There has to be some mechanism whereby all sectors of our communities are notified in such an event.

MR. BURKE: I agree with you very strongly, Senator. That is why I have to stress that Right-to-Know is a cornerstone for a cross-media comprehensive environmental program that includes right-to-know and evaluation of industrial facilities. But, it also has to go hand-in-hand with our new Strength in Safe Drinking Water Act. This act would address the kind of situation you are talking about by providing the periodic testing of those wells and by providing a mechanism for notification and understanding of the problem. For our clean-up program and our Spill Fund approach, which would provide a mechanism for the cleanup, evaluation, and remediation of that effect-- You're right; the mechanism is not yet developed. With this Right-to-Know, with this part of the puzzle in there, I think our implementation of other State laws needed -- air protection and water protection -- can be that much more effective. I agree with your point wholeheartedly.

SENATOR GARIBALDI: Thank you, Mr. Chairman.

SENATOR DALTON: Okay. Thank you, Tom.

MR. BURKE: Thank you.

SENATOR DALTON: The Department of Health is before the Joint Appropriations Committee today, as I understand it, and will be coming in a little later on. When they come in, we will probably hear from them almost immediately. However, the other administrative agency that is here today is the Public Advocate's office. The Department is represented by Ed Tetelman.

EDWARD H. TETELMAN: Thank you, Senator Dalton and Committee members. The Department of the Public Advocate wants to express its strong support for your draft of the amended Right-to-Know law. We were strong supporters of the original law, and we reiterate our strong support concerning this draft, especially with respect to addressing Judge Debevoise's concerns.

We feel that your draft will now begin to look at the particular items that Judge Debevoise raised in his opinion dealing with public fire fighters, police, emergency personnel, and health professionals, to give them that information and to create a basis to clearly differentiate it from what OSHA covers.

We recognize that there is a strong need for a protective bill, such as the one you propose. I would point out that the incidence of cancer over the last three years has increased in New Jersey by 11%. There are especially high rates of lung and bladder cancers that are linked in public health literature to environmental and occupational exposure. In addition, while all of this has been going on, we have seen the continued realization and cutback, and essentially the dismembering of the Occupational Safety and Health Administration on the Federal level. While this doesn't deal directly with the bill, when those things are dismantled it means that more toxic and hazardous substances tend to get out into the community and the environment, just because of the fact that workers go home with this stuff on their clothing.

We have seen in a recent study by OTA -- the Congressional Office of Technology Assessment -- that the OSHA people have inspected rarely, have issued small fines, and are very lenient with people who are violating the law as a policy matter, trying to get them to abate hazards. OTA has concluded that what we have had is reduced enforcement of already weak efforts on the part of OSHA. These factors all increase the need -- the important need -- for us to have strong State enforcement and strong State laws to protect our citizens and our communities.

This bill, just as the original bill, should have the elements of a strong right-to-know: Lists of hazardous materials, substances, and special health hazards substances; inventories of the

aforementioned substances; fact sheets which really tell you what those substances are about and how you might protect yourself from harm; labeling of the substances; education of the public about hazardous and toxic substances; and, a comprehensive enforcement scheme. The draft incorporates many of these elements and, as I said, it addresses Judge Debevoise's concerns. It also begins to coordinate some of the efforts between the Departments. It addresses some of the problems that we and other groups saw in the implementation of the original Right-to Know.

Our experience and involvement with the law has shown that there are a lot of technical things that could be changed. Rather than go through them with you today, we will forward these technical changes to Mark Connelly of your staff. But, let me just go over some of the things we think are important.

For one thing, education of the public is left out of the bill; it is not there. We think that this is very important; we think it should be added. Both the community and emergency personnel need to have this information in order to be better equipped to react to chemical emergencies and exposures. In turn, this may lead to reducing health damage and loss of life. We also think that the purpose section of the bill should be strengthened, not just to deal with emergency situations, but also to deal with exposure and serious threats of exposure. By adding this preventative language in Section 2, which I would add is something that Judge Debevoise really looked at in examining the Right-to-Know law, we would be allowed to take preventative steps to avoid potential emergencies.

We would also request that you add the one section that was in the original purpose section of the bill, but which is absent now from this draft. That section sets forth the concern of the citizenry about the unfamiliarity of substances that contaminate land, air, and water. We think this is an important part of the purpose of the bill, and we think it should be replaced therein. It would also tie back into the public education section we just recommended.

One of the things on which I think there is some disagreement with you is the fee structure in the draft. Although you indicate a strong concern about this, we think the fee structure should continue. We agree with you that there may have been a disproportionate burden on

certain groups under the fee structure; however, we feel that these groups tend to be the exceptions to the rule. This does not mean that the general concept of the fee structure is bad; it just means that we think the fee structure needs to be adjusted appropriately to cover those groups that use more hazardous substances and handle more materials.

We think that a fee structure is important for these reasons: One, it is a stable source of revenue. Two, it is adjusted and linked to the covered industries that use hazardous substances. We think a general revenue provision, in contrast, would impede the implementation and development of the bill, because every year the appropriation that this bill and the enforcement implementation of it would depend on, would be the subject of debate and discussion before the Joint Appropriations Committee. There would be special pressure placed on this particular item by special interests, especially in those years when resources were scarce. It would also give opponents of an effective Right-to-Know bill an opportunity to attack the bill and to weaken the law indirectly on an annual basis. I don't think anyone wants to go through this on an annual basis.

Finally, it would create uncertainty in those groups which want to be protected by the act about whether or not there was funding there. We would point out that fee structures are consistently used to fund environmental and public health laws. I have a list of all the laws in which fee structures are used, and I will just indicate a few of them: the water pollution discharge permit system, waterfront development, CAFRA, sanitary sewer extensions, Superfund, solid waste facilities, and air pollution. All of these are based on fee structures. If you like, I can provide you with the full list.

It is our feeling that companies which use the hazardous substances should bear the burden of paying for and enforcing the law, and for protecting the public. We think they should be given a real stake in enforcing the law, and a fee structure is one of the ways of doing that. It would also increase their own care and attention in dealing with hazardous substances, because if mistakes continue, one of the things that could be done would be to raise the fee structure.

The most important thing is, we think it is fair. We think companies that create serious health and environmental hazards should be financially responsible for supporting efforts to avoid disasters. We strongly support a fee structure. We suggest that there are certain ways to adjust the mechanism to do this. For example, a sliding fee scale could be established under the act. This scale could differentiate between industries and occupations depending upon the use and storage of hazardous materials -- S.I.C. designation -- on the size of the facility or the work force, or any other reasonable basis. We think a fee structure could handle a lot of the salutary purposes of the act, and we also think it would be fair.

I'll just list some of the other items we are concerned about, rather than go into great detail. First, industrial facility coverage. Right now, there is no definition of an industrial facility. We think a definition is important to differentiate between owners of facilities and operators of facilities, to include them. We also think that the S.I.C. codes presently in the bill should be expanded. Rather than dwell on which particular things we think should be expanded upon, we will be happy to share them with your Committee aide.

One of the new things that was added was DEP's Emergency Services Information Survey. This new section of the bill is important, but we also think that what have to be added to this section are the chemical names and CAS numbers, where available, for the certain substances that would appear on the survey. This would allow emergency personnel to cross-reference those substances with the Right-to-Know Act, and to get fact sheets on those particular substances.

Also, the transmittal of the environmental survey-- Right now, there is a lot of discretion placed in the hands of DEP. While we think this discretion is appropriate, we did have considerable discussion with them during the implementation phase. We think something should be put into the bill which would allow them to develop criteria specifically dealing with carcinogenic, mutagenic, and teratogenic substances. The industries that use those types of substances would be guaranteed to get the environmental survey so that those kinds of substances would not be emitted into the environment.

In conclusion, we think that the proposed draft of the Community Right-to-Know and Chemical Safety Act satisfies Judge Debevoise's opinion. The draft makes it very clear that public fire fighters, police, health, and other governmental officials require information concerning substances stored and used in communities, in order to make decisions about living conditions and emergency situations. Similar to the original Right-to-Know, the draft incorporates the important elements. It also addresses some of the gaps and omissions we found in implementation. We urge the Committee to incorporate our suggestions, both the technical ones and the ones I have made here today. We also request that you act expeditiously to restore basic protections for the community, for emergency personnel, and for those persons who lost their right-to-know due to Judge Debevoise's opinion.

We offer our assistance to work with you on the bill.

SENATOR DALTON: Thank you very much. Are there any questions from the members of the Committee? (negative response) All right, thank you very much.

MR. TETELMAN: Thank you very much.

SENATOR DALTON: As I indicated, the Department of Health will be coming shortly; however, I want to start out with members of the public now. We will start with proponent, opponent, proponent, opponent, and will mix in the unclassified witnesses. The first person to testify will be Jerry Balter from the Public Interest Law Center.

JEROME BALTER: Thank you, Senator Dalton. As you said, my name is Jerry Balter; I am with the Public Interest Law Center. I am here representing the New Jersey Right-to-Know Coalition. You will recall that it was this Coalition that was very much in favor of your bill two years ago which resulted in the enactment by the Legislature, almost unanimously, of the Worker and Community Right-to-Know law back in August, 1983.

The reappearance of this issue is a measure of success, in a sense, as well as a measure of failure. When the New Jersey Legislature enacted the Right-to-Know law two years ago, there was no national legislation and no national regulation over the subject of right-to-know; that is, there were no rights of workers to find out

what toxic substances existed in their workplaces; there were no rights on the part of the public; there were no rights even on the part of State government; and, there were no rights on the part of emergency response personnel. The enactment by the New Jersey Legislature of what has come to be known as one of the most comprehensive right-to-know acts in the United States, in large part, is responsible for the promulgation of the Occupational and Safety Health regulation, called Hazard Communication.

There are several states which also followed the New Jersey Legislature's initiatives, including the State of Pennsylvania, which for the Senators information, covers all employers, not just selected employers.

The need for right-to-know today is just as clear as it was two years ago, perhaps even clearer than that. We are all well aware of the tragedy of Bhopal, a chemical tragedy which resulted in hundreds of thousands of people being adversely affected, several thousand being killed, and, I understand, some 20,000 or 30,000 being permanently injured. It is worth noting that had the citizens of India around the Union Carbide plant been informed of what was going on at that particular facility, and if they had been told, "If a siren rings three times put a wet rag up to your face" -- that simple kind of an awareness program -- most of the tragedy which occurred would not have taken place. Right-to-Know is the first step, Senators, in developing that kind of a program. Until January 3, 1985, that was the program for the State of New Jersey. On January 3 of this year, Judge Debevoise said that the promulgation of the OSHA hazard communication regulation preempted New Jersey's law with respect to manufacturers.

Now, the word "manufacturers" is very broad. It includes the entire chemical manufacturing field; it includes a tremendous percentage of the people in industry who deal with chemicals. It means that as of this moment New Jersey is enjoined from enforcing its law on Right-to-Know with respect to Union Carbide in New Jersey, with respect to Exxon Chemical, and right on down the line.

The bill you have presented to the Legislature -- the Community Right-to-Know and Chemical Safety Act -- is a bill to fill that terrible gap. Unless this bill is passed, we will have an

anomalous situation where small industry -- not the big chemical industry -- will have to tell its neighbors what it is emitting into the air and what it has in its shop. But, Union Carbide and Exxon will not have to tell the neighbors who live around their plants what is going on. That is a situation that begs to be remedied.

Now, this all came about as a result of a lawsuit brought by the New Jersey State Chamber of Commerce and a number of chemical associations in this State, which went into court not only to prevent the State of New Jersey from enforcing its law with respect to manufacturers, that is, those who were covered by the OSHA hazard communication regulation, but also with respect to all of the other employers covered by the Right-to-Know law. They have argued in Federal court that not only are all the employers to be exempt from coverage, but they are also to be exempt from coverage with respect to letting the public know, letting the emergency people know, and letting the State know.

This is a peculiar situation. The Federal OSHA hazard communication regulation concerns only communication between the employer and his or her employees. It has nothing whatsoever to do with informing the public, emergency response personnel, or the State. Yet, the employers talk about fully enjoining the enforcement of the New Jersey law for all employers with respect to all four categories of communication. Now, I am sure you will hear from them today that they are certainly in favor of letting the public know. How do I know this? Back in March of this year, the big national association -- the Chemical Manufacturers Association -- made a big splash, in which they announced they were developing what they called "The Chemical Awareness and Emergency Response Program." They said they wanted to increase public access to hazard information about chemicals. The man who made that announcement was Edwin C. Homer. He is the Chairman of the Chemical Manufacturers Association. We will soon test the sincerity of that if they mean they will come before this panel and support Senator Dalton's proposed bill. But, don't hold your breath, because the same Edwin C. Homer is the President of Exxon Chemical Company. He was the man in the courtroom in Newark, New Jersey, who said, "New Jersey has no right to have a Right-to-Know law." So, I would seriously caution

you -- when industry comes before you and urges you to desist from passing Right-to-Know, as they did two years ago -- to question them about their sincerity regarding informing the public.

The Senator's bill with respect to the manufacturing industry, that is, the industry that is covered by the OSHA hazard communication regulation, has several purposes: to inform the public about toxic substances in industry; to inform State agencies about toxic substances in industry; and, to inform fire fighters and emergency response personnel. This bill does not have anything to do with the non-manufacturing industry. The non-manufacturing industry is covered by the existing law; it is separate. It still covers non-manufacturing industry because Judge Debevoise said to industry: "Oh no, I am not going to enjoin the whole law. I am only going to limit the injunction to deal with the industries that are covered by the OSHA hazard communication regulation." Judge Debevoise's decision, of course, left this blank. He said, "OSHA has a hazard communication that covers workers, but what is going to take place about covering the public, the emergency personnel, and the State?" He indicated that he thought the Legislature could pass such legislation, but that he wasn't going to do it out of the old law because it was all mixed up together. As a matter of fact, in March he said, at an open court hearing: "How come the Legislature hasn't acted yet to fill that gap?" I would urge the Legislature to fill that gap as rapidly as possible.

There are essentially two vehicles for informing the public, the emergency response people, and the State. One has to do with survey information, and you heard the DEP representative talk about the Emergency Services Information Survey. Secondly, associated with that are hazardous substances fact sheets prepared by the Department of Health, which inform anyone who obtains them about the nature of the chemical, the adverse health effects of the chemical, and what emergency response teams ought to be doing about it.

The other part of the information program deals with the question of container labeling. It is clear that for emergency response people to do an adequate job when they are called to a facility, they have to know what is in the containers that may be on

fire, or have spilled, or something. Now, it's true that the OSHA hazard communication regulation contains a labeling program. Industry is going to tell you that you have no right to do anything about labeling because it is covered by the hazard communication regulation, but that isn't quite right. It isn't quite right because the labeling provision in the present proposal has a different purpose, a purpose that cannot be fulfilled by the OSHA labeling regulation. Under the OSHA labeling regulation, each individual employer decides what is a hazard, and labels the containers according to a code of that individual employer. Now, that isn't a very neat system for emergency response personnel to react to when they have to go into hundreds of different facilities.

The New Jersey system is the only statewide uniform labeling system. Why? Because a substance in Plant "X" is labeled exactly the same as a substance in Plant "Y." It is labeled by its chemical name. There is only one universal chemical name, though there may be hundreds of code names, and there is one chemical abstract service number. The New Jersey law says, "Put on the chemical name; put on the CAS number." With that information, fire fighters and emergency personnel from any part of this State will be able to go into any facility anywhere in the State and know what they are dealing with. That is not true of the OSHA labeling requirement. Therefore, it cannot be said that the OSHA labeling requirement serves the purpose of dealing with and providing information to emergency personnel.

The law on preemption is "fairly" clear; I don't want to say it's clear. It sure is muddy around the edges. It seems to say this: If the State has a purpose clear and distinct from the Federal regulation, it is okay, as long as the State regulation does not frustrate or prevent the Federal regulation from taking effect. The addition of a chemical name and a CAS number will in no way interfere with the OSHA labeling service; it will provide the kind of information necessary for emergency response people. I urge you to adopt the labeling provisions of Senator Dalton's bill. Thank you.

SENATOR DALTON: Thank you, Mr. Balter. Are there any questions from the members of the Committee? Senator Garibaldi?

SENATOR GARIBALDI: You stated that regardless of what we are about to hear from other testimony here this morning, what happens in court is one thing, as opposed to what happens here. You suggested there may be those who say one thing here and do something different in court. Do you mean that the courts are not concerned with the welfare of our citizens when it comes to legislation enacted by this Legislature? Are you suggesting that if someone goes to a court and appeals an act of this Legislature that the courts are inclined to do something other than what our declaratory intent was?

MR. BALTER: No, I don't think that is the case. We have a constitutional provision that the Federal government has the right to preempt State action. In this particular case, the Federal court said that the passage of the Federal regulation, which came three months after this legislation was enacted, preempted the manufacturing employers. It said that the State had a right, and has a right, to operate in non-occupational areas, but it was just too mixed together. They urged -- they requested, if you will -- this Legislature to pass a new piece of legislation dealing with just the non-occupational aspects. I believe the court is concerned; the court is saying, "Okay, there is coverage for the workers under the OSHA regulation." He couldn't separate out the nonworker aspects, so he is coming back here and saying, "Gentlemen, ladies, please pass legislation to fill the gap."

SENATOR GARIBALDI: So, I gather then that what you are suggesting is that the bill can be made better now than what it was before.

MR. BALTER: I think there are some technical improvements, Senator, but I have not gone into them. I immediately caution it. Two years ago when the bill was coming up, industry opposed it. First of all, they said, "You have all these rights in the first place," which we didn't have. Then, "Well, something was going to happen, and besides, you really don't need it." Now, things have happened on a world-wide scale, and the chemical industry is very concerned about its image. So, it puts out literature that says, "Yes, the people have a right to know. We support their right-to-know." But, why is it that they go into court to try to get the court to stop the public from

learning about toxics in the workplace, even though all the OSHA regulation was concerned with was the workers getting information, not the public?

SENATOR GARIBALDI: I'm satisfied.

SENATOR DALTON: Thank you, Senator. Mr. Balter, one of the concerns that I suspect will be raised, and which has been raised in the past, is the whole issue of the labeling of formulas. Particularly under the old bill, there was labeling up to the five major substances that make up a formula -- the hazardous substances that make up a formula.

MR. BALTER: Senator, excuse me. I don't think that is the regulation. I think the regulation is -- and you can check with the Department of Health -- that you put the toxic substances, or the hazardous substances, that excess in the mixture at 1% or more, whether that be 5%, 6%, or 8%. When it got to the universal labeling, it said that with respect to them, you only list them if they were in the predominant five. That is the reg.

SENATOR DALTON: Let's focus in on the hazardous substances then, the 1% or more. One can make a case that if you had to mix the hazardous chemicals in a formula 1% or more, that that, in fact, could conflict, from a practical perspective, with the OSHA regulation. By that I mean you have perhaps five, six, or seven, and I suspect that some people could come up with a lot of different formulas that are even larger as far as the chemical components are concerned. Then you give a fireman that, as well as giving him the OSHA regulation. In a container of a limited size, how can you do that? How would you respond to that type of criticism?

MR. BALTER: Well, I'm not sure. Are you talking about something physically small? The fact of the matter is, the OSHA regulation requires all the labeling down to 1% and, for the carcinogens, down to one-tenth of 1%, essentially no different than the New Jersey law.

SENATOR DALTON: The question, however, is that the OSHA regulation gives the employer the flexibility to determine, as I understand it, what is hazardous, and then to either give it a chemical name or code it. So, what you have, perhaps, are two sets of standards

that have to be put on the same container -- two sets of standards that have to be adhered to. I am suggesting that this is going to be raised again and again. Do you realize that?

MR. BALTER: Oh, I'm certain of it.

SENATOR DALTON: I wanted to throw that out and ask your comments relative to that criticism.

MR. BALTER: We have tried to design the labeling requirement here to cover, to the greatest possible extent, the same substances. I think the significant difference, however, is how you identify them. If the OSHA labeling requirement clearly identified a substance so that one would know from the label what it was on a universal basis, I don't think we would be that insistent on our approach. We are insistent because the OSHA labeling requirement is so nonuniform, so disingenuous, that we are going to be back with people not knowing what they mean anyhow. They have been hiding it all along. All OSHA has done is say, "Well, here is a new vehicle for hiding it."

Now, what we are trying to do is develop a uniform system. I think we can say to the court, "Look, it may be one thing within this plant in terms of employer to employee communication," because they can have their educational programs on their labels, on their codes, and so on. But that doesn't help emergency response people from outside. What do they do when they come in to inspect a plant? How will they know what it is? The only way you can have a decent emergency response system is to have a uniform one.

SENATOR DALTON: So, uniformity is the key, I suspect. Again, there have been statements and proposals made. I think the Chemical Industry Council, at their recent convention, proposed a program which is going to start out in three counties, I suspect within the next several months, to provide information to emergency response personnel.

The key, however, is, number one, the uniformity, and number two, providing them with the chemical names. My understanding -- and perhaps you know more about this proposal than I do; I read about it in the paper, period-- Oh, that's right, I received a letter the other day. But, if you tailor a program in the State of New Jersey to inform emergency response personnel, can you effectively tailor a program without giving those personnel the chemical names?

MR. BALTER: I don't think so, Senator. The New Jersey program is sort of a comprehensive one. It includes not only the container labeling, because that is on site, but it also includes the whole preparation for emergency people to be prepared if something happens. Sometimes that is also preventive, because when you start to look into what might happen, maybe you find something to prevent it. But, at any rate, the ESIS surveys would be geared into the same labeling system as the containers. By having that comprehensive program, it would seem to me that you would be in the best position to plan for emergencies and to do something about them.

As far as I understand the industry programs they talk about, they are purely voluntary programs. What do you do about the particular employer who says, "No, I don't want to do it"? Maybe we need a whole State law just for those who don't want to do it. What will the guys who do want to do it be responding to? The most logical way is to have a uniform State plan.

SENATOR DALTON: Are there any other questions? (negative response) Thank you, Mr. Balter.

MR. BALTER: Thank you.

SENATOR DALTON: We now have a panel on the critic side of the bill which will include Bruce Coe from the Business and Industry Association, Hal Bozart from the Chemical Industry Council, Pat Whitner from the Chamber of Commerce, Ollie Papps from the Petroleum Council, and Bill Cleary from the National Federation of Independent Businessmen. By the way, the proponents took 15 minutes, for all those keeping score.

BRUCE G. COE: Senator, ladies and gentlemen: I'm Bruce Coe. I am going to read a statement, even though I hate to read. It is going to be simple because I am speaking on behalf of the New Jersey Business and Industry Association, the State Chamber of Commerce, the Chemical Industry Council, the Petroleum Council, and the National Federation of Independent Businessmen.

I would like to point out that I am wearing a pin which says, "New Jersey Needs Right-to-Know." I would also like to point out that our Association has always been an advocate of community right-to-know. We regret the confrontation which occurred as a result

of the Worker and Community Right-to-Know law. I think when the bill was signed I made some comments, unfortunately, that it was illegal, nonenforceable, and not able to be complied with. I think I even got carried away, saying, "The bad news is that in about two years I can have a press conference with the Department of Health and the Governor's office and find out that we are not in compliance with that law as passed."

I really felt upset because you don't have to try to do everything at once. The question is, how can you address serious problems about chemicals and toxics? If you get the serious ones working well, maybe then you can move on to a broader spectrum.

This time we would like to avoid that sort of a confrontation, and I would now like to read the statement: We appreciate the opportunity to appear before you today. We are jointly expressing our support for, and our concerns about, the current draft, entitled "Community Right-to-Know and Chemical Safety Act." We have utilized this joint statement format to indicate our cooperative resolve to work with your Committee in developing a dialogue which will result in creating an effective community right-to-know law.

We would like to build a complete system of notification which would recognize the responsibility to provide information on hazardous substances to the public, to provide information to emergency response personnel, and to attempt to free the public from concern over substances produced that may have an adverse effect on their health and safety.

The needs of the community and the emergency personnel should be a critical priority in drafting legislation designed to meet the goals of an effective community right-to-know law. We believe this goal can be met by a single uniform right-to-know act, even broadening this draft proposal to encompass all State industrial classifications as set forth in the original Worker and Community Right-to-Know Act.

I would like to touch on seven parameters which we feel should be part of the program. We agree with the first parameter, the Emergency Services Information Survey as prescribed by this draft, based on materials identified by the U.S. Department of Transportation Identification Number and Hazard Class of Hazardous Material. Second,

we agree with an appropriate Environmental Information Survey based on the Department of Environmental Protection's Selected Substances List as indicated in the draft proposal. Both of these surveys should be designed not only to provide effective and meaningful information to the community, but, getting to point three, we would like them to afford appropriate trade secret protection to the respondents. We think the amount of trade secret information will represent a small percentage of the total act, and will not impinge on the effectiveness of the program.

I will give you one story about trade secrets which I heard at a meeting of some businessmen with Senator Lautenberg prior to his going to Japan. The Senator's concern was the kind of problems they were having in Japan, and one of New Jersey's specialized technological small manufacturers had some trade secret information relating to rowers that are used in photocopy machines that endure high heat and high cold. To fulfill a \$2 million order in Japan, they had to supply them on a totally confidential basis to the Ministry of Trade and Industry because of trade secrets. Not surprisingly, four months later, their trade secret information was being reproduced in Japan, and that was the last order they ever had. It is difficult to keep trade secrets a secret.

The next point, Point 4: I am not an attorney, Senator Dalton, and I will read this because it was written by an attorney. I asked him, "What does it mean?" and he said, "Well, it kind of means don't do what Judge Debevoise said don't do." It reads: "The utilization of the Industrial Facility Survey in labeling clearly moves to an area covered by a Federal OSHA standard, and is, therefore, preempted. Care should be given the dissemination of any information required by the OSHA standard and should not impinge on national uniformity." I think that you, Senator Dalton, used the words "inextricably intertwined" from Judge Debevoise's opinion. The only point there is that we don't want this law written in such a manner that a reasonable judge would conclude that once again it is preempted by OSHA.

The next point, Point 5: This is a new idea. We would like to have an emergency response plan developed on a site-specific basis

with emergency response forces, which would better serve the safety needs of the emergency response teams and local citizens. We are willing to work with this Committee to develop appropriate language to include this effort in the legislation. I think that is somewhat self-explanatory. If I were a fireman, I wouldn't want to be standing there trying to read chemical abstract numbers and determine, "Gee, does that mean we should do the following?" We think a site-specific plan would be of more aid to people in that type of a situation.

The next point is Point 6, and this is a point which can be resolved. The recently enacted Uniform Fire Code, N.J.A.C. 5-18(b)-1, tends to have conflicts and redundancies with the draft of the Community Right-to-Know legislation. We think that those can be resolved, but they do exist at the moment.

The next point relates to R&D. I think Senator Dalton suggested that some people might have a concern about that. I think we all know that New Jersey's economy is booming in the area of research and development. I personally have been to many ground-breakings in the last three years celebrating new R&D headquarters moving to New Jersey. As a State, we have a distinctly competitive edge which underpins our scientific expansion. You may recall that the original Worker/Community Right-to-Know Act had an exemption for these facilities, an exemption not contained in the draft of this legislation. We would like to work with you in an attempt to define a realistic R&D exemption. I believe the R&D community -- the New Jersey Research and Development Council -- would like to testify separately, so I will let them speak more to that point.

My final point is, we have been losing our manufacturing base for the past many years. That is due to reasons beyond the control of the New Jersey State Legislature in many cases, but by the same token, we think that in effecting a realistic community right-to-know law, it can be done in a manner not viewed as hostile by the manufacturing community. We would really like to work with you toward developing a comprehensive law that we can all support.

We pledge our cooperation. Thank you, Senator.

SENATOR DALTON: Thank you, Mr. Coe. Does that incorporate everyone's testimony, or does each individual wish to give his own testimony?

HAL BOZART: Some of us have individual comments, Senator.

SENATOR DALTON: Okay. Who's next?

PATRICK WHITNER: Good morning, Mr. Chairman. I am Patrick Whitner, Director of Legislative Affairs for the New Jersey State Chamber of Commerce. I want to thank you for the opportunity to comment on the proposed draft of the Community Right-to-Know and Chemical Safety Act.

The State Chamber is pleased to support the joint statement just presented by Bruce, which we believe represents a broad segment of the New Jersey business community. We are hopeful that this carefully prepared statement will lead to constructive dialogue on this important issue.

Community right-to-know is an extremely important issue, and we believe that the most significant action we can take this morning is to resolve together to develop a needed safety and emergency response notification system for communities in New Jersey.

As stated earlier, the State Chamber has some serious concerns with the draft legislation, including labeling requirements, research and development, adequate protection for trade secrets, and a few other areas. The State Chamber and others who joined in our lawsuit are recommitted to legislation that will work within the framework of OSHA. We believe that the system which will prove most effective as far as protecting the public to the highest possible degree is a truly national workplace standard.

Mr. Chairman, that concludes my brief remarks. Thank you, again, for your attention and your willingness to listen to our concerns. We look forward to working together as your proposal progresses in the Legislature.

WILLIAM CLEARY: Senator, I'm Bill Cleary from the National Federation of Independent Businessmen. Thank you for allowing us to speak today.

Over the past few months, the small business community and the owners have attempted, in good faith, to comply with the Community and Worker Right-to-Know Act. It became obvious that the process was extremely troublesome and expensive, particularly for the smaller businesses. In hearing from quite a few of my members, a number of problems were highlighted, among them the fact that the fees were excessive, particularly for the smaller businesses, and the potential

for fines was great. We had a real problem in that there was no provision for firms which made a good-faith effort to comply that they could not be protected in some way. We would like to propose that a 30-day compliance period be enacted, where if an inspector went into a small business and found a violation, the owner would be given 30 days in which to come under compliance with the law.

We objected to the burden placed on small businesses by the surveys, certainly the multiple surveys asking for repetitive information. We disagree with DEP on that point. Many small businesses had a big problem filling out the forms, and many owners of businesses came away from the business of business in order to do the business of government. We think a shorter form, maybe a single form, would have served the small business community better.

There has also been an argument concerning who is in the law and who is not in the law. One of the groups we saw which was not in was the gas stations. One of the arguments for leaving the gas stations out has been, "If you've been in one gas station, you've been in all of the gas stations." The gentleman from DEP spoke about targeted surveys of schools. We would certainly support some kind of targeting surveys of similar type situations: "You've been in one gas station, you've been in them all. You've been to one dry cleaner, you've been to them all." If a system where a random sampling of dry cleaners, let's say, could be looked at, and then a form submitted to the dry cleaners where maybe they could write back and say, "Well, we have these additional items"-- This would have been a much more beneficial way to go about it.

We would support the labeling requirements that would most closely resemble those of OSHA, and we would certainly support a system similar to what the Department of Transportation has developed, almost a color coding system.

Finally, in previous discussions I have had with Senator Dalton, the question was raised as to how the Right-to-Know law would be affected by the new fire code which is currently being promulgated. Since the regulations are not final, we will not know the answer, other than to note that there seems to be a great deal of duplication. In addition, due to the discretion given to local officials by the fire

code, you could virtually have a different system in each municipality across the State, which wouldn't help business in any way.

We will continue to report to Senator Dalton and the members of this Committee our findings as we compare these two initiatives, both having great merit, but which seemingly will cross odds and swords with each other. Small business owners are commonly a part of the work process, and are extremely interested in the safety of their families and their employees. They embrace right-to-know, but cannot afford the burdens government places on them. Hopefully, we can work together to bring about a right-to-know law that is balanced and fair. Thank you, Senator.

MR. BOZART: Mr. Chairman and members of the Committee: I am Hal Bozart. I am the Executive Director of the New Jersey Chemical Industry Council. I appear before you today to restate our position, along with the other members of this panel, supporting community right-to-know legislation in New Jersey. We believe it is the responsibility of our industry -- and any industry which deals with hazardous substances -- to provide information on those substances to the public, to provide information to key emergency response personnel, and to free the public from undue concern regarding hazardous substances.

As you are aware, our organization is a trade association representing 84 member companies in the chemical and allied product industries, approximately 200 facilities throughout the State.

At the time Senator Dalton first introduced the original right-to-know legislation, the OSHA standard for workplace hazard communication was still under development. Since then, the standard has been finalized and the chemical industry has had a chance to review and work with that standard. It is our position that neither the OSHA standard nor the current New Jersey right-to-know proposal on an individual basis offers the most complete and effective system for communicating with members of the public.

Each program is tailored to meet different needs and purposes. Both have their strengths and both have their weaknesses. We would like to take the opportunity presented by this public hearing to offer, after some explanation, an alternative plan combining the best of each system for the most effective communications vehicle.

I would like to point out some of the positive aspects of each system with regard to the workplace. The present OSHA hazard communication standard is, in our opinion, more protective than the New Jersey Right-to-Know law in four major technical areas: scope of hazardous materials covered; scope of hazardous mixtures covered; product and waste labeling; and, enforcement of truth of information. It is also more responsive to new hazard information and offers a consistent national format already in place for our use.

However, New Jersey's existing Right-to-Know law offers more protection in other areas. For instance, its workplace coverage includes private and public employees, and the OSHA standard does not. The New Jersey law is more inclusive of its Standard Industrial Classification code coverage. In addition, the New Jersey act attempts to deal with the issue of community right-to-know, and the OSHA standard does not.

The New Jersey law also requires the submission of an environmentally hazardous substance survey and public access to the survey. In effect, this illustrates New Jersey's attempt to communicate with the public.

I would like now to cite specific examples of the strengths in both the OSHA standard and the New Jersey Right-to-Know law. The OSHA standard requires comprehensive hazard evaluation for all materials. In a plant such as American Cyanamid's plant in Bound Brook, for example, about 275 materials are covered through the whole OSHA process, through the OSHA requirement. In contrast, New Jersey's law requires evaluation of only a total of approximately 2,300 materials, and in that same Bound Brook facility owned by American Cyanamid, only 78 materials would be covered. The OSHA standard covers more materials in that Bound Brook Cyanamid plant than the New Jersey standard does. This would appear to be somewhat of a flaw in the New Jersey law.

Thus, OSHA has more extensive workplace coverage which demands, in addition, updates whenever new substances appear. I have a graph here to show you. American Cyanamid is now producing a new substance. Its chemical name, which appears on its Material Safety Data Sheets and its labels, is tetramethylxylene diisocyanate, one of

the methyl isocyanate type materials, although not the same. This is the label (witness referring to copies of labels he is holding) the OSHA standard required to be in place for this new substance, along with information about the hazards on the Material Safety Data Sheet. This is the label the New Jersey Right-to-Know law demands they have for that same substance.

The OSHA standard does not require a definitive list of environmentally hazardous materials for the public. The New Jersey law has promulgated such a list. The OSHA standard did not intend to cover the community portion, and thus such a list is lacking from its standard.

The OSHA standard requires consolidated Material Safety Data Sheets -- only a tip of the iceberg I am showing here -- on hazardous mixtures. In an emergency, response personnel would have a MSDS with information necessary to safely handle the mixture. The New Jersey law has no requirement for MSDS on hazardous mixtures. In an emergency, response personnel would have several Material Safety Data Sheets on the components of a mixture, each with different information not necessarily pertinent to the mixture.

The OSHA standard includes inspections and civil and criminal penalties. It also forces a high degree of compliance due to product liability. The New Jersey law also requires inspections and civil and criminal penalties, but it has no product liability clause. Thus, the OSHA standard is a stronger deterrent for those who would violate the law.

The OSHA standard, by the way, covers as a base, 6,000 chemicals that must be identified and communicated to workers. The judge pointed that out in his decision. Some people say that with new additions, the list could go much higher. The New Jersey law requires workplace inventory of 2,300 materials for distribution to emergency response personnel and for public access. The steel industry, which uses large quantities of sulfuric acid, is not required to have access to Material Safety Data Sheets. Under any community proposal developed by the Senator and the Committee, all Standard Industrial Classification codes, we feel, should be covered, thus avoiding such a lapse.

The OSHA standard requires product and waste labeling to contain hazardous components and explicit hazard warning information. The New Jersey law requires a listing of components only. It does not require any hazard warning information. This OSHA system affords comprehensive workplace labeling, and I have an example. Under the OSHA comprehensive labeling system, this is a label put on a drum or container by American Cyanamid for acrylamide (Mr. Bozart holds up copy of label). You can see it, and you are welcome to look at the information. This strict letter of the law (witness holds up different label) is what the same substance and its label would look like pursuant to the existing New Jersey act.

Mr. Chairman and Committee members, as I have just cited, the OSHA standard and the New Jersey Right-to-Know law deal in different areas. Let's combine the strengths of both systems to provide a consistent and effective community right-to-know law.

It is our position that such an effective bill should exempt R&D facilities for several reasons, and I know the group will talk about them. However, because many of our members have R&D facilities, I would like to spend a second on this. Such facilities use hazardous substances in small quantities rather than in batch processes; they employ highly trained technical professionals; and, most importantly, trade secret protection is of the highest priority for these folks. The chemical industry strongly advocates the design of emergency response plans for R&D facilities with local emergency response personnel. Given the differences among R&D facilities, such plans should be site-specific and provide needed flexibility, while protecting legitimate trade secrets.

Senators, what we suggest here today is what we like to think of as an innovative attempt at combining the best aspects of the existing New Jersey Right-to-Know law and the OSHA standard. By molding such a facility-specific system around the following guidelines, New Jersey could have an emergency services information system which would be the best and most comprehensive in the nation, rather than a labeling and survey system which has many associated problems. The guidelines are: use of the OSHA Material Safety Data Sheets; names and phone numbers of plant personnel for emergency

response people to contact in case of an emergency; use of the broader OSHA substance list; an open-door policy which would open the workplace to fire and emergency response personnel to become familiar with each facility; an emergency services information survey; an environmentally hazardous substance survey; and, public access to the information provided by each and every one of those parts.

We are all aware of the events and the sobering incidents which have occurred in the recent past. We understand them and we have come to grips with the new thinking they have brought to our industry. We, along with the rest of the members of the panel, stand ready, in a good-faith effort, to work with you to best meet the needs and to protect the community. Thank you.

OLIVER PAPPS: I hope I can do this gracefully. Senator Dalton, members of the Committee: I am Oliver Papps, Associate Director of the New Jersey Petroleum Council. We represent the major oil companies doing business in New Jersey. I want to thank you for this opportunity to speak before you this morning.

We certainly support the joint statement given by Mr. Coe earlier. We would like to commend Senator Dalton for taking a concerned, but nevertheless pragmatic, approach to the proposed legislation. We intend to work with the sponsor, the Committee, the entire Legislature, and the Governor's office to create a dialogue aimed at presenting a bill in final form which will offer comprehensive, useful information to protect emergency response personnel and the public, while at the same time utilizing a common sense approach to the provisions of the legislation.

Thank you very much.

SENATOR DALTON: So far, Ollie, you've won the trip to Mount Holly for being brief. (laughter) Are there any questions from the members of the Committee? Senator Costa?

SENATOR COSTA: No, thank you.

SENATOR DALTON: Senator Garibaldi?

SENATOR GARIBALDI: No, thank you.

SENATOR DALTON: Hal, I was interested in your comments, particularly your comments about combining the strengths of the two programs. I think you used the example of acrylamide. You showed that

under the State law all that would have to be shown was the chemical name, and under the Federal act you would be providing much more. I just want to note that we are not trying to preempt the Federal act. Under the State program, that combination of strengths you talked about would be provided; that is, the chemical name and the MSDS through the Federal OSHA regulations.

I think it should be pointed out at the outset that we, in fact, were not in a position-- The State of New Jersey did not try to break up the combination of strengths; it was you who tried to break up the combination of strengths. (laughter and applause)

MR. BOZART: Would you like me to comment, Senator?

SENATOR DALTON: Certainly.

MR. BOZART: Thank you. From our viewpoint, and I believe from the viewpoints presented here today, the manufacturing and business communities in the State of New Jersey were faced -- after the passage of the original Right-to-Know Act -- with a situation which had our companies, in the area of the workplace alone, having to respond and deal with two separate and distinctly different sets of regulatory practices -- the OSHA hazard communication standard and the New Jersey worker portion of the Worker and Community Right-to-Know Act.

It was felt that working with two different kinds of systems was, number one, nonproductive, and number two, not the best use of time and money. Also, it was not providing the correct kind of information. In effect, we told the court that we wanted a traffic cop to tell us which way things were going, whose turn it was to go, and who had the final legislative authority to legislate in the area of the workplace. The court happened to rule in favor of the plaintiffs in the suit, who said, in effect, that OSHA had priority in the area of the workplace and fully intended, and did, regulate in the area to protect and to provide hazard communication information to the workers.

Having said that, moving along to this new plan, what we are saying, in effect, is, take the things that are now in the workplace, the Material Safety Data Sheets, the labeling, the education and training program, and provide all of that information, in effect, to the emergency response people and to the members of the community. That is not what the OSHA standard calls for, but it's something that

should be done. I was just trying to make a differentiation between the worker side and the reason why there was litigation on the community side.

We would like to see a community right-to-know which would embody the best of the OSHA standard, which provides what we consider the best kind of information to give people, number one, and number two, provides it in a fashion so that the emergency response people can really and literally react in an emergency and know what to do when those drums, which would have labels, could potentially be on fire, thus obscuring the labels. It's simplistic and it is a surface level argument only to say that labels will make emergency response people do a better job. I am not sure that that is the whole case. What we need to do is have the plan we have outlined, which will allow the emergency response people into the facility for discovery -- for want of a better word -- to find out where the things are, what to do in case of an emergency, who to contact, what kind of equipment is already available at the plant site to deal with the emergency, and what precautions to take because of the concomitant risk or hazard dealing with the individual substances.

Large facilities have many of their own fire brigades already on hand who are trained and educated, but many people utilize outside emergency response personnel. It is a cooperative joint effort in trying to get them the information they need to respond effectively to an emergency.

SENATOR DALTON: Do the Federal regulations give any discretion to the manufacturer as to whether or not he can provide the chemical name, Hal?

MR. BOZART: Yes. Specifically, the OSHA standard says you can use, on your labeling and MSDS sheets, a chemical name or a common name. A common name can mean a color code; it can mean whatever is best to communicate. However, a large majority of my members do include the chemical name on the MSDS sheets, for example, the two I showed you here today. I know that all of the large companies I represent now -- except in cases of legitimate proprietary information which needs to be protected -- utilize in excess of 95% common name identity on their labels and their MSDSs.

We have never fought the issue by saying chemical name carte blanche couldn't be on there. All along many of our companies have used chemical names when, number one, they communicated most effectively with the people who were working with the chemicals in the workplace, and number two, they did not abrogate their ability to provide jobs for the people who worked in that plant, and thus protect their trade secrets. Some have said that the trade secret argument is nothing but a red herring. I suggest to you that those people have never worked in one of the facilities whose life is dependent on the viability of maintaining confidential information.

There are people out there who make their living as industrial spies. They are not spying on anything except the kind of information in these cases I am not talking about, which people want to hide. I have a small member of my group who is an epoxy resin manufacturer. His family has been in business for 100 years. The business goes back three generations. They have about 90 employees. They make glue; they make all sorts of glue for golf heads, for golf balls, for whatever. It is not the fact that that substance and its identity should be hidden from his workers; it is the fact that he has competitors who would love to know how he puts it all together and what he uses in his products. That makes him a viable entity. He would be one of the examples of why trade secrets are important.

That is not really the major issue here, as we have said, and I know that the Senator agrees. The major issue is, how can we best provide a plan to communicate the necessary information to the public and to the emergency response people? We've said, and I will reiterate, that we are more than willing to do that. I think if you look at our testimony of two years ago and compare it to what we have said today, we have taken a large step forward. We think this is the way to begin the debate. We have started some things, as the Senator pointed out, on the CARE Program, which is a voluntary program on the national level on community awareness and emergency response. This is something that more and more facilities will be doing in coming months. We have established Hazardous Materials Advisory Councils in two legislative districts in the State -- Senator Dalton's district and Assemblyman Pankok's district -- which will coordinate efforts such as

what Senator Dalton talked about. There is a grant provided by five companies totaling about \$400,000 to provide the necessary training for what we call "first responders" -- the firemen, the police, and the emergency response people. That money will be followed through the HMACs, as we call them, to make sure that once the information finally gets out to these people, they will be adequately trained so they can respond with the least minimum risk to their safety as they go in to solve the emergency situation.

We think this is an attempt; it is not the end of the attempts the industry will make, but I think it is a good-faith effort toward starting the dialogue and making sure that the community and the emergency response people have the adequate information they need.

SENATOR DALTON: That was a tremendous essay question.
(laughter)

MR. BOZART: Thank you. Do I get to go to Mount Holly now?

SENATOR DALTON: What I am trying to get at, and what I want to know is, are you opposed to the use of the chemical name -- opposed to providing fire fighters with it, period? Yes or no -- I don't need the Gettysburg Address; please stay on the question, if you will.

MR. BOZART: Maybe.

SENATOR DALTON: Maybe?

MR. BOZART: Would you like more?

SENATOR DALTON: Okay.

MR. BOZART: Some questions cannot be answered yes or no, Senator. This is a very technical subject, and we are doing our best up here.

SENATOR DALTON: Hal, I'm not putting you down. We have had the opportunity at times to kid around with each other. I'm sorry; don't be offended.

MR. BOZART: I'm not.

SENATOR DALTON: Okay. You may embellish on that "maybe."

MR. BOZART: Our major concern is that the workplace, and the OSHA standard labeling embodied in the workplace by the judge's decision, cannot be changed, cannot be added to, cannot be embellished upon. The judge said, in effect, that the OSHA standard regulates the workplace. He said it was up to the Legislature to deal with the area

of community right-to-know. We agree. He also said that should the Legislature design legislation which impacted on the area which OSHA, by law, regulated in, that he or another judge would then have to deal with the issue of implied preemption, whether or not a bill coming from the New Jersey Legislature would, in effect, land back in court because of what that bill did, regardless of the rightness of the purpose, to the OSHA workplace labeling sections. So, I guess my answer is--

SENATOR DALTON: It sounds as if that maybe is a "no."

MR. BOZART: If it means labeling in the workplace, the answer is "no."

SENATOR DALTON: No? Okay.

MR. CLEARY: Senator, as it relates to small businesses outside the manufacturing sector -- all those other businesses that were brought in under the law -- we have spoken in the past about the burden it is going to be. Take for instance a body shop, where they have different processes of paints going through. We suggested color coding, where there could be a single bound volume of all the substances, the MSDSs that were used. In a situation like that, the smaller businesses, in particular, could have the chemical and different names of the products in that bound volume. But, to expect individual body shop owners, for instance, or dry cleaners, to run around, not being chemists themselves, and label every hose, van, and container, would be a tremendous burden, particularly to the smaller businesses.

SENATOR DALTON: Regardless of whether or not they are hazardous materials, you don't want to give the name? You just want to color code them?

MR. CLEARY: Color code, and then have-- Evidently DOT has a very good system in use right now.

SENATOR DALTON: The Federal DOT or the State DOT?

MR. CLEARY: The New Jersey DOT. Their list could be included to embody those chemicals, if they are not already on their list; however, I assume they are. Your bill should also include them.

SENATOR DALTON: I am not going to get into the issue of what Judge Debevoise's opinion established because we can play dualing lawyers here all we want, but I don't think that is going to help.

However, I have an opinion from the Office of Legislative Services, and I also have an opinion from the Attorney General, which say that this bill -- that we can go in and label -- okay? -- to provide the community, and especially emergency response personnel, with information. So, you know, that whole argument could go on ad infinitum. I really don't want to get into that. The whole issue of color coding, I suspect, is going to be addressed when the fire fighters have an opportunity to speak.

MR. CLEARY: I wasn't trying to make that argument. So many of my members were not preempted. Quite a few S.I.C. Codes are still in, and are still required to be labeled under the New Jersey law. But, we are just searching for something that we can offer that will settle your conscience and problems without having to make the small business owners run around with little signs and stencils, in effect, multiple times in a given day. These people are trying to maintain jobs in a growing economy. We have spoken about this before. They have serious problems with universal labelings, and we are happy to hear that you are not as much in support of them.

SENATOR DALTON: I'm considering modifying them.

MR. CLEARY: Modifying -- that is the word I was looking for.

SENATOR DALTON: I am in support of them in theory; I do not think there is any question that I am in support of them.

MR. BOZART: Senator, would it help in the planning phases working between the facility people and the emergency response people to provide them, at that point, with the chemical name? Would that satisfy the intent of what you are trying to do?

SENATOR DALTON: I think the ability of the fire fighters -- and I don't intend to sit here and speak for the fire fighters because they are going to be coming up to speak for themselves -- to have that information provided to them when they walk in, or even prior to walking in or prior to an emergency situation-- I think they are going to feel it is imperative. That is why we are going this route, because the emergency response personnel in this State requested we go this route.

MR. BOZART: Maybe that is something, Senator, that at least my group can take a look at. It's a possibility.

SENATOR DALTON: I don't know how you can take a look at it. Either you provide the chemical name or you don't provide the chemical name.

MR. BOZART: I was talking about it from the position of all of the 84 people I represent. It is an issue that obviously is close to your heart and the hearts of the fire fighters. Given those two facts, I'm saying that I will take the issue of providing chemical names to the emergency response people in the preplanning and the planning stages back to my members to see whether or not I can develop a consensus of opinion. I give you my word that I will get back to you as soon as we have reached a decision on what seems to be a major point.

SENATOR DALTON: Very good. Senator Costa?

SENATOR COSTA: I would like to pursue what you started to talk about regarding labeling and trade secrets. Is your concern regarding trade secrets about formula or a name itself -- a product name?

MR. BOZART: It's all of the above, I'm afraid, depending on the specific location and the business we are talking about. For instance, as part of our membership, we have people who are in the recycling industry. Just the fact that a competitor could know that certain substances existed in a facility would mean that the owner was doing business with another firm and recycling its product. So, they feel that confidential information to them should list where that substance came from. Let's say it came from DuPont and recycler "A" now has 40 new containers of a special substance from DuPont which he is recycling. Should recycling company "B" find out that DuPont material in that large a quantity was going to recycling facility "A's" firm, he would know that there was business there. Then recycling company "B" would say, "All right, let's try to find out how to get recycling company 'A's' business from him."

So, in a sense, it's quantity, it's location, it's existence and, in some cases, it's chemical name. For instance, drug companies are very, very careful regarding information about what goes into their products, be it substance combination, constituent make-up, or whatever, because of the fact that they want to protect their

multi-million-dollar investment in developing drugs and products, which another company, without doing all of the million-dollar investigation, could have if we did not provide aqua trade secret protection.

Again, this is not a ruse; this is not an opportunity for us to hide information from either the workers or the community. This is a legitimate trade secret problem, and I agree with the Senator that there has to be some way to find a balance between protecting trade secrets and making sure that the necessary information gets out to those people. It is a fine line, and we tried last time to define the balance. In some cases, people thought it was acceptable; in our case, we were not sure.

SENATOR COSTA: Let's go beyond that. Your concern is the trade name; our concern is the health and welfare of the people. I don't think you can read a label and protect someone at an accident. I think you have to have knowledge beforehand and, also, know how to take care of an individual who has been harmed by a product.

My next question is, how do you suggest that a response crew get this information? How do we tackle whether such a product was used, if we are not sure if that product was there or not?

MR. BOZART: I think that is probably something Pete Smith from the Fire Association will have some ideas on. However, I think the main point is, if we find ourselves in a situation where there is a valid trade secret and at the very minimum we need to communicate the hazards of a material to both the fire people and the community, as well as what precautions to take-- We have said all along that if a case arose where for whatever reason a chemical name should not be given out -- let's say for the purpose of argument, a trade secret reason -- that through some kind of a communication vehicle we ought to be able to give doctors and emergency response people information about the hazards involved with that substance, so that if something does happen, they will at least have the emergency information they need to handle a person's problem.

SENATOR COSTA: That sounds great and I think that should be done, but what vehicle would be used so we could have that information available? I mean, will we base it upon your kindness in giving out that information at a certain time?

MR. BOZART: Bruce just pointed out to me from his statement his suggestion that whatever system is developed, it has to have flexibility so we can take into consideration the differences between one site and another site. A site-specific plan would have to be developed between the facility and the emergency response people. However, the basic bottom line is to communicate that information as far as possible. Maybe it is in the preplanning stages I mentioned to Senator Dalton, where the fire people get the chemical name. Maybe that is the time to do it so they have the necessary information, and yet we can still protect, when need be, our legitimate trade secrets.

SENATOR COSTA: You're speaking prior to an accident, of course?

MR. BOZART: Well, that is probably the best time to plan for one.

SENATOR COSTA: Definitely.

MR. BOZART: I know the fire people understand that once an emergency has occurred, there are an awful lot of problems going on that they must deal with in split-second timing. So, the more planning and education that can be done ahead of time, obviously, the better it will be so they can avoid whatever problems they may run into.

SENATOR DALTON: Not only for the fire fighters, but also for the community at large, including doctors.

MR. BOZART: I agree.

SENATOR DALTON: I suspect if, in fact, there was an emergency situation and you finally presented the doctor with the chemical name, the doctor would have no way of preplanning either.

MR. BOZART: We agree 100%. I know it is the policy of many of my members and was the stated position of the organization last time around, that should a treating physician with a patient call a company and say, "I have a problem here; I want to know what this man was exposed to," they would immediately give the chemical name and whatever other information the doctor needed.

SENATOR DALTON: If they sign an affidavit?

MR. BOZART: No, over the phone. If it were one of those substances that demanded confidential treatment, the doctor would only be asked after the emergency was over to sign a release form saying he

would not divulge the information to competitors or anyone else who could use it in a business sense. But, the information would be provided to the treating physician immediately when he asked for it.

SENATOR DALTON: I suspect what we are talking about here is going even a step further -- providing the doctor with that information prior to the emergency. That is what you have just indicated, right?

MR. BOZART: Well, I indicated that for emergency response people. We don't know which doctors are going to have to treat emergencies.

SENATOR DALTON: I suspect in certain cases, around certain plants, you are going to have the ability to determine what the hazardous substances are in that plant, and providing doctors with that information prior to an emergency would probably assist the doctors in the treatment of the people who are going to be brought before him. Right?

MR. BOZART: I agree, Senator.

SENATOR DALTON: I should say him or her.

MR. BOZART: I agree.

SENATOR DALTON: Thank you very much.

Prior to a half-hour break by the Committee, I would like to call on Mr. David Slowinski. Thank you for coming Mr. Slowinski. You are accompanied by whom?

DAVID SLOWINSKI: I am accompanied by my attorney.

STEVEN YOST: For the record, Senator, I am Steven Yost. I am Mr. Slowinski's attorney.

SENATOR DALTON: Very good.

MR. SLOWINSKI: My name is David Slowinski. In October, 1983, I started to work at the Ciba-Geigy plant in Toms River, New Jersey. Ciba-Geigy is the chemical company which was fined by the State last week for unlawful storage of toxic wastes.

I was fired by Ciba-Geigy this January. I was fired because I gave a list of chemicals to the members of the Greenpeace organization. This list contained the names of the chemicals present at the Toms River plant. I believed then that the people near the plant had a right to know what chemicals were around them. I still

believe this. If toxic chemicals from that plant leak, people will be exposed to them. Right now, the company discharges treated waste into the Atlantic Ocean. I think the people have the right to know what materials are in this discharge.

The public cannot consider what risks they are being exposed to if they do not have this basic information. People cannot consider what measures they should take for their personal safety if they do not know the nature of the risk.

I am not an activist, but a worker who made a choice which turned out very badly for me as an individual. I was fired. If workers who know of dangers to the public are not protected, most of them will never speak out for fear of losing their jobs.

I support this legislation because it will insure that the people of our State will have the basic right to know what toxic materials are around them. Under this bill no one will be forced to choose between protecting his job and informing the public.

SENATOR DALTON: Thank you very much, David. (applause) I would like to ask you a couple of questions. Mr. Yost, David was dismissed because he provided a group with information?

MR. YOST: Yes. That is essentially correct, Senator.

SENATOR DALTON: And what type of information was it?

MR. YOST: It was a list of all the chemicals present at the plant.

SENATOR DALTON: Okay. So, he disseminated information about the chemicals at the plant to a group called Greenpeace?

MR. YOST: Yes.

SENATOR DALTON: So, David, for that you were fired?

MR. SLOWINSKI: Yes.

SENATOR COSTA: Were there labels on the products?

MR. SLOWINSKI: Yes, there were labels on them.

SENATOR COSTA: On the raw materials?

MR. SLOWINSKI: Yes.

SENATOR COSTA: Not on the end product?

MR. SLOWINSKI: What I gave to Greenpeace--

SENATOR COSTA: (interrupting) Anyone who came in could see the labels on the products -- on the raw materials?

MR. SLOWINSKI: Well, yes, if they were allowed in the plant.

SENATOR COSTA: It's not that you were hiding someplace to pick up all that information.

MR. SLOWINSKI: No.

SENATOR COSTA: It was there right before you, right?

MR. SLOWINSKI: Yes.

SENATOR COSTA: And yet, that--

MR. YOST: (interrupting) He just disseminated a list, A to Z, of everything that was present in the plant by chemical name.

SENATOR COSTA: Could anyone else have gotten that information from the plant if they had inquired?

MR. SLOWINSKI: I'm not really sure exactly.

SENATOR DALTON: David, where did you work in the plant?

MR. SLOWINSKI: I was in the production area.

SENATOR DALTON: So, the information that was available to you being employed in the production area was available to anyone else. Is that correct?

MR. SLOWINSKI: What do you mean by "anyone else?" Do you mean people in the plant or people from the public?

SENATOR DALTON: People in the production area.

MR. SLOWINSKI: Oh, yes, all of the production workers and the officials at the plant had that information.

SENATOR DALTON: Senator Garibaldi, do you have any questions?

SENATOR GARIBALDI: At any time, did you go to your supervisor or to anyone within the plant with your questions as to the chemicals that were being used before you dispersed that information?

MR. SLOWINSKI: Well, no.

SENATOR GARIBALDI: In other words, did they deny you the opportunity to complain about the chemicals that may have been hazardous to your and your neighbors' welfare? Did you ever approach your supervisor or the plant officials themselves to say, "Look, if you don't divulge this information, then I am going to do it in the interest of public safety"?

MR. SLOWINSKI: No, I never approached them, because why should a company hold back like that?

SENATOR GARIBALDI: I don't know if they did or they didn't. First of all, I support your courage in that you took it upon yourself to inform your neighbors and whomever else may be in jeopardy by what may be taking place. I am somewhat familiar with what has been happening at the Ciba-Geigy plant in Toms River and about what has been escaping into our oceans and affecting our environment. However, what I would like to know is, did the plant officials attempt to hold back that information and did you, as an individual, witness any behavior on the part of your employer, or the plant officials, to curb your activities in connection with letting the right-to-know for the benefit of anyone around you?

MR. SLOWINSKI: As I said, I was a production worker. None of the officials ever came up to me until the day I was fired. I did not go to them to present a grievance or anything like that.

SENATOR GARIBALDI: No, let me rephrase my question. All I am trying to determine is how your employer acted before he fired you. In other words, did Greenpeace, did anyone go to that employer and say, "Look, we want a list of the materials you employ in your manufacturing operation to determine whether or not they are hazardous to the workers, to the firemen, or to whomever"?

MR. YOST: May I answer that?

SENATOR GARIBALDI: Yes, please.

MR. YOST: To the best of my recollection, I believe that the Greenpeace organization did approach Ciba-Geigy for a list of the chemicals at the plant. That is why they were using other avenues in an attempt to obtain this information, by directly approaching employees at the plant.

SENATOR GARIBALDI: Okay, thank you.

SENATOR DALTON: David, did you realize the possibility was there that you might be fired if you--

MR. SLOWINSKI: (interrupting) Yes.

SENATOR DALTON: Okay. You thought it was important for people to have this information?

MR. SLOWINSKI: Well, yes, the people in the area now and the people who are going to be there later. I am very concerned

because there are children around the plant playing now, and last week they found waste. So, what does this mean? It means that our children are playing in garbage.

SENATOR DALTON: I certainly thank you, David, for coming here; I know you had to take off from work. (applause) I also thank you for your courage. Thank you very much.

MR. YOST: Thank you, Senator and Committee members.

SENATOR DALTON: The Committee is now going to take a half-hour break. We will be back to continue testimony.

(RECESS)

AFTER RECESS

SENATOR DALTON: The public hearing is reconvened. I would like to ask everyone to keep his or her testimony as concise and compact as possible. That would help us. From chairing this Committee in the past and from being a member of other committees, I know that after a certain amount of time, your ability to consume and digest information really reaches the maximum. At the same time, I know there are a lot of people here who have come a distance to testify. We want to try to be fair, but let's be fair by remembering that there are other folks here who want to testify. Try to keep to the point, and keep the testimony as concise as possible.

Is Bill Dalton from International Flavors and Fragrances Association here? (Mr. Dalton not present.) Mr. Harrison from the New Jersey Research and Development Council? (Mr. Harrison not present.) How about Ed Neidert and Harry Groth?

ED NEIDERT: Mr. Chairman and honorable members: My name is Ed Neidert. I am Regional Director in the States of New Jersey, Delaware, and Pennsylvania for the Distilled Spirits Council of the United States. This is a national trade association of distillers and bottlers of distilled spirits with offices in Washington, D.C.

We appreciate this opportunity to express to you some major concerns of our industry on your preliminary draft of the Community Right-to-Know and Chemical Safety Act. Distilled beverages are consumer goods produced directly for human consumption. Under law, all alcoholic beverages are foods as defined in the Federal Food, Drug, and Cosmetic Act. We feel there is no justification for including distilled spirits as an environmental hazardous substance or material.

Our industry has a perfect safety record, and all workers at distilled spirits' plants are fully informed and trained. Safety rules are stringently enforced. Allowing our products to be classified as hazardous substances or materials automatically taints them. I have been working full-time in this industry since 1959, and I have never heard of employees being stricken with poor health as a direct result of working in a distillery. I have been advised that Laird and Company of Scobeyville, New Jersey, is one of the oldest companies in the State; it was established in 1780. Laird and Company presently has 11 employees with 20 to 30 years' service. The average for all 100 of their employees is 15 years' service. This is testimony in itself. Incidentally, we have the president of that company, Mr. Larry Laird, with us here today.

Distilled spirits are simply not hazardous or toxic chemicals and should not be categorized with dangerous substances that have long and incomprehensible names. We are not asking for a plain exclusion from the law; we expect our New Jersey member companies to comply with the law as it applies to hazardous substances and materials used in their facilities.

The new proposal gives the New Jersey Department of Health and the New Jersey Department of Environmental Protection the authority to develop the hazardous substances, hazardous materials, and environmentally hazardous substances list. In accordance with the foregoing statement, we feel that this latitude should not be given to the Departments for distilled spirits, and we ask that they only be allowed to regulate our product as it applies to the emergency service portion of the law. New Jersey is an important market for distilled spirits products, ranking seventh nationwide in total spirits sales.

In 1983, there were seven distillers and distilled spirits bottlers in New Jersey. No other state east of the Appalachian Mountains, including Pennsylvania, has so many active distilled spirits plants. We regret that one of these, Distillers Company, Limited, of Linden, New Jersey, was forced by weakening demand to shut its plant on September 30, 1984. In New Jersey, distilled spirits consumption for 1982 and 1983 was virtually flat; they offset each other. Through September, 1984, New Jersey's consumption was down 1.7%.

Stigmatizing our products as a hazardous substance or material will only further add to the decline. There are 10 states that have seen fit to exempt our products from their right-to-know hazardous substance law. We hope this aforementioned information will enable you to honor this reasonable request by granting this exemption for distilled spirits in New Jersey's new Community Right-to-Know and Chemical Safety Act.

Thank you for giving me this opportunity to testify. I would now like to turn the next portion of our testimony over to Mr. Harry Groth. Mr. Groth is the Plant Manager of Julius Wile Sons & Company in Dayton, New Jersey.

HARRY GROTH: Ladies, gentlemen, members of the Committee: I am here today as a representative not only of the seven distilled spirits facilities in New Jersey, but also for several dozen wholesalers and the thousands of retail establishments whose livelihood of over 30,000 employees is dependent on beverage alcohol.

As Mr. Neidert has stated, the beverage alcohol business is facing very difficult times due to DWI legislation and the foreboding 19% increase in Federal excise taxes slated for October 1 of this year. What we don't want in the Community Right-to-Know and Chemical Safety Act is a law that implies to the worker, the community, and the general public that beverage alcohol is a hazardous substance. That implication is unwarranted and, hopefully, my testimony will present to you logical justification to exclude beverage alcohol from the hazardous substance list being developed.

First, the right-to-know act's purpose is to control the proliferation of hazardous substances in the environment which pose a

growing threat to the public health, safety, and welfare. Beverage alcohol is not a new substance. It has been around almost since the beginning of time. It is made by the natural process of fermentation -- nothing new nor nothing complicated. Whiskey making has virtually remained unchanged, except for the introduction of more versatile bottling equipment. We are in an old and well-established business that on national, State, and local levels has never presented any problem to the employees, the community, or the general public. There is no evidence to point to the contrary; no scientific studies that give any evidence that the manufacturing or distribution of alcohol places the public, the community, or the employees in jeopardy.

During the last few weeks, I have personally hosted local governmental authorities on a tour of my facility. I believe they all left my plant with an impression and with confidence that they themselves or members of their families could feel very safe working in my facility. All we do is add water to a consumable product. We do not belong on any list that may construe to the public, the community, or the employees adverse health effects or serious environmental problems.

The second point I would like to bring to your attention is that the beverage alcohol industry is the most regulated business in America today because we are the number one source of tax revenue behind personal income taxes. We operate by Federal jurisdiction under the regulations provided in the Code of Federal Regulations, Parts 19, 26, and 27. These regulations are strictly enforced by the United States Customs and the Bureau of Alcohol, Tobacco, and Firearms. These regulations cover all aspects of our importing and manufacturing operations through shipments to the retail level, and include continual physical and procedural audits by Federal agents. We are told, in very explicit terms, in over 1,000 sections in Part A of CFR 19, how the operations must be run. For example, Section 19.271 tells us how our building must be constructed; Section 19.272 tells us the type of equipment we must provide in a plant; Section 19.274, the type of pipes; Section 19.381, the types of records we must maintain to record the mixing of all ingredients and the transferring from one tank to

another; Section 19.391, records to transfer spirits out of our processing rooms; Section 19.394, records to be maintained for each lot of spirits bottled or packaged; and, Section 19.395, Federally approved labels that agree with contents of tanks and bottles. I could go on and on, but the point of all this is to show you that we are held accountable for all beverage alcohol entering and leaving a facility.

The controls that the right-to-know legislation seeks are maintained in a liquor facility because of tax revenue protection. There is no need for duplicity of controls by the right-to-know legislation for beverage alcohol. The controls for the labeling of tanks, pipe lines, and containers are already mandated. The formulation of products must be under BATF regulations and in FDA conformance. The history and methods of disposal and losses are a matter of government record, and have been for over 50 years.

In conclusion, I would like to reiterate that for the beverage alcohol business we are requesting a specific exemption in the act and that beverage alcohol not be included on the proposed hazardous substance list being developed by the Department of Health and the Department of Environmental Protection.

We will cooperate fully with the emergency survey portion of the act, which is in line with policies with local police and fire authorities. I appreciate your time. Thank you.

SENATOR DALTON: Gentlemen, you're saying you want an exemption only with regard to the distilled alcohol being listed as a hazardous substance, but you are willing to comply with the other sections of the act.

MR. NEIDERT: Exactly.

MR. GROTH: Correct.

SENATOR DALTON: Very good. Thank you very much for your testimony.

MR. NEIDERT: Thank you, Senator.

SENATOR DALTON: The next speakers will be Mr. Pete Smith, President, Fire Fighters Association of New Jersey AFL-CIO, Mr. George Brown, Chairman, Fire Fighter Health and Safety Committee, Fireman's Mutual Benevolent Association, Mr. James Conroy, Fraternal Order of Police, and Bev Barvmeyer, New Jersey State First Aid Council.

PETER SMITH: Mr. Chairman, my name is Peter Smith. I am President of the Fire Fighters Association of New Jersey AFL-CIO. The other folks are not here with me at the moment, so I will take the opportunity and the privilege, if I may, to bring George and Michael McGuinness to the witness table with me, as well as Mr. Jim Foley from the Atlantic City Fire Department. He is the Fire Inspector there.

Senator Dalton, on behalf of the Fire Fighters Association of New Jersey, we commend you for working so hard to put this new Community Right-to-Know and Chemical Safety Act together. You have demonstrated your interest in the health and safety of fire fighters.

There are two points I would like to bring to your attention. The first one is the inclusion of labeling in the draft. Universal labeling is most important to the fire service. To be able to pre-fire plan any industrial facility and to be able to do it right, a fire fighter must know what is in the building, whether or not the material is toxic or hazardous, and how it reacts with water, our primary extinguishing agent. Using the information provided on the Emergency Service Information Survey and the Hazardous Material Data Sheet, the fire fighter or inspector can quickly match the label to the information in his possession to determine the hazard, what extinguishing agent should be used, whether SCBAs should be used, first aid procedures, the level of toxicity, and so forth.

With the limited number of inspectors available and the budget cuts which have taken place, inspectors' available time would be increased because the inspector would not have to pour over chemical books to ascertain the pertinent information needed to properly pre-fire plan in an industrial facility or any other structure that contained hazardous material.

For the fire ground operation, the Emergency Service Information Survey and Hazardous Material Fact Sheets could be available at a command post that would be set up. The fire officer in charge would then have all the necessary information at his fingertips to assist him in making the proper judgments for extinguishment, safety of fire fighters, and evacuation, if necessary.

We would like to see the chemical abstract service number on the ESIS as it is now on the Hazardous Material Data Sheets. We are also working with the Department of Health to give more emphasis to emergency response on the Hazardous Material Data Sheets. I believe they will cooperate and that additional legislation will not be necessary.

The second point I would like to raise is the S.I.C. codes governing schools, except for vocational schools, being exempted in the new draft. Our Association is opposed to any such exemption, and I will give you and the Committee documentation to support our position. Mr. McGuinness will address his concerns on that issue.

I have been in communication with the consultant who surveyed 42 school systems; I understand now that the number is up to 63. He has discovered many toxic and dangerous materials in the systems he has surveyed to date. I am also submitting this report.

To sum up, the Community Right-to-Know and Chemical Safety Act is an extremely important piece of legislation for the fire service and the residents of our State. We respectfully request your vote to release this legislation from Committee with the suggestions that I propose, as well as the amendments suggested by the Right-to-Know Coalition.

I have a few comments on some of the things the previous speakers have mentioned. Regarding research and development facilities, we feel they should be included. However, if trade secrets are going to be a problem, possibly we can work out some system to ensure that the trade secrets remain safe and also give us the necessary information we need.

Chemical names, naturally, are very important. Regarding what was mentioned before about pre-fire planning site-specific, what I was talking about in my statement was pre-fire planning which would be site-specific. In a lot of cases, this is not done at the present time because information on the hazardous substances and their toxicity is not available.

Some of the previous speakers mentioned the new fire safety codes. They felt that they would provide a Utopia and that

Right-to-Know would not be necessary. That is not a fact. That's like comparing apples and oranges. The fire code is not mandatory; Town "A" may do it; Town "B" may not do it. Town "C" may do it one way; Town "D" may do it another way. There is no uniformity. Until the Right-to-Know came along, there was very little knowledge about what was in any industrial facility, except where the industrial facility would cooperate, and cooperation has not been uniform in the past. This would make it uniform.

Regarding what was mentioned before by Mr. Bozart, or one of the persons on that panel, about golf balls and glue, any competent laboratory can break down a substance and tell you what is in it. Therefore, I don't think he made a case on the point of industrial espionage.

The Hazardous Material Data Sheets have not been finalized. They are in draft form. There are several proposals and several amendments that the Advisory Council and myself, since I am a member of that Right-to-Know Advisory Council, have been working on with the Department of Health and the Department of Environmental Protection. They have been most cooperative. There may be some problems with funds to do exactly what everyone wants to do; however, I think we can come to an agreement to package the Hazardous Material Data Sheets that will satisfy everyone.

That about sums up my comments. I will be happy to answer questions, or Mr. Foley will be happy to answer questions, if you have any.

SENATOR DALTON: Cathy, do you have any questions?

SENATOR COSTA: No, thank you.

SENATOR DALTON: I was intrigued this morning when the Business and Industry group came up. They seemed to me to be indicating that there is a need for emergency response personnel to have the chemical names prior to an emergency, and for physicians to have that information, as well. Pete, my question is, how do you do it without labeling?

MR. SMITH: You can't do it, really. Without labeling, I don't see any way to do it. I know in cases where our people have been

exposed, they have gone to the hospital. The first thing the hospital says is, "What have you been exposed to?" In a lot of cases, we don't know. The individuals don't know what they have been exposed to because of the fact that the drums are not labeled, or maybe one substance that was in one drum was transferred to another drum, with no labels at all on either drum.

SENATOR DALTON: Let me try this out. Let's take an instance where you visit a plant prior to any emergency and an employer provides you with a color code system which translates into a chemical name. I'm trying to--

MR. SMITH: (interrupting) Are you referring to the NFPA system?

SENATOR DALTON: Yes, okay, let's utilize that as an example.

MR. SMITH: We would like to incorporate that also, in addition to what is taking place involving the Hazardous Material Data Sheets. That is one of our suggestions.

SENATOR DALTON: But there is no way, other than labeling?

MR. SMITH: No.

SENATOR DALTON: Even if you went to a plant beforehand and found out that this size container contains this and that size container contains that; I mean, some way of letting you know the chemical names without labeling. Have you ever been aware of anything like that?

MR. SMITH: No, I have never been aware of anything like that.

SENATOR DALTON: Okay, neither have I. I thought that together we could come up with a system here.

The next issue I would like to address is the issue you mentioned relative to the ESIS forms containing the CAS number. I know that is important to DEP. Would you provide us with a rationale as to why you feel that is needed?

MR. SMITH: Because of the fact that the Hazardous Material Data Sheets and, also, the ESIS sheets would then be uniform. All of the information would be on the two sheets as far as the CAS numbers were concerned.

SENATOR DALTON: Isn't the chemical name on the two sheets now?

MR. SMITH: To my knowledge, it is not on the ESIS sheets, no.

SENATOR DALTON: Okay, it is just a hazardous material description.

MR. SMITH: The one--

SENATOR DALTON: (interrupting) By the way, folks from DEP, does that translate into the chemical name?

MR. GARIE (from audience): In many cases it does. There are several generic classes, such as gasoline or fuel oils, that are really not chemical names. It tries to cover both areas.

SENATOR DALTON: I guess what I am saying is, given that, if you have the chemical name, why do you need this? Tell me the importance of it.

MR. SMITH: To make it uniform -- the synonyms of the chemicals.

SENATOR DALTON: Okay.

SENATOR COSTA: Mr. Smith, I was just looking at the final horror story you have in your written material.

MR. SMITH: Mr. McGuinness will address that fact.

SENATOR COSTA: I don't know if even this law, if it becomes law, could prevent this.

GEORGE MCGUINNESS: Well, I think, Senator-- Let me give my statement first and then I will address that point, because I think the whole nub of what I am going to say here today is that this law has created an awareness within the school systems of the problems with which they are confronted. Okay? If it has done nothing more than that, it has been very, very beneficial.

As Pete said, we have been in 63 districts now. They range from small two-school districts in Sussex County to large urban and suburban districts which have several schools. There are a couple of interesting factors, namely the similarities between schools and the differences between schools. Those two facts stand out markedly.

To date, we have identified 432 substances on the hazardous substance list as being in the schools. This is our computer printout as of last Friday (witness holds up printout). Of those, 67 are classified as carcinogens, mutagens, or teratogens. One hundred and six of them are classified as special health hazards. Okay? Now, I am not saying that each school has all 432 substances; however, with respect to the high schools, it is not uncommon to find 190, 200, or somewhere in that range.

The other point I would like to make is, this is a manual prepared by the Council of State Science Supervisors (witness holds up manual). It is published by the U.S. Consumer Product Safety Commission. On Page 12 of this report, it lists 21 substances that are not recommended to be in schools. They range from arsenic and arsenic compounds to benzene, benzidine, which has a threshold value of zero, chromium, carbon tetrachloride, cadmium, and so forth. Of those 21, we have identified 19 as being in most of the school systems. On Page 13, the manual lists 29 substances as "animal carcinogens or mutagens." Of those 29, we have identified 20 as being in the school systems.

I would like to state that we have not talked to a teacher, or a principal for that matter, who, once they understood what the law was about, opposed the law. I think I can sum that up by quoting a teacher and a principal. The teacher, who is an art teacher, said, "I have been trying to find out for a long while what is in the cans I use in my classroom, but I haven't been able to. I think it is about time we had this law." The principal said, "This is a good law. It has opened our eyes to a lot of things we were not aware of." Administrators, generally, while in support of the law, are, with some justification, critical of some of the regulations, particularly with respect to training and labeling. That might be an issue the Council can address. As a matter of fact, we had a call from a superintendent in Bergen County yesterday, and he said, "I understand we are getting an exemption from this law, but I want you to do the survey because we would like to know what we have."

SENATOR COSTA: You're not speaking of all schools; you're speaking of vo-tech schools, right?

MR. McGUINNESS: No, no, high schools.

SENATOR COSTA: All schools?

MR. McGUINNESS: Yes. We have surveyed about four vocational schools; I think four county vocational schools. Most of our schools have been high schools, junior schools, and middle schools -- excuse me, elementary schools, K through 5. What we generally find in the K through 5 grades which concerns me-- In their art programs, there are a couple of things. A lot of times, the kilns are not ventilated, with the result that you get a lot of noxious fumes. Also, from time to time you get the same result from some of the glazes they use.

In our exit interviews with superintendents and principals when we point out our concerns, most of them are very anxious and willing to move forward in acting on the concerns we have expressed to them, because they are good people. The teachers and the administrators are good people. In one district, we criticized storage to the superintendent because they had sulfuric, hydrochloric, and nitric acids in bottles in cardboard containers on the floor. We told them that some day a student was going to kick one of those bottles over, and then they would have a problem. His reply was, "Would you please put that in your report because I have been trying to get money for a larger lab for several years?" Storage cabinets, oftentimes, are nonexistent. It is not that the teachers haven't tried to get them; they have. So, you have flammable and noxious materials floating out into the classrooms. I think the other point you have to remember when discussing this is, it is not just the teachers who are exposed; it's the students. They are all in the same buildings; they are with the same substances.

As I said, the teachers are good people; the administrators are good people. Their training has not exposed them to the toxicology of the substances with which they deal. Their training has tended to be in the subject matter, not in the toxicology of the materials or in the safety of the materials.

To make my circle complete, as I said at the outset, I think the principal benefit of this law -- and this is based on our experience with the schools -- is that it has created an awareness that there are substances there which could create problems. Many of these

substances are very potent carcinogens. Mercury is a very common occurrence. We usually ask, "Do you have any benzene or carbon tetrachloride?" They say, "No, we got rid of those." Well, they're there." With respect to the issue you brought up, that principal had been trying to get that stuff removed for quite some time. My latest information is that they are starting to do that.

In the first school we went into, we found 20 pounds of asbestos in the science laboratory. It was finely ground. Two boxes were uncovered. No one knew it was there, and no one knew how long it had been there. I am not being critical of the school system, believe me. Within a week this school district moved to have that asbestos removed. Once they know, they act on it.

SENATOR COSTA: I guess you could say there is a need for education in the schools.

MR. MCGUINNESS: Yes. In this area, I would tend to agree because the focus of the training has been the subject matter, you know, not what those substances could do to you.

Generally, the problems are with the storage of the chemicals, the flammables, and things like that. Sometimes there are problems with getting enough money to correct these situations. I think these surveys have brought to light an awareness that now there are substitute materials they can use. For that matter, I think it would be kind of a mistake at this moment in time to remove the exemption. I would strongly urge you -- for the safety of the teachers, as well as the students -- to continue it.

I will be happy to answer any questions, Senator.

SENATOR DALTON: I think we are going to hear more on that, sir, but we appreciate your comments. Thank you very much.

MR. SMITH: Senator Dalton and Senator Costa, thank you very much for allowing us to testify today.

SENATOR DALTON: Pete, could you clarify any potential duplication between the fire code and the Right-to-Know?

MR. SMITH: I do not see a duplication, very honestly. I appeared as a member of the Governor's Right-to-Know Advisory Council with one of the subcommittees of the Bureau of Fire Safety. They were

very interested in DOH and DEP presenting them with the ESI surveys and the Hazardous Material Data Sheets so they would have them. I really do not see a conflict. They want the information there so they can have it, can put it in their library, and help to get it out to the fire service, along with other means of education.

SENATOR DALTON: I guess from the perspective of the employer filling out a lot of different forms that may potentially be asking for the same information-- I think that is what they were referring to earlier.

MR. SMITH: That may be, but if an inspector goes in and, as I mentioned in my written statement, he has the Hazardous Material Data Sheets and the ESI surveys, it is going to make it much easier for him to inspect the place, and then for the inspector and the fire suppression forces to come up with a pre-fire plan. It is going to make it a much easier situation. So, I don't see the duplication.

SENATOR DALTON: There is no debate about whether you should have the information. Everyone agrees that you should have the information. What I'm--

MR. SMITH: (interrupting) Under the code -- under the existing fire code -- an inspector would probably have the right to go in and ask for certain information, and he would be supplied that information. But, that would be on an individual basis from town to town, from inspector to inspector, and there would be no uniformity.

SENATOR DALTON: How about--

MR. SMITH: (interrupting) Our people in the fire suppression end of it would not have the protection that the Right-to-Know law is going to give them.

SENATOR DALTON: How about if an employer has already filled out an ESIS -- okay? -- and an inspector comes in and wants essentially the same information? Can the employer just refer him to the ESIS?

MR. SMITH: Right. The inspector should have the ESIS in his possession when he goes into the building because the employer has to send it to both DEP and the local fire department. Therefore, he would have accessibility to the ESIS before he went to do the inspection.

SENATOR DALTON: In other words, he would not be asking for that?

MR. SMITH: He would not be asking for the duplication.

SENATOR DALTON: Okay. Thanks, Pete. Thank you very much, Mr. McGuinness.

MR. SMITH: Thank you, Senator.

MR. MCGUINNESS: Thank you.

SENATOR DALTON: The representative of the Department of Health has arrived. Assistant Commissioner Ronald Altman? Now that the Joint Appropriations Committee has cut your funds, Doctor, I want to know how you are going to implement this program.

DR. RONALD ALTMAN: Thank you, Senator Dalton. You realize the importance of our being before the Joint Appropriations Committee.

My name is Ron Altman. I am the Assistant Commissioner in charge of the Division of Epidemiology and Disease Control. I will be presenting the Department's testimony on the proposed Community Right-to-Know Act.

I would like to say at the outset that we strongly support the introduction of the Community Right-to-Know and Chemical Safety Act. We think this legislation is necessary to reestablish a comprehensive system for the disclosure of information concerning hazardous substances by owners of industrial facilities, which essentially have been preempted from the previous act by the court's decision. This will accomplish the community aspects of what was previously in the Right-to-Know law.

There are a number of provisions in this act which the Department has supported very strongly, and we are very happy to see them in there. Particularly, the Department is very happy to see the inclusion of Sections 21 and 25, which give the Department of Health the right to enter an industrial facility for purposes of compliance and for conducting public health investigations and surveys. This is very important to us to determine the actual hazards of the various substances, which we are supposed to communicate to the community.

Another provision, Section 9(c), complements the provisions cited above in that it requires the owners of facilities to give us access to employee health and exposure records. Again, this is essential if we are to determine and transmit health effects, which is a critical thing for us.

We are also particularly pleased with the opportunity to establish education and training programs for police and fire departments. This is not a new activity for us. We have worked very closely with fire fighting services to develop and publish a report called "Fire Fighting in New Jersey: Hazards and Methods of Control," which we are proud to say is a somewhat unique document in determining guidelines for safe fire fighting practices from the point of view of exposure to various chemicals. We work with police departments on carbon monoxide problems in police vehicles and firing range problems relating to lead. So, this is not a new activity for us and we are very happy that the bill gives us a specific mandate to do this.

We have a few changes we would like to bring before the Committee. One, which is really just under discussion now and which we have to develop further with the Department of Environmental Protection to come back to you, is, we would like to explore further the question of whether there could be fewer survey forms, with some extension of the mandate in the current forms. That is a technical problem and we would like to come back to you in the future on that.

SENATOR DALTON: It would make me very happy if you could reduce the number of forms.

DR. ALTMAN: Thank you. The second issue involves the Material Safety Data Sheets. When the Department established regulations for the current Right-to-Know law, we thought it would be very useful to have Material Safety Data Sheets, where they are available -- we are not asking anyone to develop new sheets, but where they are available; they are required by OSHA -- and to distribute these sheets because they involve mixtures of chemicals which are not specifically covered by the Hazardous Substances Fact Sheets that we prepare. We do need some new regulations because we have had a lot of comments that we did not have specific legislative authority to do this in the current bill. We think it is an important community service to be able to require the use of the Material Safety Data Sheets, and we would like to see that included in the bill. Again, we are talking about sheets that are already available; we are not asking that new sheets be developed.

We think that the labeling requirements may need a little bit of fine tuning. We are concerned, for example, about the provision of CAS numbers on the label. I am not talking about CAS numbers on survey forms; I'm just talking about them on the label. One of the comments that came to us during the implementation of the law was that many places, such as laboratories, for example, get chemicals which are completely labeled in terms of what the law would require, but they miss the CAS number. Therefore, they have to be completely relabeled to conform to the act. We think that if a chemical is uniquely labeled as to truly inform about what the chemical is, just a simple inclusion of the CAS number on the label should not be necessary. We want to see the CAS number continued on the survey forms, so that the individual communities might have a place of reference to get that number if they need it.

I have also covered several other things in my prepared testimony. We have some concerns about the covered employers. In the prepared testimony -- and I am not going to read all the various codes -- there is a list of things we think might be deleted, some that might be clarified, and some that might be added.

I would like to just comment on one of the items, and that is the deletion of schools. Both the Committee and the Department have received a great deal of comment about this. We have received surveys from schools, particularly high schools and middle schools, and we find many chemicals in these schools. We think that in the high schools and middle schools which have laboratories and shops with chemicals in them that might be of concern to communities and students, labeling is appropriate. We urge the Committee to put these schools back into the labeling section of the law.

We would also like to have some discretion about surveying various types of employers, such as the discretion already allowed DEP. For example, gasoline stations. We do not think it is necessary to survey the thousands and thousands of stations. They could be supplied with fact sheets without this because every station has the same type of materials. We are just asking that there be some discretionary authority.

I have tried to be brief. I just want to say that we support this bill; we would like to see the bill passed. It is a very long and complicated bill that needs some fine tuning, and we are most anxious to work with Senator Dalton and the Committee on certain aspects of it, along with DEP. Thank you, sir.

SENATOR DALTON: Thank you, Doctor. We appreciate your testimony. Mr. Jeffrey Peterson, Economics Laboratory.

JEFFREY PETERSON: Thank you, Mr. Chairman. My name is Jeff Peterson. I am the Manager of State Legislative Affairs for Economics Laboratory. I am also Chairman of the State Legislative Affairs Committee of the Chemical Specialty Manufacturers Association. CSMA is a national trade association with a membership of some 400 firms that manufacture and sell household, institutional, and industrial specialty chemicals. 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 two plants here.

Almost two and a half years ago, I testified before this Committee to express some specific concerns that CSMA and Economics Laboratory had about the Worker and Community Right-to-Know bill. At that time, we emphasized the importance of allowing manufacturers and employers to have flexibility to provide essential hazard communication information in a manner that would be uniform from state to state. We supported the then proposed Federal OSHA hazard communication standard as a mechanism for providing information in a consistent and effective manner. We also stated at that time that the Community Right-to-Know provisions should make a distinction between what is needed by emergency response personnel and the general public. We believe that the former should have as much information as they believe they need, and that the latter should justify their need to know before receiving wholesale information that may have security or proprietary value to an employer.

My testimony then also reflected our interest in working with the Legislature to constructively incorporate language that would help to take care of some of the problems we anticipated. Our views on the right-to-know issue have not changed since that time. Over the past

two and a half years, we have attempted to assist with amendments to the Worker and Community Right-to-Know bill, and following that, we submitted comments through the rule-making process. Our goal was always to find some way to fit New Jersey's Right-to-Know law into the national mainstream of right-to-know as it was developing. Certainly, some accommodations have been made and some exemptions were provided. But, by and large, we felt that we were unsuccessful in those attempts.

Mr. Chairman, your remarks this morning regarding universal labeling suggest that you might be open to making some accommodations in that regard. That would be a principal concern and interest to us.

As laws such as New Jersey's Right-to-Know require us to provide different labels or even make adjustments in our Material Safety Data Sheets, which it appears we may have to do in both Massachusetts and Pennsylvania, they force us to face additional expenses to accommodate even the slightest variation from what is generally acceptable. We believe there has been no demonstration, to this point at least, that the unique requirements, at least in the current law and in the bill you have before us, contribute to a safer working environment for the employees of this State, as compared to what may be available to workers in other states under other right-to-know laws or under Federal OSHA, and we are talking about both the manufacturing and non-manufacturing sectors.

Today, only two months before the implementation of some of the key provisions in the Right-to-Know law, we are faced with the affirmation of some of the worst fears we had two and a half years ago. The labeling provisions, as they now stand, of the Community and Worker Right-to-Know laws that are being reenforced in this language are proving to be as much or more of a problem for our company than we had anticipated. Two and a half years ago, we could only speculate about the costs; now, we can be fairly specific.

Let me tell you briefly what our company faces again, at least with the existing language. Economics Laboratory produces and distributes cleaning products for institutional and industrial uses. Most of our products are hazardous -- and we recognize that -- for varying reasons. All of them are labeled in accordance with at least

one or more Federal labeling standards. Our customers are varied in New Jersey, including restaurants, nursing homes, hospitals, dairies, automobile repair outlets, colleges, and numerous industries of all sizes requiring metal cleaning and metal finishing. The labels for these products used by the customers will be, and have been, adequate under other state right-to-know laws, at least the ones we are aware of, and they would be in compliance with the Federal hazard communication standard. The sole exception to that would be the existing law in New Jersey.

We felt we would have limited options between now and June 30, but it is a likely possibility that we will have to consider relabeling all of the products that we distribute in New Jersey. The scope of that encompasses-- We have approximately 7,000 accounts in New Jersey that cover a whole range of businesses and many units of government in the institutional and industrial sector here. Annually we distribute approximately 450,000 product units to all of these accounts. In order to comply, the first thing we would have to do would be redesign labels for about 600 of our products. That is the estimated amount we ship into this State. The cost of redesigning and going through all of the mechanisms for label design would be approximately \$500 a label, or \$300,000 as a one-time cost.

After that we would have to look at annual costs of approximately -- and this is a conservative estimate -- \$350,000 for the logistics of applying these separate labels, segregating the products in our plants across the country, and continuing through our distribution network into our warehouses, until finally delivery would be made to our customers in New Jersey. Again, we consider this a conservative estimate. Since we have never had to do anything like this before, we can only hope that we would do it efficiently enough to get the required labels to the right customers in New Jersey so we would not be putting our accounts at risk here.

We feel that these expenses would be very difficult to justify in light of the detailed information we expect to be providing, and will be providing, to our customers when we start shipping Material Safety Data Sheets into this State, as we will every other state, when

the Federal OSHA hazard communication standard is initiated in November. It is unclear to us to what extent the passage of this bill would complicate or add expense to the labeling problem I have just described. It may have little or no impact at all on the expenses I just outlined. But certainly to the extent that the labeling provisions can accommodate the concerns of a national distribution of hazardous products, such as we have to face, we feel that you will be coming a long way toward addressing those problems I just outlined.

As we mentioned two and a half years ago, we stand ready to work with you, at least in dealing with the labeling provisions.

SENATOR DALTON: So, you would rather go with the OSHA standard; you don't want to give the chemical name.

MR. PETERSON: Well, Mr. Chairman, the information on most of our products -- again, there are approximately 600 of them -- is in compliance with the Federal Hazardous Substances Labeling Act. That was designed principally for consumer products. We felt it was an adequate standard -- one which we have used for quite a while -- for the products we market that are not already covered by another standard, such as FIFRA for pesticides or for the Food, Drug, and Cosmetic Act. Basically, the Federal Hazardous Substances Labeling Act requires you to list hazardous materials that contribute overall to the hazardous nature of the substance. Certainly, we recognize it is not as detailed as the requirements you have in your current law, but, again, we recognize that the labels can be referenced to Material Safety Data Sheets, where there would be much more information available. That is a provision that a number of other states allow, and which Federal OSHA permits, as well.

SENATOR DALTON: In other words, you are opposed to giving the chemical name? That was my question.

MR. PETERSON: Well, Mr. Chairman, for a mixture we would list some chemical names, but we do not list all of the chemical names in a mixture on our current labels.

SENATOR DALTON: Okay. The hazardous labeling mixture requirement is anything hazardous that constitutes 1% or more of that mixture.

MR. PETERSON: That is correct.

SENATOR DALTON: What you are suggesting is that you, in no way, want to comply with that. By the way, I am not getting into motives or anything here, okay? I am just trying to focus in on what your problem is. You are generally against the labeling provision, and I want to find out where and why. I suspect the why is probably the fact that you only have to do it in New Jersey.

MR. PETERSON: That is correct.

SENATOR DALTON: Is that basically your problem, because you only have to do it in New Jersey?

MR. PETERSON: Mr. Chairman, that is basically it. As a matter of fact, if we were a smaller company and were marketing our products principally in New Jersey, we could probably make accommodations and do that. But, again, our products go all over the country, and to the extent that New Jersey, or any other state, or any combination of other states, require us to have separate but different things on our labels, it makes it virtually impossible for us logistically to do all of the things I described when we have approximately eight plants across the country manufacturing, in many cases, the same things and labeling them. Logistically it is very complicated.

SENATOR DALTON: Do you feel there is a need for this information?

MR. PETERSON: Well, Mr. Chairman, again, we feel that--

SENATOR DALTON: (interrupting) If it is hazardous?

MR. PETERSON: The information on the Material Safety Data Sheet-- We are already sending Material Safety Data Sheets with every product in states which are already under Right-to-Know and require it. We intend, as of November of this year, to send a Material Safety Data Sheet with every product into every state, including New Jersey. That would provide even more information than would be required under the labeling requirement you have now.

SENATOR DALTON: Will you be doing that just in New Jersey?

MR. PETERSON: No, sir, Mr. Chairman, we are going to do that in every state, as every business should under Federal OSHA.

SENATOR DALTON: Okay. There is just no way to reconcile this. It is a production problem. You are going to have to label separately for New Jersey. We're asking you to give us the hazardous chemicals that are a part of the mixture in your products.

MR. PETERSON: Mr. Chairman, that is correct; but that would be on the Material Safety Data Sheet.

SENATOR DALTON: I thought perhaps there would be some way we could help you, but I suspect there isn't.

SENATOR COSTA: Then the reason that you do not want to comply is not a trade secret -- not for trade secret purposes?

MR. PETERSON: That is correct. The point I was making is not really related to trade secrets.

SENATOR COSTA: It would just be a matter of the label itself. You feel you would not be able to go along with that? No matter where you send your product it is going to be hazardous.

MR. PETERSON: That is correct.

SENATOR COSTA: Not only in New Jersey.

MR. PETERSON: That is correct. As I mentioned, we are currently labeling all of our products according to the Federal standard. As I also mentioned, in order for us to change our labels for the products coming exclusively into New Jersey to conform at least with the current language of the bill, we estimate the cost would be an additional \$350,000 a year.

SENATOR COSTA: How often do you change your labels? You're manufacturing all the time and you have a certain amount of labels. So, would it cause you any hardship to just change the labels, instead of ordering a new batch of the same labels?

MR. PETERSON: Senator, we do change the labels, but basically we follow the labeling parameters of the Federal Hazardous Substances Labeling Act. A number of other companies which ship nationally also do the same thing. Again, we could redesign new labels, apply them in the various plants, and then ship them, but I am just citing the additional cost that would be required.

SENATOR COSTA: I can't follow that, Mr. Chairman, because if you are making up a label, you're making up a label.

SENATOR DALTON: And you can add the chemical name.

SENATOR COSTA: If you have so many in stock and you finish with them, you have to order new labels. Right? Why can't they comply?

MR. PETERSON: Currently, we do not provide the level of information required under the current law. We talked about supplementary labeling, but it would be very difficult for us because many of our products are not that big. We have some 55-gallon drums, but we sell dishwashing soap for the food industry in small packages. The labels practically cover most of the box. We would have to redesign and apply those labels to accommodate the law.

SENATOR DALTON: Mr. Peterson, I didn't mean to sound glib before. I was seriously reaching out trying to find a way to help. I know there are some FDA materials where every component is listed, not just hazardous components, and you probably have to comply with those labeling requirements too. In that case, those labeling requirements are even more extreme than what we are asking for here in New Jersey.

MR. PETERSON: Mr. Chairman, that is correct. The Food, Drug, and Cosmetic Act and FIFRA, for example, do require more information. For some of the products that are covered under those labeling laws, we do provide more information.

SENATOR DALTON: The bottom line is that it is one State. We're asking you for more information than perhaps 49 others. That is the problem in a nutshell, again, not being glib. That is the nub of the problem as I understand it.

MR. PETERSON: Well, Mr. Chairman, again, the advantage we have had in some of the other states is where they had different labeling requirements, they have allowed us to use the Material Safety Data Sheet as a reference to the existing label. Again, Pennsylvania is very explicit about that. Illinois has done that through the regulations; Minnesota has done that through the regulations. So, there is some precedent for doing that.

SENATOR DALTON: Okay. Thank you very much, Mr. Peterson.

The next speakers are a panel, the George Brown panel. I don't know who is here and who is not here anymore.

GEORGE BROWN: Good afternoon, Senator.

SENATOR DALTON: Good afternoon.

MR. BROWN: My name is George Brown. I am the Chairman of the Fire Fighter Health and Safety Committee for the State Fireman's Mutual Benevolent Association. What I would like to do today is testify on behalf of the law. I have a button on my lapel that says, "Fire Safety is Everybody's Business." After listening to testimony today and going through some training sessions on hazardous material, it should probably say, "Hazardous Materials Are Everybody's Business."

What I would like to do is give you some statistics on what we face as fire fighters. In 1983, which is the last year we have statistics available for, 106 fire fighters died in the line of duty. Seven of those fire fighters were from New Jersey. Out of those statistics on 106 fire fighters in 1983, residential occupancies represented 37.4% of those deaths. Manufacturing occupancies represented 14.3% of those deaths. But, we don't go to as many manufacturing occupancies as we go to residential occupancies. When you break down the incidents in terms of per 100,000 incidents by occupancies, the figure for manufacturing occupancies is more than double the figure for fire fighter deaths by residential occupancies.

Unfortunately, fire fighters in this country probably have the worst occupational death record of any occupation. We die more often than miners, construction workers, police officers, and almost anyone else in this country. That does not count the cancer death rate of fire fighters. The cancer death rate in 1950 was 2% greater for fire fighters than for the general population as a whole. As of 1980, we were almost 18% higher than the general population as a whole. We suffer cancers of the intestinal tract, rectal cancer, colon cancer, cancer of the lung, lymphatic cancer, throat cancer, and leukemias. We also suffer from brain cancer, pancreas cancer, and mouth cancer, with the last three cancers being very rare in the general public.

It was mentioned before about the site-specific plan. We are very much in favor of a universal labeling law. The site-specific plan is a nice idea. It gets us to the front door of the facility, but once we get to the front door of the facility we have to go in. In America fire fighters are very, very aggressive. We believe in going in and attacking. Unfortunately, we are too often men of action. We do not

take the time to size up a situation because we do not anticipate a problem with hazardous materials in many, many occupancies. The site-specific plan is going to tell us, "Stop, wait a minute. Let's find out what is going on." There is no problem with the site-specific plan if we have buildings that are dedicated only to a single hazardous substance. But, when we have a multiplicity of hazardous materials within a building, we have to move into that building and we have to do reconnaissance. We have to be properly protected when we do that reconnaissance. We need to see whether or not the hazardous material itself is involved in the fire; we need to see whether or not we can defend that material from becoming involved in the fire; and, we need to see if we should abandon our operations and withdraw from the area.

I found it very interesting that the chemical industry came up here and spoke about the fact that they thought a site-specific plan was accurate enough. One gentleman even said that as a fire fighter, he wouldn't want to be reading barrels. Well, as a fire fighter, I'll tell you this much: I want to read those barrels. I need to know what is inside those barrels. It's kind of ironic that CHEMTRAC, which is an emergency response agency established and maintained by the Association of Manufacturing Chemists in this country, requires you to give them the specific material involved in a fire. Without that specific material, they will not be able to identify its physical or chemical properties. They can't tell you its toxicity, its explosivity, or its reactivity. You are on your own at that point.

So, I kind of find it very ironic that we have the chemical industry in the State saying, "Well, we'll go so far, but we will stop at giving you labels on the barrels," when their own national Association is saying, "We need to know what is in there."

We have a cliché in the fire service, and time and time again it is very, very true. The cliché is very simply: "The first five minutes are more important than the next five hours." The actions a fire fighter or a fire officer takes upon arrival at the fire ground is going to set the tone for that entire operation. If we are aware that hazardous materials are in there, we can take the necessary level of protection. There are some hazardous materials that are turned out

by the air in the self-contained breathing apparatus we normally wear. There are some chemicals where that is all that is required for us to wear, but there are many, many more substances which require specialized equipment, and even total incapsulation suits to protect our lives and our health.

I would like to specifically address the fact that we have many, many times where fire fighters are not even aware that they have been exposed to these materials, either through ignorance, through the fact that there has been very poor training, or through the fact that there has been poor cooperation with industry. No one has sought out the cooperation of industry, yet we respond. Fire fighters come off the fire ground-- Dr. Altman alluded to the report: "Fire Fighting in New Jersey: Hazards and Methods of Control." One of the items pointed out in that report was the fact that our clothing, quite often, is contaminated by the products combustion of a fire, or by the products involved in a fire. When I go off duty in the morning, I go off duty in the same uniform I work in all night. I go home in that uniform and I wash it in my own clothes washer. I am beginning to change my philosophy on that idea. There are many volunteer fire fighters who go to a fire and go right home from the fire in the same clothing they had on their backs. That clothing can very easily be contaminated. That clothing will not only be contaminated, but will contaminate the hamper they put it in, the washer and dryer they put it in, and all of the clothes it comes in contact with. So, we have to be aware. There is a long route to go with hazardous materials. This is just one of the many steps we have to take.

There was some discussion before about the Department of Transportation labels. The Department of Transportation labels are very, very basic. By the Department of Transportation's own admission, theirs is not a totally accurate method of assessing the situation. Two materials that come to mind are methyl isocyanate, which is the material that was involved in Bhopal, India. By DOT's own admission last week while I was in Atlantic City at a seminar, they admitted that basically if you look up methyl isocyanate under the guide DOT publishes, you really do not get that much information. If you ever read that information, you would never imagine a Bhopal, India.

DOT also labels anhydrous ammonia as a nonflammable compressed gas. Unfortunately, there are two fire fighters in Louisiana who are dead right now because they believed it was a nonflammable compressed gas. They went in to mitigate the incident wearing Level "A" protection suits, and when the gas ignited, their clothing ignited with it.

We need labeling; we need as much information as the first responders to be able to handle a situation not just for our own benefit, but we need the information so we can get plans together if we have to get people out from downwind, if we have to evacuate areas. We have to be able to have that information on hand. We can't call someone who might be on vacation at the Jersey Shore. We can't wait for him to get back to give us the information. We have to have it then; we have to have it right away. Without it, the only thing I can recommend is for the chemical companies, the manufacturers, to indemnify themselves, and for us to withdraw from the area and just let it burn, where no one will get hurt. Thank you. (applause)

WINNIE HARTVIGSEN: I'm Winnie Hartvigsen; I'm President of the New Jersey State First Aid Council. I, too, have a deep concern for our nearly 15,000 volunteer first aiders. Presently, we have one young woman who is hospitalized, and has been since April 19. Her family is being denied her expertise, etc. This was a result of attending to the needs of fire fighters on the scene fighting some unknown substance. This girl is in the hospital worrying and concerned for the well-being of the nurse who attended to her when she was brought into the hospital because the nurse was pregnant. I have seen the suffering this girl is going through, and I am deeply concerned. I don't want to see this happening. We have problems obtaining and retaining volunteers, and things like this can be very detrimental to us.

The other thing is, I also have a concern about small children. They are notorious for their desire to ingest any substance that is available to them. Granted, adults are the biggest offenders because they make things available to children of that age, but when we answer a first aid call, it is extremely frustrating not to know what was in whatever the child ingested. Precious time is lost while

everyone does his or her utmost to find out what was involved. We do not attempt to treat until we are really sure what means are going to be best for evacuating the substance from the youngster.

Again, I just want to say this is a deep concern to me. Thank you.

SENATOR DALTON: Thank you very much. Senator Costa?

SENATOR COSTA: I agree about the labeling, especially where children are concerned. As far as fires are concerned, when you are speaking of labeling, are you really more concerned about the labeling on an article, or about the fact that you should know prior to going into a building? As I see it, just picturing a fire, you are not going to start reading a label. There may not be a label to read because of the fire. So, the important part of that-- That's symbolic, in a sense, for you, as far as a fire fighter is concerned. The fact is, you should have that information prior to even going into a building where there should be a label on a can. Is that correct?

MR. BROWN: Okay. I agree with you that, yes, we should have the information prior to an incident, and pre-fire planning is a tremendous tool within the fire service. But, to have a complex, a manufacturing complex, and to have several different products within a building, if we are going to move in and mount an interior attack on the fire, which is the normal method of fire fighting in this country -- we are very, very big on saving property as well as saving lives -- I want to see what is burning. If I cannot discern what specific material is burning, then maybe it is time to abandon the operation and withdraw.

SENATOR COSTA: That is what I am speaking about. As I see it, let's say there's a fire and you can't get into the building, or maybe all the labels are burned already. You should have that information. As a fire fighter, you should know what is in the building before you even go near it.

MR. BROWN: Right. If a building is dedicated to only one type of material, we will definitely have the knowledge before we enter the building. But there are situations--

SENATOR COSTA: (interrupting) If there are different types of materials, you wouldn't know?

MR. BROWN: What's that?

SENATOR COSTA: If there are more, you wouldn't know?

MR. BROWN: If a building has more than one material?

SENATOR COSTA: Yes.

MR. BROWN: Well, there may be only one part of the building on fire, which is generally the case. You would move into the building and you might be in a position where you would be able to identify the material not yet involved in the fire, identify it as to its explosivity and flammability. You might be able to mount an attack which would allow you to defend those materials not already involved so that the fire could not extend to those materials. We are not just identifying the materials on fire; we are identifying the materials in the building which have the potential to catch fire. We are not just asking what the possibilities are, or rather, we're not just looking at the probabilities; we're looking at the possibilities. The more we have on the fire ground, the more information we have available to us, the less time is lost trying to get that information. The fire ground is a very, very confusing place for about the first 10 minutes. It is a very difficult situation.

SENATOR COSTA: That is the way I see it in something like this, an awareness and knowing what is in the building, and what they are manufacturing. I feel there should be some way for you to know what part of the building houses what hazardous substances. I just can't see you walking into a building and starting to make decisions by reading the labels right then and there. That has to be done way ahead of time. We're changing our ways of even fighting fires. A lot of education has to go on with fire fighters before they are called upon to fight a fire.

MR. BROWN: Yes, we definitely need pre-fire planning information to develop the resources to handle the incident. We definitely need that. If there are special levels of protection required -- Level "B," Level "C," Level "A" -- we need to know that beforehand. We are not going to go out and run around trying to get Tivex suits or totally encapsulated suits at the fire.

SENATOR COSTA: I just want to clarify something in my mind about what you were speaking of when you said, "It has to be written on a label." Someone came into my office and spoke to me about a person going into a building to rescue someone. Let's say a person is laying down in a building and he has been exposed to some kind of toxic fumes. Then another person says, "Heck, I'm going in there to rescue him, but I don't know what I'm getting into." Well, what do you do at that point? You should know before you go in there, but you are exposing yourself anyway, you know, after the fact.

MR. BROWN: It is a very strange thing when life is involved. You suddenly--

SENATOR COSTA: (interrupting) Yes, you do things without thinking.

MR. BROWN: You think much differently. You don't always think rationally.

SENATOR COSTA: As I say, I think we are changing our whole way of fire fighting and saving people.

MR. BROWN: It will take a long time, I'll tell you that much. I would also like to point out that not all incidents the fire service responds to involve fire. Many, many incidents simply involve spills.

SENATOR COSTA: I see.

MR. BROWN: Or leaking containers, or things like that. Without a label on a single drum of material, you have no idea of what you are up against. There was an incident down in Port of New Orleans where they had a ship burning. There was a belief, because the shipping manifest was improperly-- They had not loaded all of the cargo on when it left. One of the items on the shipping manifest was tetraethyl lead, which is an additive for gasoline. If I remember correctly, it is explosive and poisonous. Because of that, they would not mount an attack on the fire. They withdrew and stayed back. They found out about two days later that the cargo was never loaded; the shipping manifest was wrong. So, the material burned for two days.

It will also be to the benefit of the manufacturers if we are able to identify the materials, because if we find out there are no

hazardous materials involved, we can move in and save their plants. We can save them downtime. It's not just for the benefit of the fire service. There would be an awful lot of benefit out of this.

SENATOR DALTON: Thank you very much, both of you.

MR. BROWN: Thank you.

SENATOR DALTON: From the unclassified witnesses, I would like to call on Mary Woodson from the South Jersey Auto Rebuilders Association. Mary, would you have any objections if-- It seems that Mr. Rudolph is here from Garden State Auto Body--

MARY WOODSON: No, that's fine.

SENATOR DALTON: Is Mr. Rudolph here? (no response)

MS. WOODSON: He's not here?

SENATOR DALTON: No, he's not here.

MS. WOODSON: Okay. My name is Mary Woodson. I am the Director of the South Jersey Auto Rebuilders Association and owner of an independent body shop. I appreciate the job you are doing to protect the people and the community, but our people feel there is a burden with the paperwork. We are trying to comply with it, but we are not scientists and we stand to be severely penalized if we make a mistake. We can fill out all of the paperwork and still not understand what we have done, or if we have filled it out properly.

We have to make decisions about getting training for our employees, yet we have not received any criteria from the State to do that.

SENATOR DALTON: Training is out.

MS. WOODSON: Training is out?

SENATOR DALTON: Mark, training for auto body shops -- is that still in?

MR. CONNELLY: Yes.

SENATOR DALTON: I'm sorry; it's in.

MS. WOODSON: Training is in.

SENATOR DALTON: But, you haven't received any criteria yet?

MS. WOODSON: No criteria, but we are supposed to have them trained by June 30. That is the last I understood.

If we are supposed to label products as they come through the door, many of the products we use are not manufactured in New Jersey. The manufacturers are the ones with the expertise to do the labeling, yet they balk at labeling only for New Jersey. So, that puts the burden on us to do the labeling. A lot of times the product that is coming through the door is being used within an hour, or you're bringing it in-- Say I send an employee for a can of gas to start a motor; he is going to do it. I have to label the can of gas to hand it to another employee to use. I would have to have one person to do nothing but labeling, which, of course, would be a burden.

I am trying to keep up with all the labeling. If we use paint, so many of our materials are common and use the same things, that this would be a burden-- If we had 10 cans of paint, they would have common materials. They are the ones you are concerned with, not that the can of green paint has one chemical that the can of red paint doesn't. So, it becomes sort of an overkill.

I think the purpose of the labeling is education of the community and the employee. Now, if an employee is concerned about whether he is getting cancer, I think that is what he wants to know -- that if he is working with a certain product he is going to get cancer, not that the name of the chemical -- which can be this long (witness demonstrates) -- gave him the cancer, as opposed to another chemical name just as long. I think his thrust is, does he have to protect himself to prevent cancer? Along with that, I think a more simplified labeling system might prove more beneficial. Once we have educated the employee, why couldn't we just identify the cans with, say, a large "C," designating cancer causing, or a large "F," designating flammable? We could identify the ones you could use water on as "FW," and for the ones you couldn't use water on, you could have a slash over the "W," the way they have it on nonsmoking signs, and that kind of thing, something that is clear. I think the community needs to know. We're talking about the emergency services people. When they enter a building, I don't think they are going to take the time to read labels.

SENATOR DALTON: You just heard from them.

MS. WOODSON: That's right. I don't think they are going to go into a burning building and read labels. I think the main information they need has to be presented beforehand. If they are in a building, I think a large "F" with a "W" on it would tell them more immediately. That would be what they need to know, not little letters, because some of the cans are very small. That would probably identify things to them in a quicker manner than having long names, where they would then have to go to some kind of a master sheet to find out if a product was going to explode on them. The idea is to have the information available during an emergency situation.

Finally, what responsibility would we have with respect to a tenant in compliance? If we have a property and we rent it out to someone, and he has hazardous materials, then our concern becomes, "What is he doing with his waste, oil, or whatever -- with his products?" How far does our responsibility go?

SENATOR DALTON: It's clear; the employer has to do the labeling. It comes under the parameters of the bill.

MS. WOODSON: But, what if--

SENATOR DALTON: (interrupting) If you rent to an employer, it's the employer. I mean, it's clear.

MS. WOODSON: Okay, we have no other responsibility for someone else's--

SENATOR DALTON: (interrupting) Under this act, the tenants-- There's nothing; there's no tenant/landlord relationship here. We are not getting involved with--

MS. WOODSON: (interrupting) It's just my employees I have to worry about, not the ones in the building next door?

SENATOR DALTON: That is correct.

MS. WOODSON: Okay.

SENATOR DALTON: I suspect that if there are carcinogenic materials next door, you might be concerned for your own safety, but there is nothing germane or unique to the tenancy that would cause you any concern under this act.

MS. WOODSON: So, at that point, if I was concerned about him not complying, I would have to take action through the State to force

him to come into compliance so that I could have the information, not that I would have the responsibility because he was my tenant.

SENATOR DALTON: Again, you would have the option of calling up the State and reporting his noncompliance; that is correct. It is not a requirement.

MS. WOODSON: No, but to protect my employees. If I am doing it within my own building and he is not, but he does have something that could harm us.

SENATOR DALTON: That would make sense, yes.

MS. WOODSON: Okay.

SENATOR DALTON: Mary, let me ask you a couple of questions. The Health Department has representatives here. Under the Department's education program, which has to be-- What is the status of that, Health Department?

RICHARD WILLINGER (from audience): We are developing education and training program criteria which we expect to send out to covered employers during the month of June.

SENATOR DALTON: Now, if they don't have that program ongoing by June 30, they are in noncompliance with the law. What happens then?

MR. WILLINGER: Okay. Let me say that this criteria is in addition to the criteria currently set forth in the regulations. There are some criteria to start off with. By June 30, they have to have a program set up; then they have until the end of the year to actually train their employees pursuant to the recent amendments to the law.

SENATOR DALTON: So, in other words, you have a program that has to be in place by June 30 and in effect by the end of the year. Is that what you are saying?

MR. WILLINGER: Yes, it has to be established by June 30, and then they have to the end of the year to actually give the training to their employees, whether they want to do it in one day, or over the course of several months.

SENATOR DALTON: One of the concerns, while we are talking about this-- I know Mary and a lot of other people have tried to get through on your 800 number, and have been unable to. That is something we are going to have to work on.

MR. WILLINGER: Late last year, during November and December, we did have a problem, but since the first of the year, the calls have leveled out and have been reduced quite a bit. So, we haven't had any reports since January from people being unable to get through.

SENATOR DALTON: Mary, does your organization have the 800 number?

MS. WOODSON: I have it, and we have passed it along at our meetings.

SENATOR DALTON: Okay.

MS. WOODSON: But that just covers a small percentage of the body shops in New Jersey.

SENATOR DALTON: Okay. Regarding the labeling, one of the things we talked about earlier -- and you've been here -- was trying to establish some sort of a component within the Departments to really come out to assist employers with labeling, such as yourself, so that you won't be left in a lurch. For people who want to comply, we want to give them the tools to comply. I know that is a concern of yours. "FW," or whatever system, is just unacceptable to those people addressing emergencies, as you have heard already today. But, trying to provide you with how to determine what materials are in your shop is something that-- I couldn't agree with you more. We have a responsibility to people like yourself to help you to comply through this act. I am not suggesting, by the way, that you are going to be 100% totally in love with this bill after we put that in place. What I am suggesting is that we are going to try to make your life easier through that component.

Additionally, I think you raised another issue, but it escapes me right now. The labeling was one issue. You are aware of the education. I think you raised another issue which I cannot recall.

MS. WOODSON: I talked about labeling things as they come through the door. If one employee is going to use a product, if he is mixing paint -- I have one painter who mixes and another who uses the paint -- he then has to label it to hand it to the other person. Yet, it is a product he is very familiar with and may have mixed himself the day before. But, according to the law, the person who mixed it would

have to stand there and put a label on the container before he could hand it to the next employee to use.

SENATOR DALTON: Okay, you have a person whose paint is coming through the door.

MS. WOODSON: If I have a mixing system--

SENATOR DALTON: (interrupting) If you have a mixing system--

MS. WOODSON: (continuing) --or if the paint comes through the door and one employee is mixing it with a thinner to get it ready to use-- You do not spray it directly out of the can; you mix it with thinner, and then you put it in a spray gun. So, if one employee did the mixing, he would have to label the spray gun for another employee to be able to use it.

SENATOR DALTON: In other words, you're saying that on the labeling requirements--

MR. WILLINGER: (interrupting) There are certain exceptions for processing painters and I would have to look at those, but it basically sounds as though the testimony is correct. The purpose is so that any new employee who gets a mixture will know what is in that container. Therefore, if there is a label on it, he would be familiar with what is in the container, you know, as familiar as the person who actually mixed it.

SENATOR DALTON: How about if the employees are not new employees?

MR. WILLINGER: No, I didn't mean-- I meant an employee who received a container from another employee. The employee who received the container, who did not do the original mixing, should know the hazardous substance constituents of the container, as well as the person who did the mixing.

SENATOR DALTON: That, again, just raises a practical problem. If it is a process that someone does over and over and over again, such as in an auto body shop, there you would have a-- You know, again, this is something I think we have to look at.

MS. WOODSON: I don't profess to be familiar with other people's businesses, but I know in mine, it is common products that we are using day in and day out.

SENATOR DALTON: You have the same people doing the same things.

MS. WOODSON: Yes, the same things all the time, with the same products. I would imagine that a lot of other businesses are the same.

SENATOR DALTON: That's correct. Mary, you have raised several really good points, and I appreciate your testimony here today.

Is Jeffrey Klein here? (Mr. Klein not present) How about Bob May and Clark Martin? (Also not present) Robert Harrison and Bill Dalton? -- no relation, by the way. (no response) Is there anyone here from the Research and Development Council? (affirmative response)

I have been calling Robert Harrison. I thought he was the representative of R&D. You represent whom, sir?

CHARLES HARRISON: I represent the Research and Development Council of New Jersey. My name is Harrison, but I am no relation to Robert Harrison. Senator, I understand we were called earlier for the R&D Council, but we were not back from lunch. I apologize for our tardiness.

Senator Dalton, Senator Costa, my name is Charles Harrison and I am here today as the Vice Chairman of the Research and Development Council of New Jersey. With me are Barry Wood, who is the Vice Chairman of the Government Relations Committee, and Karen Hanzevack, who has also worked in connection with the Government Relations Committee on a task force involving the Right-to-Know law.

The Research and Development Council of New Jersey is an organization of 105 industrial, university, and testing laboratories in the State. Our members employ over 100,000 people, and spend some \$6 billion a year in the search for new medical, electronic, and other technical and scientific advances.

At the outset, let me emphasize that the R&D Council endorses the aims of the Worker and Community Right-to-Know Act and the proposed Community Right-to-Know and Chemical Safety Act. Protection of worker health and the environment are major concerns of the Council's members, concerns with the public interest which flow naturally from the objectives of research and development. Many of our members' projects

have benefited, and will continue to benefit, public health and welfare. More directly, our member laboratories widely use protective devices, engineering controls, training programs, safety manuals, and trained on-site emergency response teams to minimize risks from exposure to hazardous substances. In addition, laboratory personnel are highly trained individuals, with the knowledge and respect to properly handle hazardous substances.

Our purpose in offering this statement today is to request the reinstatement of the survey and labeling provisions afforded research and development laboratories under the Worker and Community Right-to-Know Act. As you know, these provisions were provided after careful consideration by the Legislature, and nothing has changed to warrant the omission of these provisions in the proposed Community Right-to-Know and Chemical Safety Act. Further, we want to ensure that the most effective and efficient measures for achieving the goals of the two acts are adopted. In addition to briefly reviewing some of the reasons why research and development laboratory facilities are different from the manufacturing plants for whom the provisions of the acts were obviously geared, I'd like to propose some alternative suggestions, which, in conjunction with measures already in place, the R&D Council believes will provide the most effective and efficient means of protecting our workers and the communities neighboring research and development laboratories.

Turning to the unique aspects of laboratories which differentiate them from manufacturing plants, the most significant and obvious distinction is the relatively small scale of our operations. In the course of an experiment, a research scientist would normally use very small amounts of a substance over a very short period of time, a use far removed from what may be a long-term continual use in tons or thousands of gallons at a manufacturing plant. Any chance of a hazardous release to the surrounding community likewise orders of magnitude less from a research and development laboratory.

Along with this scale of operations is the presence of correspondingly small containers. The proposed Community Right-to-Know and Chemical Safety Act would require laboratories to place the

chemical name and chemical abstracts service number of the contained substance on each container. In the case of mixtures, the five most predominant components must be listed, as well as all other components that also appear on the hazardous substances list. Remember that small containers can have only small labels, rendering these requirements often impossible to comply with.

Therefore, the R&D Council recommends retention of the coded labeling provision now part of the Worker and Community Right-to-Know Act. This labeling provision helps to overcome the difficulties previously mentioned and provides sufficient information to deal with potentially dangerous situations. Thus, we urge that this provision be applied to the bill you are about to propose.

Another characteristic which distinguishes laboratories from manufacturing facilities is the diversity of our operations. A typical research and development facility may employ hundreds or even thousands of scientific personnel, with a like number of small-scale experiments underway at any given time. In contrast, a manufacturing plant conducts fewer, but larger-scale operations. Despite this difference, the proposed bill will require research and development laboratories to complete the same surveys as manufacturing facilities. However, it takes as much time to compile data about grams of material as it does for tons of material. Furthermore, because of the diversity of its activities, a typical laboratory will have a greater number of listed substances on its premises than will a manufacturing plant. Therefore, the effort required for survey completion will be much greater for laboratories in absolute terms and disproportionately greater in terms of the quantities of materials and the risks involved. The effort required on the part of public officials for the evaluation of these laboratory surveys will also be disproportionately large and the benefits accruing small.

In the case of an emergency response situation, there is a better way, and I will suggest fire fighting as an example. It is unlikely that the presence of relatively small amounts of a wide variety of chemical substances could significantly alter basic and safe fire fighting techniques, but there is a serious concern as so

eloquently expressed here this afternoon. Therefore, we submit that rather than surveying each and every research and development laboratory for all chemicals, regardless of amount, and preparing a list for local distribution, what is needed is careful advance consultation and planning between a laboratory and its community emergency response forces.

The elements of an emergency response program are already largely in place or proposed. In the Worker and Community Right-to-Know Act, Section 25(b) already requires research and development laboratories to establish communications programs with their local fire departments. This requirement can be appropriately extended to laboratories in manufacturing facilities falling under the Standard Industrial Classification Major Codes 20-39 through the proposed Community Right-to-Know and Chemical Safety Act. Supplementing this is Section 24 of the proposed act, which requires the Department of Health to establish an education and training program to assist local fire and police departments in responding to hazardous substance emergencies. Together these provisions provide an effective and efficient mechanism for emergency response at research and development laboratories.

In a similar fashion, community protection against non-emergency releases is also available. Besides the inherent protection afforded by the small scale of our operations, our environmental discharges are generally covered by numerous Federal and State permits and regulations, with frequent on-site inspections by appropriate authorities, all of which are part of the public record. In addition, the Department of Health's set of Hazardous Substances Fact Sheets, which will also be part of the public record, provides a representative picture of the types of hazardous substances present in research and development laboratories. Finally, the proposed bill provides right of entry to our facilities for the Departments of Environmental Protection and Health, as well as local fire and police departments, further ensuring the safety of our operations to surrounding communities.

Within the workplace itself, those research and development laboratories now covered by the Worker and Community Right-to-Know Act, such as universities, hospitals, and museums, are already required to comply with the three basic elements of worker protection: knowledge of the substances handled, awareness of their hazards, and training in risk reduction. Thus, the act's labeling, Hazardous Substance Fact Sheet, and training provisions already provide for an effective worker protection program.

The research and development laboratories in manufacturing facilities falling into S.I.C. Major Codes 20-39 will be covered by the Federal Occupational Safety and Health Administration's hazard communication standard. In promulgating this standard, OSHA recognized that due to the large number of small containers in laboratories, and the types of operations performed, not all provisions of the standard could be appropriately applied to these facilities. However, OSHA does require that labels on incoming bottles not be removed or defaced and that received Material Safety Data Sheets be maintained in the work area, with employee access. Furthermore, the standard requires that its training provisions be fully implemented for laboratory employees.

Although this standard goes a long way toward meeting the three basic elements of employee protection, the Council recognizes that the State of New Jersey may wish to consider a supplemental approach. In an effort to supplement the protections offered under the OSHA standard, we propose that the complete set of Department of Health Hazardous Substance Fact Sheets also be sent to our member facilities falling under S.I.C. Major Codes 20-39, and maintained in the work area, with employee access. We believe such a request would achieve a high rate of acceptance. Any attempts by the proposed bill to impose mandatory workplace standards on laboratories in manufacturing facilities falling under S.I.C. Major Codes 20-39, even though labeled as community standards, are likely to fail and leave the types of unacceptable situations in which we find ourselves today where, for example, a museum laboratory is more closely regulated than is a factory.

I would now like to turn to another important aspect of the Worker and Community Right-to-Know Act and the proposed Community Right-to-Know and Chemical Safety Act, that is, their treatment of trade secrets. Trade secrets are the lifeblood of business. Their development requires large expenditures of time, money, and effort, and they are as valuable pieces of property as are facilities or equipment. Their protection is particularly important for laboratories, since it is here that the research and development of trade secrets is commonly done. The comments I have presented today, in addition to suggesting more efficient means of safeguarding workers and communities, will also enhance the protection of trade secrets, since laboratories would not have to disclose trade secret information through surveys or container labels.

However, the R&D Council is also concerned about the safeguarding of trade secrets when they leave our premises, and we urge the following with respect to employees or industrial facility owners generally:

A. That trade secret information need not be submitted to the Department of Environmental Protection and the Department of Health until such time as a trade secret claim is challenged;

B. That trade secret information need not be disclosed on container labels. A code system could be used instead. In addition, universal labeling should be excluded entirely. This requirement will not help the community to better protect its health -- as the materials labeled are by definition nonhazardous -- and is, therefore, inappropriate in a right-to-know proposal;

C. That trade secret registry numbers be assigned by the person making the trade secret claim, rather than the regulatory agency;

D. That the definition of trade secret in the acts be changed to conform to that found in the Restatement of Torts, but clarified slightly to include the use of known substances; and,

E. That Subparagraph 11(i) of the proposed bill, which deems information relating to special health hazard substances not to be property, be deleted.

In summary, the Research and Development Council of New Jersey urges that the provisions of the Worker and Community Right-to-Know Act, which currently exempt research and development laboratories from the survey requirements of the act, and allow coded labeling of containers at such facilities, be continued in both the existing and proposed acts. The Legislature carefully considered the unique nature of research and development laboratories before granting these exemptions, and nothing has happened in the interim to change our status. We submit that these steps will provide effective worker and community protection. We also urge that trade secrets be afforded the protection they deserve as valuable business property rights.

Your thoughtful consideration of our position would be greatly appreciated. If members of the R&D Council can provide any further data or other information to substantiate what we have said, we would be very happy to comply.

SENATOR DALTON: Thank you very much, Mr. Harrison. Are there any questions from the Committee? (negative response) Again, thank you very much. The next panel is Peg Lawlor from the NJEA, Ray Peterson, American Federation of Teachers, Jim Gelsinger from the Mobil Research and Development Corporation, and Patricia Cullen from the Independent Laboratory Employees' Union at Exxon Corporation.

MARGARET A. LAWLOR: Edithe can't be here today; she has a pressing engagement in North Jersey. I am Margaret Lawlor, Assistant Director of Instruction Training for the New Jersey Education Association. I am here today to commend you for recognizing the right of the public and affected workers to know about hazardous substances in the workplace, and to ask you not to remove public schools from coverage by the act. Students and school employees need these protections too. State and local governments are covered by the act. Workers in City Hall are protected, for example, as are workers in the municipal library.

I agree that they deserve such coverage. Students and staff in public schools deserve it no less. The active coverage will continue to include colleges, universities, professional schools, junior colleges, and technical institutes. In this view, I can see no justification for changing the act to permit students, faculty, and

support staff in public schools to run the risk of exposure to hazardous substances.

I appreciate the fact that you do not intend to harm the children and staff who spend their days in school buildings. I suppose that in proposing to exempt schools, you assumed that there are no hazardous substances in them. I hope you are correct, but where the health and safety of children and NJEA members are concerned, assumptions are not a sufficient guarantee. It is undoubtedly true that outside of science laboratories and vocational classrooms there are few hazardous substances in instructional areas. But school buildings contain non-instructional areas too. Have you been down in a school basement lately? They are below ground and have storerooms where most hazardous substances are kept. Many schools use unventilated sheds and closets to store gasoline and other flammable substances. This constitutes a peril that everyone on the premises is entitled to know about. Furthermore, by including public schools under the act, you will allow local emergency response personnel to plan for, and respond to, emergencies and enforce compliance with applicable laws and regulations concerning these substances.

As you may realize from the asbestos situation, the maintenance and custodial staffs are those most likely to be exposed to hazardous substances in schools. Chemical solvents are frequently used in day-to-day cleaning activities. The employees who handle these substances are often unaware of their poisonous nature. When they know the potential dangers to health and safety, they will be alert to the proper storage and handling precautions.

There are custodial and maintenance employees in every school building. They are entitled to the protection of this act, including strict labeling to give them knowledge of the substances present in the workplace, access to chemical fact sheets, and awareness of safety precautions. The proposed amendment recognizes the need for vocational schools to be covered by the act. You should recognize that most secondary schools offer vocational programs. Vocational programs such as print and automotive shops use both volatile and poisonous substances. For this reason alone, public school districts should be

required to comply with the act. In addition, science education programs utilize many of the items named on the list of hazardous substances, such as acids, aromatic amines, and hydrocarbons. Staff members involved in such programs should have the right to know the precautions necessary in working with formaldehyde, for example, including the proper way to dispose of this hazard.

Compliance with the act requires the employer to complete two workplace surveys. If there are no hazardous substances on the premises, no further action is required. Where the health of the staff and the student body is concerned, this represents no unreasonable burden. Workers and parents will recognize that they have nothing to worry about. On the other hand, if hazardous substances are present in a school building, workers, parents, and students are entitled to the further protections of the act. From my experience, I can testify that it is the lack of knowledge and training that causes accidents and other hazardous situations in the workplace. One of the most important benefits of Right-to-Know is the education of employees on the proper safety and handling procedures in storing, handling, and disposing of dangerous chemicals. If school employees are properly trained, accidents are unlikely to occur. They, in turn, can provide education, by example, to students.

For these reasons I ask you, on behalf of NJEA's 118,000 members, to leave public schools in the act. We welcome your protection.

RAY PETERSON: Good afternoon, Senator Dalton, Senator Costa. I am Ray Peterson. I am the immediate past President of the New Jersey State Federation of Teachers, the AFT, and I am also a member of the Central Jersey Right-to-Know Committee.

Our members, of course, are also members of the community. As such, we welcome the protections that would be afforded to all members of the community by this. That is the first point I want to make. We are endorsing and heartily recommending this bill.

The second point I would like to address is the concern about the safety of the fire fighters who may be entering storage places, transportation facilities, manufacturing facilities, etc. We would like to get to the question of school facilities.

I drafted a short statement last night which I planned to read to you. I am sure you will be pleased to know that I am not going to read it. Two of the previous speakers made the point quite adequately. The speaker who immediately preceded me reviewed many of the things that I would have said. As I sat out there through this hearing with you today, I reviewed in my mind many of the cans, boxes, jars, and other things I have seen scattered in various shops and storage facilities in the schools, and I realized that this goes far beyond the chemical laboratory. But, the most telling testimony, I think, came from the gentleman on Pete Smith's panel, when he gave you a survey based only on 60 schools. What that gentleman told you merely confirmed what I have suspected after 25 years in the public schools, and that is that there are hazardous substances in the schools, and that the more we know about them the better.

So, like the NJEA, we also respectfully request that you include the public schools under the protection of this act.

JAMES GELSINGER: My name is James Gelsinger. I am a laboratory technician employed by Mobil Research and Development Corporation in Paulsboro, New Jersey. I am Chairman of the Mobil Lab Union Health and Safety Committee, and I served on the Ad Hoc Advisory Committee to the Health Department and the DEP during the drafting of regulations for the New Jersey Worker and Community Right-to-Know law.

Under the Worker and Community Right-to-Know law enacted in 1983, research and development facilities were given special exemptions. These employers did not have to file environmental or workplace surveys and they could establish their own labeling and emergency response programs. No disclosure to the public of any kind was required of them in the law.

It is the belief of my union and of research and development workers in general that any special status for research and development facilities must be eliminated under the new Right-to-Know legislation. The way the legislation is written right now, there is no special privilege for them, and we applaud that effort. In the petrochemical industry, research is not just a bent-scale operation of chemists creating new materials. Much more money and effort is devoted to

applying technical changes to known processes and materials to yield better products more profitably. The scale of operations in research can involve tons of hazardous materials, most of them stored on site.

The public should have the right to information about these hazardous materials which are present in their communities. The fact that the user or producer of these materials is a research facility should be of no consequence. By applying the same labeling standard to research and development that the rest of the manufacturing sector must comply with, emergency response personnel will be able to readily identify hazardous materials. They would not have to decode a label to identify a substance. The way the Worker and Community Right-to-Know law was written, each separate R&D facility could have their own coding system for labeling, thus creating a lot of confusion for people who would be responding to an emergency.

Research would still be able to protect trade secrets in the same way as manufacturers do, through the appeal process. I would point out that labeling an inventory survey, as a gentleman from the Research Institute mentioned, to our way of looking at it, is merely good laboratory practice to carry on those activities in a constant manner, so that a laboratory is hygienically safe at all times.

It is imperative that research and development employers be treated in the same manner as all other employers. Research workers handle the same materials as production workers. We have the same exposure to these materials on a daily basis. Industry would prefer to perpetuate the aura of mystery about research and development, but social progress dictates that the public know the truth about any hazards that exist in these facilities. Right-to-Know was initiated so that the residents of New Jersey, the most industrialized state in this country, could make informed decisions about how hazardous materials will be used on the job and in their communities. Right-to-Know will lay a foundation of knowledge for future control of all hazardous materials.

Senator Dalton, this is Pat Cullen. She is from the Independent Laboratory Employees' Union at Exxon. She would like to say a few things.

PATRICIA CULLEN: Good afternoon, Senator Dalton, Senator Costa. I would like to thank you for the opportunity to comment on this very important act. I would like to say that everything Jim said is supported wholeheartedly at the Independent Laboratory Employees' Union. I am a little bit nervous, so please bear with me.

Our union represents 900-odd employees at Exxon Research and Engineering Companies located in three separate counties throughout the State of New Jersey. This union represents laboratory workers, mechanics, pipefitters, and other laboratory support personnel, all of whom come in contact with many chemicals which are listed as hazardous, nonhazardous, and "secret formula" substances.

We support the including of R&D in the Community Right-to-Know and Chemical Safety Act and the labeling of all hazardous chemicals. We feel that even though laboratory personnel in R&D facilities are educated in the chemical and technical aspects of their areas, they cannot all be proficient with the toxicology information dealing with each and every chemical that is out there on the market.

Also, many of the support personnel at the R&D facilities, mainly the mechanics, the pipefitters, the chemical transport personnel, and the maintenance personnel, lack the chemical and technical educational background that most laboratory technicians possess. Therefore, they have a higher potential to handle hazardous chemicals incorrectly and possibly harm themselves just due to ignorance. It is for these citizens, and for myself, that I am here simply to say that we are people too, as are the employees of manufacturing companies. Please don't leave us out. Thank you.

SENATOR DALTON: Thank you very much. Cathy, do you have any questions?

SENATOR COSTA: No, thank you.

SENATOR DALTON: Thank you, all of you. Next we will hear from Mr. John Henderson, New Jersey School Boards Association. What we are going to do is take Mr. Henderson, then Mr. Norman Shayer, and then we are going to call it an afternoon. By the way, we will leave the record open for two weeks, and we would be glad to receive any written testimony.

JOHN M. HENDERSON: Senator Dalton, Senator Costa, ladies and gentlemen: My name is John Henderson; I am Associate Director of Governmental Relations for the New Jersey School Boards Association. On behalf of the 611 local school boards in New Jersey, I welcome this opportunity to address some of the issues concerning the current Community Right-to-Know and Chemical Safety Act and this draft proposal to amend certain sections of that act. This far-reaching law is one of enormous importance to the health and safety of all State citizens. Its intention is noble, as it seeks to put New Jersey in the forefront of the right-to-know movement nationwide.

As many of you know, there have been problems with the implementation of the act, problems which led the New Jersey School Boards Association to seek the recently enacted legislation, A-3296, to delay compliance with the provisions of the current statute until June 30, 1985. While the draft legislation before us today exempts most local districts from mandatory compliance, the problems as they pertain to those school districts still included -- namely vocational schools -- continue. These problems fall into two categories: expertise to do the job and the time line.

Given the fact that we are dealing with the health and safety of children and the staffs who teach them, it is imperative that school districts be given the opportunity to avail themselves of expert thinking in this field. Unfortunately, in the absence of a requirement for manufacturers to provide this information, considerable expertise will be needed at the local district level to make the proper determinations as to what is and what is not in a given substance. The stakes are high. This is not a task for custodial or maintenance staff, nor is it clear that a high school science faculty has this expertise either. Furthermore, even if qualified, some staff members have indicated reluctance to taking on the responsibility of making these determinations. Districts are left with the decision to either label haphazardly or to incur the cost of hiring consultants to do the job.

This expertise problem is compounded by a second problem area -- time line. It appears the extension previously granted by A-3296 to

comply with the current provisions of the statute may not be enough. There is evidence that the different Departments of State government charged with administering the various sections of the law are having difficulty meeting their own obligations in this area. For example, an inquiry to the Department of Health concerning previously promised fact sheets on the more than 2,000 hazardous substances revealed that their availability would be delayed for several more weeks, and even then would only be released in small batches covering 10 to 20 substances at a time. What good will these sheets be after June 30? They will have some impact, but will not be as important as they would be before that date.

We urge the Committee to assure that this legislation facilitates the purpose for which the law was originally enacted. As a minimum, the fact sheets need to be completed and distributed to organizations, surveys and other forms need to be standardized and simplified to the greatest extent possible, and direct on-site assistance -- or at least a series of statewide seminars on compliance -- needs to be made available to affected organizations. Consideration should also be given to the establishment of a series of sequential time lines for each of the required activities, rather than the current requirement that virtually everything be done at once.

Finally, the School Boards Association supports the Administration's appeal of the Federal court decision freeing manufacturers from the obligation of disclosing the component substances in their products. We believe that it is only fitting in this instance that the community in search of a resolution to a problem of this nature seeks assistance from those who are part of the problem.

In conclusion, the New Jersey School Boards Association supports the intent of the current law and this proposed legislation, but we ask you to fine tune its implementation. If school districts are to be required to comply, they need more training and expertise than they currently have to do the job, and more time in which to do it. When information is compiled and training provided, it must be as accurate and comprehensive as possible. To do any less may lend substance to a charge of the "blind leading the blind."

Thank you for your time and attention.

SENATOR DALTON: Mr. Henderson, can you be more specific in either another written statement or conversations with the staff when you talk about, number one, sequential time line, and number two, when you talk about expertise. Everyone needs more expertise to comply with the bill. There is no one, no employer, with the exception of the manufacturing sector, who can come up with this information readily.

MR. HENDERSON: Right.

SENATOR DALTON: So, if you would give the Committee your thoughts and your recommendations as to specifics regarding that-- You don't have to do it today. Obviously, we--

MR. HENDERSON: (interrupting) Well, I think-- One thing, Senator, that comes to mind, are the fact sheets. They are very important. They would be very handy for the districts to have. Consider a district, for example, that is K to 6, without a science faculty at all. Typically in school districts you would rely on the science faculty as your point persons to help in this matter. In a district -- a K to 5 or a K to 6 district -- you may not have many of these people. Many people have a broad certification that, you know, might include a little science, but certainly not enough to do this task. In that type of district specifically, those fact sheets would be crucial. They would be handy to have. In fact, from what we hear of them, they are going to be perhaps several pages--

SENATOR DALTON: (interrupting) You have to identify the substances in order to get the fact sheets. Your problem is with identifying the substances.

MR. HENDERSON: That too, and then making an intelligent decision of what should go into the training, once you have identified the substances. The fact sheets would be useful for that.

SENATOR DALTON: Yes, but I mean, it seems to me that the problem I heard over and over, and believe me, over and over again, from the schools is that we don't have the expertise to determine what materials are in the school buildings. What I am suggesting to you is that is where your problem lies. It is not with the fact sheets; you get the fact sheets after you identify what is in the school buildings. That is the way the process works.

So, if you could provide us with your recommendations as to where you think we can beef up assistance, not only to school boards, but also to all employers within the State-- I mean, it is something that I said right at the outset. We need to do that. But, if you could give us specifics, I would be appreciative.

Additionally, you talked about a sequential time line. You know, right off the bat, what do you want? What are you talking about?

MR. HENDERSON: Well, we have three things that are now due June 30. Some new information from a previous speaker in response to the Department of Health said that there are some new things they would like to see in training that they will be sending out prior to June 30. Training plans, surveys, and the first phase of labeling are due on June 30. There is a certain sense to that, but is it absolutely crucial? Our districts feel overwhelmed by having to do all of these things at once.

SENATOR DALTON: Well, you have gotten a three-month extension. If your argument, John, is that there are parts of your districts that may not be included in the new bill, then that is a rational argument. But, after having a three-month extension, now you are continuing to say, "We still find this burdensome," and I find that is a burden on us. Now we have to come back and do legislation. I think what you are suggesting is another extension.

MR. HENDERSON: Well, what we are suggesting is that the expertise needs to be beefed up along the lines of what you said. An extension to September would not be helpful if the expertise were not forthcoming. That has been the need, as you began today saying very, very clearly. So, you're right, an extension would not be helpful if the expertise were not there.

On the other hand, if, all of a sudden, we were able to get a tremendous push from the Department of Health and the Department of Environmental Protection, a tremendous field operation going between now and the end of June, it is possible that the districts could comply quickly. I think school districts feel, perhaps by the nature of what they are involved in, a particular need to get this stuff right, to nail it down. There is a certain conscience involved, I suppose. They

just don't want to do the task and call it done. You know, "Do we have this bottle nailed down," so to speak.

SENATOR DALTON: I think the concern I have is, short of someone doing it for you, what can we do? That is the impression I got when I talked to the school boards. They want someone to come and do it for them. Okay? That is the bottom line. That is the sense I got. I don't think that is going to happen even in the new bill, even if we put in a component. My sense is that we are willing, the Legislature may be willing, to set up some sort of a private-sector consultant and contract that consultant to go out to give you a hand on, say for instance, a county-by-county basis. But, the expertise of someone going out and doing it for you is not going to be available to any school board or any employer. They are going to have to do it. They are going to have to find out what is in their shops. That is the bottom line.

MR. HENDERSON: Yes. Perhaps it is unique to school districts since there are so many of them, and so many school buildings in the State, that the matter of getting the information nailed down correctly is a key one because of the potential for lawsuits. Science teachers, for example, could be told -- we have no hard evidence of this -- "Don't get involved with the labeling. If there is ever a lawsuit, the school board will be sued, but you will also be brought into it. You could also be a part of the suit." You know, this may be a tremendous damper on getting it done.

SENATOR DALTON: Okay, John.

MR. HENDERSON: Thank you, Senator.

SENATOR DALTON: I don't know if I have any answers for you. Next will be Mr. Norman Shayer. Mr. Shayer, can you paraphrase some of your statement?

NORMAN SHAYER: Yes, I can. My name is Norman Shayer. I am a teacher of chemistry and environmental sciences at Livingston High School, and have been for 20 years. One of the responsibilities given to me was the implementation of the Worker and Community Right-to-Know Act. After making a complete inventory in the high school, we found out that we had a terrific number of carcinogenic materials in every department,

at every level. The school board was completely cooperative and we obtained a DEP number. A DEP-approved contractor removed most of the materials. However, in our science programs, some of these materials are really necessary to create an awareness in the student about handling the materials and, also, in terms of recognizing that they are present. So, the bottom line, of course, has been-- Am I the last speaker today?

SENATOR DALTON: Oh no, you are not the last speaker. We have a couple more now.

MR. SHAYER: The bottom line, without taking up too much of your time, is that I don't believe that secondary middle schools, junior high schools, or even elementary schools should be excluded from this act. One of the examples I listed was a hazardous material fact sheet on a cleaning material. I went to the custodian and asked him about the material and he replied, "That is the stuff that ate away my shoes." All they did was include minuscule amounts of insignificant compounds; however, they included a physical properties data sheet which indicated by certain measurements that the material was extremely caustic. Therefore, this fact had to be researched, and we came up with an idea for certain precautions when using it.

I feel that secondary schools should be included, that the labeling is good, and that the law is terrifically beneficial. Probably one of the greatest corollary advantages to this law will be the establishment of new programs that will be carried out with materials that are not quite as hazardous as those we have had before. I would also think that it would serve as an incentive for many school districts -- as was stated before -- to remove these materials from the workplace, from the place where children are.

I think the law is good. I will just sum up what I have to say because it has already been said. I have taken the liberty of including some supportive documentation from the manual "Safety and Health Hazards in the School Laboratory." Most of this outlines exactly what has been said here before. The only thing I could conclude with, attempting to make this very brief, is that I urge you to include secondary schools, elementary schools, and junior schools --

not to exclude them from the present law, because these hazardous materials exist in all areas, not only in art and janitorial areas, but in the industrial arts department, and even in the duplicating pool, where they are used in the business department. In fact, just the other day I came across a gym freshener which was used as a deodorant in a gym, which had blatantly stated on the label by the manufacturer, "Do not inhale. May be fatal if inhaled." This was right on the label. So, this just permeates the entire school plant; it is not just in one place.

Again, I urge you to include schools at all levels in this law.

SENATOR DALTON: Mr. Shayer, where do you teach?

MR. SHAYER: I teach at Livingston High School in Livingston, New Jersey.

SENATOR DALTON: And you went through the process of compliance with the bill?

MR. SHAYER: I was asked by the school board to take over and coordinate compliance with this act. We find absolutely no trouble whatsoever in doing so. In fact, we are even logging this on computer disks of our inventories which will fit into any Apple computer. We can retrieve it any time we want.

SENATOR DALTON: When you say you haven't had any problems with complying with it, do you mean you were able to determine the materials in your schools without any problem?

MR. SHAYER: No problem.

SENATOR DALTON: Are you a chemist?

MR. SHAYER: No. Well, one of my degrees is in chemistry, but I have been teaching for almost 20 years. I had no problem with complying, and no problem with cooperation in inventorying from all schools, from all departments, and even logging the information onto the computer disk, which I did myself, and, although I am not very good at it, it is certainly very adequate. It is more or less universal because you can take these inventories each year, if it is required, and just put them on a disk, press a couple of buttons, and get a printout. But we in Livingston had absolutely no trouble whatsoever.

SENATOR DALTON: Maybe we will hire you in State government, Mr. Shayer. (laughter) We could send you out to the school districts.

MR. SHAYER: I can say just one other thing. The school board in Livingston is completely cooperative and really wants to comply with this. It is very, very supportive in every aspect of the law, every one of them.

SENATOR DALTON: I really appreciate it; thank you very much.

MR. SHAYER: Thank you, sir. (applause)

SENATOR DALTON: May we have John Shinn, Joe Nardone, Wynn Falkowski, and Jane Nogaki?

JOHN SHINN: My name is John Shinn; I am the local President of the Aluminum Brick and Glass Workers Union, Local #514. I am employed at AFT Industries in Cinnaminson.

I think one important aspect I would like to add to this, after listening to all of the testimony today, is, there have been a lot of questions about, "What good is labeling once there is a fire in a building?" The good part about the labeling is that the employees know what is in the building. They can direct the fire fighters by telling them what they are fighting, whether it is a carcinogen, or whatever, and to stay away. Then they will make the determination once we have advised them of what is in the building.

The same thing is true with emergency response teams. If someone is exposed to something, we can inform him what he was exposed to. By the time he gets to the hospital he can be treated. That is all I wanted to add.

WYNN FALKOWSKI: Senator Dalton, Senator Costa, I want to thank you for not only giving me the opportunity to speak, but for sitting here throughout this hearing. We get the feeling that you really do listen and take all of the comments into consideration.

I am Wynn Falkowski; I am the Chairman of the South Jersey Committee of the Right-to-Know Coalition. Having a variety of frames of reference, I am here to encourage you to support the Community Right-to-Know and Chemical Safety Act. As Chairman of a municipal environmental commission, I feel it is imperative that information on toxic substances be readily available. Our commission is pursuing an

aggressive ground water monitoring and preservation program, which would be severely hindered if this information was not available.

I will paraphrase my statement. As a registered nurse who specializes in critical care, I also must encourage you to support labeling. Having advance information will enable emergency personnel to be prepared. In many instances, knowledge of the substance to which a person was exposed can lead to the prompt administration of an appropriate antidote. This procedure will most probably immediately reverse the toxic effects and allow the victim to return to his or her activities of daily living. When the substance of the exposure is unknown, only symptomatic treatment is the best that can be administered, and may result in permanent disability or death.

As a mother, I feel it is my right to know about the existence of toxic substances in proximity to my home and also to the schools which my children attend. This will allow me to make an informed decision as to whether or not I want to allow them to continue to endure the exposure.

Workers have been deleted from the coverage of the Right-to-Know. I do not believe that workers can be isolated from the community. Workers are also our residents, our fire fighters, our first aid squads, etc. Upon passage of this bill, they will share the same benefits as the remainder of the public. This will be a well-deserved benefit, as the worker has a much higher incidence and degree of exposure.

I would like to say that I would be proud to be a resident of a State which is a leader in the movement to preserve and protect the health, safety, and environment of all of its residents.

JANE NOGAKI: Thank you, Senators Dalton and Costa, for hearing us and for letting our last little citizen panel go forth here. I represent District 8, Burlington County. I am co-coordinating the right-to-know effort in Burlington County, along with Evan Klein, who is the County Fire Marshall. Evan couldn't be here today because it is very dry in South Jersey. I guess it is dry all over New Jersey. He said he could only come if we had at least two inches of rain. We did not have two inches of rain, so he is standing by in Burlington County.

We have amassed quite a few resolutions supporting the Right-to-Know bill from environmental commissions, from fire fighter groups, from the chiefs' association, from the whole County's first aid squad, and from the council. They are all very excited about the possibility of this bill and are very much behind it.

One point we would like to suggest be added to the bill is a means of public education. That is to say that the labeling and the surveys are really key, but if the information does not get out to the public that those surveys are available and how to use them, if the information doesn't get out to health professionals -- the fact sheets and the surveys -- the bill will exist on paper someplace in the Health Department, but won't be getting out to the people who need it. We would like to see a section funded for public education. I don't want to go into detail about who should be doing the educating or how the money should be spent. We know there are vehicles for doing that. But, health professionals have told us they would love to see environmental surveys of what is out there. They would love to see the fact sheets because a lot of them are not experienced in occupational medicine, but could readily learn the information if it were available from a source. So, we feel that educating the public, the citizens, and the health professionals alike, is a key component to this bill. Education of the community is what will finally make the Right-to-Know work.

That is all I have to say. I wish to bring you a strong letter of support from a group called the "Clean Water Steering Committee." That is a committee of about 18 environmental organizations, large and small, which did not have Right-to-Know on their agenda. However, as soon as the Right-to-Know came along, they said, "We must put this on our agenda of work for this year because without it everything else in New Jersey becomes secondary." So, for the Clean Water Steering Committee, I wish to give you their support also.

JOSEPH NARDONE: My name is Joe Nardone; I am with the Ironbound Committee Against Toxic Waste. Two years ago, we discovered that there was a toxic waste dump in a warehouse in our neighborhood. It was

discovered after there was a fire in April, 1983, in which 30 firemen were overcome by toxic smoke and taken to a local hospital. Over a year prior to that fire, citizens had complained that something was going on at that warehouse. The fire department and the public health department said they couldn't get in there because it was private property, and they couldn't cross private property without some specific hard evidence. For two and a half years, this company dumped toxic waste into that warehouse.

After the fire, we learned what was in there, and there was every kind of toxic waste, such as mustard gas, DDT, etc. The citizens in our community formed a group called the "Thomas Street Area Residents Oversight Committee." We went to a lawyer from the Department of the Public Advocate to request that DEP clean up that site. After two years, the site is pretty well cleaned up. It is not completely cleaned up; they have not worked out the decontamination yet, but it is almost cleaned up.

The point I am trying to make here quickly is that there were 40,000 containers ranging from 55-gallon drums to one-pound lavatory packs, all unmarked, all unknowns. If it said "fructose" on the outside of the package, only God knows what was on the inside. This was discovered after the fire. The point is, if we have this chemical Right-to-Know bill, and as someone from the Health Department said, if under certain provisions of the bill you can give public health departments access to get into these companies, to check these companies-- If this bill had been in effect and they had had access to what was going on with these chemical companies a year or two years ago, or at the very beginning, this tragedy never would have occurred in our neighborhood. We do not know what affect it is going to have on us on a long-term basis. Thank you.

SENATOR DALTON: I thank all of you; we appreciate it.
(applause)

SENATOR COSTA: Mr. Shinn, thank you for your comments. You made a point that no one made before, but it was a good one. This isn't a gag here. I would like to say that I feel education is very important. You know, I have seen OSHA in operation, and if OSHA had

worked as it was supposed to work, I don't think we would even have needed this bill. But the problem is, of course, that even with this bill, if we let it go the same way OSHA went, we will be nowhere. So, we have quite a responsibility even after the bill.

MR. SHINN: Thank you.

SENATOR DALTON: The public hearing is now adjourned.

(HEARING CONCLUDED)

APPENDIX



TMXDI (PARA)

(p-Tetramethylxylene diisocyanate)

WARNING! HARMFUL IF INHALED

**MAY CAUSE ALLERGIC RESPIRATORY REACTION
AND DERMAL SENSITIZATION
MAY CAUSE EYE AND SKIN IRRITATION**

**Avoid breathing dust or vapor.
Avoid prolonged or repeated contact with skin.
Avoid contact with eyes, skin, and clothing.
Keep container closed.
Use with adequate ventilation.
Wash thoroughly after handling.**

FIRST AID: In case of contact, immediately wash skin with soap and plenty of water. Immediately flush eyes with plenty of water. Wash clothing before reuse.

**If symptoms occur from inhalation, remove from exposure.
Administer oxygen if necessary. Get medical attention.**

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ATTENTION
DO NOT USE AIR PRES-
SURE OR APPLY HEAT
WITH OPEN FLAME TO
REMOVE CONTENTS
OF DRUM
AFTER EMPTYED, DRUM
MAY RETAIN SOLID,
LIQUID, AND/OR VA-
POR RESIDUES. CON-
TINUE TO OBSERVE
ALL PRECAUTIONS, IF
ANY, ON LABEL
DO NOT CUT, PUNC-
TURE, TORCH, OR
WELD ON OR NEAR
EMPTYED DRUM
DO NOT USE FOR OTH-
ER PURPOSES

American Cyanamid Company

ACRYLAMIDE 50% Aqueous, Inhibited

(Acrylamide in water)

WARNING! HARMFUL IF INHALED, ABSORBED THROUGH SKIN, OR SWALLOWED
POLYMERIZATION MAY OCCUR FROM EXCESSIVE HEAT OR CONTAMINATION

**CHRONIC TOXICITY HAZARD. ACRYLAMIDE MAY CAUSE NERVOUS SYSTEM DAMAGE.
ACRYLAMIDE CAUSED CANCER IN LABORATORY ANIMAL TESTS.**

Before handling this material, read American Cyanamid Material Safety Data Sheet for more detailed safety, health and environmental data.

The following components of this product are listed in accordance with right to know laws.

CAS No.	Component
000079-06-1	Acrylamide

Do not get in eyes, on skin, on clothing.

Avoid breathing vapor.

Buildup of heat and pressure in closed containers may result if polymerization occurs.

Avoid contamination with iron, copper, aluminum, brass, bronze, acids, bases, oxidizing, reducing and chelating agents, precipitants for copper and known initiators for vinyl polymerizations.

Wash thoroughly after handling.

Keep container closed.

Use with adequate ventilation.

Wear clean work-clothing daily.

FIRST AID: In case of contact, immediately flush eyes or skin with plenty of water. Wash contaminated clothing before reuse.

CONTAINER DISPOSAL: Destroy empty container by incineration or burial in an approved landfill. Do not use for any other purpose.

SPILL CLEAN-UP: Cover with some inert absorbent material; sweep up and place in a waste disposal container. Flush area with water. Decontaminate area if required according to the Acrylamide-50 (N-Methylolacrylamide) Handling and Storage Procedures brochure available from American Cyanamid Company.

ATTENTION

DO NOT USE AIR PRESSURE OR APPLY HEAT WITH OPEN FLAME TO REMOVE CONTENTS OF CONTAINER.

AFTER EMPTYED, CONTAINER MAY RETAIN SOLID, LIQUID, AND/OR VAPOR RESIDUES. CONTINUE TO OBSERVE ALL PRECAUTIONS, IF ANY, ON LABEL.

DO NOT CUT, PUNCTURE, TORCH, OR WELD ON OR NEAR THE EMPLOYED CONTAINER.

DO NOT USE FOR OTHER PURPOSES.

STORE BETWEEN 55° AND 90°F

L2072 R7 1M 2-85 EN

American Cyanamid Company • Wayne, N.J. • Emergency Phone 201-681-1111



ACRYLAMIDE 50%

Aqueous, Inhibited

000079-06-1 ACRYLAMIDE

SUBSTANCES IDENTIFIED* AS KNOWN OR PROBABLE HUMAN CARCINOGENS

CAUTION: This is not a comprehensive listing of all chemicals having substantial evidence of carcinogenicity. Further, each substance listed here may have additional health hazards.

These substances are **NOT** recommended for use or storage in schools unless an absolute need is determined and appropriate use and storage safety procedures are instituted. If it is determined that there is a definite need to use one of these carcinogenic chemicals, obtain additional information on the risk involved. Information on many carcinogenic chemicals can be obtained from NIOSH or CPSC. Ask for the NIOSH criteria document on the chemical of interest by writing to NIOSH, Publications Dissemination DSDTT, 4676 Columbia Parkway, Cincinnati, OH 45226, or write for additional information to CPSC, Directorate for Health Sciences, Washington, D.C. 20207. (For more information, contact the groups listed in Section 9 of this document.) **REMEMBER** — Some carcinogens are more potent than others and risk increases with **level** and **duration** of exposure.

REMOVAL: These substances should be removed by health authorities or a licensed commercial company. All state, local and federal regulations must be adhered to in the removal process. Once removed, the substances should not reenter the school. Instructions should be added to the procedures for ordering chemicals to make sure that, once removed, these chemicals are not reordered.

KNOWN CARCINOGENS	CAS NO.	AMOUNT
Arsenic Powder**	7440-28-2	
Arsenic Pentoxide	1303-28-2	
Arsenic Trichloride	7784-34-1	
Arsenic Trioxide	1327-53-3	
Asbestos	1332-21-4	
Benzene	71-43-2	
Benzidine	92-87-5	
Chromium Powder**	7440-47-3	
Chromium (VI) Oxide	1333-82-0	
Lead Arsenate	7784-40-9	
Sodium Arsenate	7631-89-2	
Sodium Arsenite	7784-46-5	
PROBABLE CARCINOGENS	CAS NO.	AMOUNT
Acrylonitrile	107-13-1	
Cadmium Powder**	7440-43-9	
Cadmium Chloride	10108-64-2	
Cadmium Sulfate	10124-36-4	
Carbon Tetrachloride	56-23-5	
Chloroform	67-66-3	
Ethylene Oxide	75-21-8	
Nickel Powder**	7440-02-0	
o-Toluidine	95-53-4	

*Based on the International Agency for Research on Cancer (IARC) classification. "Known" carcinogens are IARC Group 1; "Probable" carcinogens are IARC Groups 2A and 2B.

**Evidence for the carcinogenicity of these metals is derived from occupational exposure studies. Although it is uncertain whether the metal or a metal compound(s) is responsible, only respirable particulates are thought to be of concern.

ANIMAL CARCINOGENS: Reports on the extent of the hazard to humans are not complete as of this edition. Substances that are animal carcinogens should be regarded as posing a carcinogenic risk to humans and should be used with appropriate caution.

MUTAGENS: The extent of the hazard to humans associated with exposure to mutagens is less clear than it is with carcinogens. However, it is recommended that similar (to that exercised in handling carcinogens) caution should be exercised in handling substances which are mutagenic.

Substances are identified as **KNOWN ANIMAL CARCINOGENS** or **MUTAGENS**

SUBSTANCE	CAS NO.	ANIMAL CARCINOGENS	MUTAGENS	AMOUNT
Acetamide	60-35-5	●	●	
Acridine Orange	494-38-2		●	
Ammonium Chromate	7788-98-9		●	
Ammonium Dichromate Ammonium Bichromate	7789-09-5		●	
Aniline (or any of its salts)	142-04-1	●		
Anthracene	120-12-7		●	
Antimony Oxide	4327-33-9		●	
Beryllium Carbonate	66104-24-3	●	●	
Cobalt Powder	7740-48-4		●	
Colchicine	64-86-8		●	
1,2-Dichloroethane (Ethylene Dichloride)	107-06-2	●	●	
1,4-Dioxane (p-Dioxane)	123-91-1	●		
Formaldehyde	50-00-0	●	●	
Hydroquinone	123-31-9		●	
Indigo Carmine	860-22-0		●	
Lead Diacetate	301-04-2	●	●	
Nickel (II) Acetate	373-02-4	●		
Osmium Tetroxide	20816-12-0		●	
Potassium Chromate	7789-00-6		●	
Potassium Permanganate	7722-64-7		●	
Pyrogalllic Acid	87-66-1		●	
Silver (I) Nitrate	7761-88-8		●	
Sodium Azide	26628-22-8		●	
Sodium Dichromate Dihydrate	7789-12-0		●	
Sodium Nitrate	7631-99-4		●	
Sodium Nitrite	7632-88-3		●	
Thioacetamide	62-55-5	●	●	
Toluene	108-88-3		●	
Urethane (Ethyl Carbamate)	51-79-6	●	●	

*Based on IARC classification or the National Toxicology Program testing classifications.

**Based on IARC classification, the National Toxicology Program testing classification, or the Registry of Toxic Effects of Chemical Substances (following review of citations by CPSC).

TESTIMONY BY NEW JERSEY DEPARTMENT OF HEALTH BEFORE
SENATE ENERGY AND ENVIRONMENT COMMITTEE

ON

Proposed Community Right to Know and Chemical Safety Act

April 30, 1985

I have been designated by Commissioner Goldstein to present the Department's testimony on the proposed Community Right to Know and Chemical Safety Act.

The Department strongly supports the introduction of the Community Right to Know and Chemical Safety Act. This legislation is needed to reestablish a comprehensive system for the disclosure of information concerning hazardous substances by owners of industrial facilities in the manufacturing sector to state and local agencies, local police and fire departments, emergency response personnel and members of the public.

This legislation achieves the non-workplace objectives of the Worker and Community Right to Know Act, by requesting: 1) the completion of the Environmental and Industrial Facility Surveys, 2) the labeling of containers of hazardous substances and 3) the

distribution and availability of survey information and fact sheets to the community and emergency personnel.

There are a number of provisions in the bill that recognize and involve the Department of Health in the implementation of this legislation. In particular, the Department commends the inclusion of Sections 21 and 25, which give the Department of Health the right to enter an industrial facility for purposes of compliance and for conducting public health investigations and surveys. This is an important provision which recognizes the medical and technical capability of the Department and the need for these investigations to protect the health of community members.

Another provision (Section 9c) complements the provisions cited above and will assist the Department to conduct these epidemiological studies. This section requires owners of industrial facilities, upon request by the Department, to provide the Department with copies of employee health and exposure records. Access to these records is essential if meaningful studies are to be conducted.

The Department of Health welcomes the opportunity to establish an education and training program for local fire and police departments (Section 24). The Department has worked closely with the firefighting services to develop, publish and distribute the report "Firefighting in New Jersey; Hazards and Methods of Control" The Department has also provided police departments with a program to monitor carbon monoxide in police vehicles.

It should also be noted that the Department will continue its efforts, as required by this legislation, to develop hazardous substance fact sheets and make them available to the county health departments.

The Department recommends changes in some of the provisions of the bill. These changes are intended to facilitate and encourage employers to comply with this legislation.

Surveys

We are concerned about the number of survey forms that an employer has to complete. We will be discussing with the State Department of Environmental Protection the possibility of collecting all the necessary information on fewer forms. We will be letting this committee know whether or not this is feasible.

MATERIAL SAFETY DATA SHEETS

We recommend that the law require employers to transmit a copy of the Material Safety Data Sheet (MSDS) for materials containing hazardous substances to the Department of Health, county health departments and local fire departments. Material Safety Data Sheets contain safety and health information on mixtures which is not necessarily the same information found on the Hazardous

Substance Fact Sheet for a pure substance. The existing law should also be amended to require the distribution by employers of MSDS to employees in addition to the Department of Health, county health departments and local fire departments.

LABELING

We recommend that the labeling requirements for containers and pipelines be more consistent with labeling required by the OSHA Hazard Communication Rule. A major objection from industry concerning the labeling requirements has been that the requirements are different from those of OSHA. Our major suggested change would be a provision that would allow the elimination of CAS numbers, which is not required by OSHA.

The Labeling requirements (Section 10) should be changed to require: 1. the chemical name (as defined in the act) 2. hazard warning information 3. the name and address of the chemical manufacturer, importer or other responsible party. The Chemical Abstracts Service number of each hazardous substance would not be required.

The labeling requirements would apply to containers and pipelines with hazardous substance (Section 10a) and to all substances as provided in Section 10b.

The definition of "common name" as referred to in Section 10b should be changed to reflect the provisions in the Department of Health regulations (N.J.A.C. 8:59-5.7) which state:

- (a) Only common names specified by the department may be substituted for required chemical names on labels.
- (b) For hazardous substances listed on the Workplace Hazardous Substance List, the first name shall be considered the common name for the hazardous substance for purposes of labeling containers. If there is only one name listed for a hazardous substance on the Workplace Hazardous Substance List, no other name may be used for purposes of labeling containers.
- (c) For substances not listed on the Workplace Hazardous Substance List, any synonym accepted by the Chemical Abstracts Service shall be considered the common name for the substance for purposes of labeling containers.

Covered Employers

The definition of "employer" in the original law specifies which types of employers are covered by the Act. The original law identified categories of employers by Standard Industrial Classification Code Major Groups which did not distinguish among employers who possessed hazardous substances and those who did

not. In addition, many groups of employers who possess hazardous substances were not included under the original law because they did not fall within any of the Major Groups covered. The amendments now being proposed "finetune" coverage of the law by excluding those subcategories of employers (i.e. SIC 4722 - Travel Agencies) which do not possess any or possess insignificant quantities of hazardous substances, and by adding (i.e. SIC 5085 - Wholesale Trade-Industrial supplies) those subcategories of employers who possess hazardous substances.

Initially, however, it should be clearly stated in the definition of "employer" that where a four digit SIC code is used, not all employers in the Major Group two digit SIC code are included. This is not clear in the Bill as currently written.

The following SIC codes should be added to the definition, or, if currently in the law, should not be deleted:

- 7342 Disinfecting and Exterminating Services
- 7391 Research and Development Laboratories
- 7395 Photofinishing Laboratories
- 7397 Commercial Testing Laboratories
- 807 Medical and Dental Laboratories (currently in law)
- 517 Wholesale Trade - Petroleum and Petroleum Products
(currently in law)
- 8222 Junior Colleges (currently in law)

The following SIC codes should be included with limitations:

822 Elementary and Secondary Schools - should be limited to middle and high schools (currently this entire subcategory is in the law)

5511 Motor Vehicle Dealers (New and Used)) Should be

5521 Motor Vehicle Dealers (Used Only)) limited to dealers who do auto body work.

We are particularly concerned about the exclusion of schools under the new proposed law. Middle and high schools with chemistry laboratories need to be included. The amount and type of substances used in these schools make it imperative that they are included. Schools have reported heavy metals such as arsenic, lead and mercury, and carcinogens such as carbon tetrachloride.

For certain new categories of employers, a new subsection 8 (c) should be added to the law to give the Department of Health discretion not to send workplace surveys to employers within these SIC subcategories:

4225 General Warehousing and Storage

4226 Special Warehousing and Storage, NEC

5085 Wholesale Trade - Durable Goods - Industrial Supplies

5087 Wholesale Trade - Durable Goods - Service Establishment
Equipment and Supplies

517 Wholesale Trade - Nondurable Goods - Petroleum and
 Petroleum Products

518 Wholesale Trade - Nondurable Goods - Beer, Wine and
 Distilled Beverage

5511 Motor Vehicle Dealers (New and Used)

5521 Motor Vehicle Dealers (Used Only)

5983 Fuel Oil Dealers

5984 Liquefied Petroleum Gas (bottled gas) Dealers

7391 Research and Development Laboratories

7397 Commercial Testing Laboratories

The Health Department wishes to have the same discretion on whether or not to survey employers as the DEP now has. We would be happy to see this discretion limited to those employers who will be covered for the first time by the new law. These include gasoline stations and retail fuel dealers. The repetitive nature of the material at these locations makes a survey form unnecessary from all these employers. Fact Sheets could be distributed based on a sample on-site survey by our own staff. This would eliminate a burden to these small businesses of having to fill out the survey form.

In conclusion the Department of Health strongly supports the draft of the proposed Community Right to Know and Chemical Safety Act. The changes that have been suggested should increase the feasibility for owners of facilities to comply while at the same

time providing the same essential information to the Community and the emergency response personnel.

In addition to this testimony, the Department will submit a detailed analysis and recommended specific changes to the proposed legislation.

AUG 28 1985

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