LEGISLATIVE RESEARCH COMMISSION

HAZARDOUS SUBSTANCES LABELLING AND IDENTIFICATION

REPORT TO THE 1983 GENERAL ASSEMBLY OF NORTH CAROLINA 1984 SESSION

LEGISLATIVE RESEARCH COMMISSION

HAZARDOUS SUBSTANCES LABELLING AND IDENTIFICATION

REPORT TO THE 1983 GENERAL ASSEMBLY OF NORTH CAROLINA 1984 SESSION

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY:

ROOM 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-9390

STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

7 June 1984

TO THE MEMBERS OF THE 1983 GENERAL ASSEMBLY:

This is the Legislative Research Commission's report to the 1983 General Assembly, Second Regular Session 1984, on Hazardous Substances Labelling and Identification. This report is made pursuant to Section 21 of 1983 Session Laws Chapter 905 (HB 1142), was prepared by the Legislative Research Commission's Hazardous Substances Labelling and Identification Committee, and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,

Liston B. Ramsey
Speaker of the House

W. Craig Lawing
Senate President Pro Tempore

Cochairmen
Legislative Research Commission

PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has ten additional members, five appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of an investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most effective manner" (G.S. 120-30.17(1)).

At the direction of the 1981 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given the responsibility for one category of study. The cochairmen of the Legislative Research Commission, under the authority of General Statutes 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairmen, one from each house of the General Assembly, were designated for each committee.

The study of the Hazardous Substances Labelling and Identification was authorized by Chapter 905 (H1142) of the 1983 Session Laws (Omnibus Studies Bill), with reference H1339 introduced in the 1983 Session.

The Legislative Research Commission grouped this study in its environment area under the direction of Representative Bruce Ethridge. The cochairmen of the Study Committee established by the Research Commission are Senator Ollie Harris and Representative Harry Payne. The full membership of the Committee is listed in Appendix A of this report. Chapter 905 authorizing the Study and House Bill 1339 (with flow chart) which the Committee was authorized to consider in determining the scope of the Study are attached in Appendix A.

TABLE OF CONTENTS

Appendix B

Appendix C

Appendix D

BACKGROUND

A. Generally. State and local legislation concerning worker and community "right-to-know" (abbreviated RTK) has burgeoned in recent years. The term commonly means that employers in specified categories must compile lists of and information about hazardous chemicals used in the workplace, and make this information available to workers, health and emergency personnel, and sometimes the community-at-large. The first comprehensive RTK law was enacted in New York in 1980. Since then, sixteen states have enacted some type of RTK law, while seventeen states, including this one, considered such legislation in 1983. Numerous communities, chiefly in California, have enacted community RTK laws. Several municipalities in North Carolina are considering such enactments. The mainsprings for the proponents of this type of legislation appear twofold: First, a concern over hazardous and toxic chemicals generally and their potential effects of human health; second, a perception that the federal government has not been sufficiently vigorous or comprehensive in its approach to this issue.

B. Legal Framework. H1339 is a comprehensive RTK bill covering virtually all employers and mandating labelling, records, and educational requirements, along with community right-to-know provisions. However, since federal OSHA issued a hazard communication rule last November, the legal framework of the RTK issue is far from straightforward. The key threshold issue is to what extent the federal government has preempted the RTK issue with its issuance on November 25, 1983, of its Hazard Communication Rule in 48 Federal Register 53280 (1983) establishing a new 29 CFR 1910.1200. (See Appendix B for a summary and outline of federal rule.)

Preemption occurs when the federal government legitimately asserts jurisdiction over an area in such a way as to totally or partially exclude state action. Federal jurisdiction in the occupational health area arises through the Federal Occupation Safety and Health Act setting up the federal OSHA. In 29 USCS 651 Congress asserted its power under the Commerce Clause and General Welfare Clause to "assure so far as possible...safe and healthful working conditions." However, in 29 USCS 667(a) Congress acknowledged a state role, stating that "nothing in this Act shall prevent any state agency...from asserting jurisdiction under state law over any occupational safety or health issue with respect to which no standard is in effect..." The Act also provided that a state wishing to assume responsibility for occupational safety and health issues could propose a "state plan" for federal approval. North Carolina has done this. N.C. OSHA is under the N.C. Department of Labor and G.S. 95-131 provides that all federal standards "shall in all respects be the rules of the Commissioner of this State" unless alternative rules "as effective as the federal requirement" are promulgated.

In contrast to H1339, the federal standard covers only two classes of employers--chemical manufacturers and importers, and manufacturers in SIC Codes 21-39 (most manufacturing). These regulations impose various hazard determination, labelling, education and disclosure requirements on these employers. However, this standard does not cover such categories as construction, services, utilities, or the non-manufacturing sector generally. Statistics from the Employment Security Commission indicate that about 71% of the workers in North Carolina are in non-manufacturing jobs. Federal OSHA estimates

initial cost will be about $604 million or $43 per employee with annual cost of about $159 million or $11 per employee. 48 Federal Register 53327 (1983).

It should be noted that the federal standard is silent on the community RTK issue--public access to chemical lists. Nor does it speak directly to the concerns of emergency personnel, such as firefighters.

Federal OSHA defends its restriction to the manufacturing sector by arguing that the manufacturing sector accounts for a dispproportionate amount of the occupational injuries. (Id. at 53284-85) and promising that it would consider expanding the scope later (Id. at53286). N.C. DOL, which has adopted the federal rules and is in the process of implementing them, has also pledged to consider extension into non-manufacturing sectors. For its part, federal OSHA has warned of strict scrutiny of state standards submitted under an approved state plan: "The Secretary intends to approve a State standard only if it is required by compelling local conditions and do(es) not unduly burden interstate commerce." Id. at 53322.

It should be plain from this discussion that RTK is a litigious issue and that the fine points of preemption and other aspects of the federal rule will be fought out in the courts. However, reading the federal OSHA Act and the new federal standards together, one could make strong arguments for the following conclusions:

1. That areas bearing on the public health and safety, as, for example, on behalf of firefighters and the general public (community RTK) are not preempted; and

2. Non-manufacturing sectors, such as health care, construction, and services, are not preempted.

An outline of the legal framework can be found in Appendix B.

COMMITTEE PROCEEDINGS

A. Generally. The full Committee has met on January 5, 1984, and February 10, 1984. At the February 10th meeting, the Committee decided to form a Subcommittee consisting of Senators Russell Walker and George Marion and Representative Joseph Mavretic and Cochairman Representative Harry Payne. The Subcommittee met on the afternoon of February 10th and again on February 24, 1984.

As might be expected, the subject matter of this Committee aroused intense public interest. There were nearly 20 speakers at the January 5th meeting. Essentially, the speakers fell into four groups: 1. Labor unions and associated bodies; 2. government; 3. industry and trade associations; and 4. environmentalists and public interest advocates. Their positions ranged in a continuum from support for H1339 or support with modifications to the categorical rejection of H1339, preferring the federal standard instead.

B. Issues Summary. The reader who is interested in a comprehensive view of the proceedings can consult the Committee minutes and tapes in addition to the various statements of participants listed in the Appendices. The major issues in dispute emerging from the Committee proceedings were as follows:

1. The need for additional State legislation--whether the federal regulation should be supplemented at all.
2. Appropriate structures for transmitting the information required by legislation.
3. The exemptions, if any, that should be granted under legislation.

4. The appropriate definition for key terms, most notably "hazardous substance." For example, the federal standard looks to the chemical manufacturers themselves to develop hazard information, while H1339 and other state legislation looks to specific chemical lists. There are many such lists compiled for many different purposes. Which is the best?

5. Appropriate bodies to administer legislation.

6. The appropriate scope of legislation--whether it should be comprehensive within non-preempted limits or have a narrower focus, such as emergency personnel.

C. Meetings. January 5, 1984. Committee Counsel reviewed the legal issues for the Committee (See Appendix B). Labor Commissioner John Brooks appeared to brief the Committee on what the Department of Labor intended to do in response to the federal regulations. He reported that Labor would be implementing the federal rules, and he questioned some of the information transmittal procedures contained in H1339. He endorsed the idea of more information for emergency response personnel as well as the view that community RTK remained within the jurisdiction of the State. His statement appears in Appendix C.

Several speakers spoke to the issue of the overall need for legislation like H1339. Notable among the proponents were: Ms. Susan Lupton of the North Carolina Occupational Safety and Health Project (statement in Appendix C); Ms. Jan Ramquist of the League of Women Voters (statement in Appendix C). Others who spoke to the Committee in favor of RTK but did not present written statements were:

Dr. Shirley Osterhaut of the Duke Poison Control Center; Dr. Rick Maas of the N.C. State University Water Quality Project; Mr. Michael Okun, an attorney representing the AFL-CIO; Mr. Joe Coyne of the Roanoke Valley Central Labor Union; Mr. Zeke Paire of the Durham Electrical Workers; and Mr. John May of the Communications Workers of America.

Business and trade associations generally were skeptical of H1339, but all endorsed the goal of a safer workplace. Statements of the following appear in Appendix C: Mr. Gene Hill of N.C. Citizens for Business and Industry; Mr. William Stenger of Du Pont Chemicals; Ms. Karen Murphy of the Hospital Association; and Ms. Angela Waldorf of the Petroleum Council. Mr. Sam Johnson, representing N.C. Associated Industries, also spoke against H1339.

On the narrower issue of information for emergency management personnel, Mr. Tom Pugh of the Department of Crime Control and Public Safety, presented a statement (see Appendix C). Mr. Ellis Stanley of Durham Emergency Management seconded the concerns of emergency personnel.

At the close of the meeting, the Committee requested that the participants elaborate on their views in writing. The replies of those who responded are reproduced in Appendix D.

February 10, 1984

A list of speakers appears in Appendix E. Essentially, many of the same points were made as at the previous meeting. The Committee formed a Subcommittee to focus on the most important issues. They were:

1. Analogous structures. The Subcommittee was particularly interested in pesticide regulation.

2. Comparative state approaches.

3. Lists of toxic chemicals--what kinds, for what purposes, advantages and disadvantages.

February 24, 1984

A list of speakers appears in Appendix F. The Subcommittee heard from Mr. John Smith of the Department of Agriculture, who briefed them on state and federal pesticide regulation. Part of this regulation embodies labelling and storage requirements together with emergency contingency planning. Mr. John Campion of Burroughs-Wellcome made a presentation arguing that the various federal and state regulations meant that H1339 was not needed. A copy of the part of his presentation dealing with federal laws is in Appendix F. Dr. Ted Taylor of the Division of Health Services of the Department of Human Resources reported to the Subcommittee on the various chemical lists in use.

The Subcommittee adjourned to a date to be determined by the chairman in order to consider the materials and information presented to it.

The meetings have sometimes generated lively correspondence and counter-correspondence. NCOSH's written response to issues raised by industry in the February 24th meeting may be found in Appendix F.

FINDINGS

Having heard from over 25 individuals representing a broad spectrum of business, labor, environmental, emergency management, and governmental interests and having received many materials from these persons and through Counsel, the Committee makes the following findings:

1. The problem of hazardous substances in the workplace is significant and growing. Federal OSHA admits that approximately 25 million American workers, or one in four, are "potentially exposed to one or more of the nearly 8,000 hazards identified by NIOSH", and "(A)s many as 40 to 50 million Americans (23% of the entire population) may have been exposed at some point during their lifetimes to one or more of the hazardous chemicals presently regulated by OSHA." 48 Federal Register 53282 (1983). Moreover, the federal Environmental Protection Agency estimates that over 33,000 chemical compounds are now in common use, with about 700 entering the workplace each year. Clearly, these figures suggest that there is significant potential hazard in the workplace.

But while the problem stems from the workplace and is most concentrated there, there are at least five separate issues, each of undeniable significance, related to the RTK issue.

First, there is the issue of worker health and safety.

Second, there is the issue of community health and safety.

Third, there is the issue of emergency management personnel health and safety. The proliferation of toxic chemicals and the presence of toxic fumes when they burn give an added dimension

of danger to firefighting which did not exist before.

Fourth, there is the issue of medical personnel access to information. A doctor or other health professional can hardly be expected to make swift and accurate diagnosis of the chemical exposure condition if he does not have access to requisite data on the chemicals involved.

Fifth, there is the issue of environmental management. The Committee received testimony that it would enormously simplify the task of toxic chemical monitoring if appropriate authorities had access to the information as to what toxic chemicals are stored where.

2. There is a significant need to extend coverage into sectors not covered by the federal rules and provide for community right-to-know, emergency management, and enhanced environmental management. As will be recalled, the federal standard covers workers only in the manufacturing sector in specified SIC Codes and in the chemical manufacturing and importing sectors. The Committee heard testimony that only about 29% of the workers in North Carolina are in manufacturing. Clearly, the overwhelming majority of workers are unaffected by the federal standard. In addition, the federal standards do not deal with the issues set out above of community health and safety, emergency management health and safety, or questions relating to environmental management. Even as to sectors the federal standards do cover, the Committee heard testimony criticizing federal OSHA for its hazard determination structure, its exemptions, and its trade secret provisions.

3. The State of North Carolina possesses the legal authority to legislate in areas not specifically preempted by the federal standard. The Committee feels that it is nonsensical to argue that the federal standard "preemptively preempts" the right of a state to legislate as to non-covered sectors and issues when the plain intent of the OSHA statute is to allow such legislation. Moreover, established principles of constitutional and statutory interpretation militate against such a broad assertion. The Committee recognizes that the niceties of preemption will likely be settled in federal court at some future date but is confident that the correct decision will be reached. Meantime, the State can and should begin the process to act in these issues.

4. The issues involved in RTK are of such complexity and potential economic impact that more concentrated study is necessary to provide a coherent regulatory framework for attacking these issues. The Committee held two full Committee meetings and two Subcommittee meetings and heard from over 25 individuals. After the first meeting, it became apparent that the RTK issue was very broad and involved fundamental policy choices at a number of steps about which the Committee needed technical and expert testimony. The constraints of time and money did not allow the Committee to explore these points completely enough; and while a comprehensive approach is needed, it must be based on a thorough study and reflect considered policy choices based on the preponderance of the evidence. While the Committee makes findings about some areas, some of the areas about which the Committee or Subcommittee received testimony but about which fundamental policy choices are yet to be made are:

a. The appropriate definition of hazardous substance. Each state which has enacted a RTK uses a different list. The Committee wants to build on the experience of others and choose the best approach.

b. The appropriate exemptions from coverage.

c. The appropriate structure for information distribution. The Committee wants to avoid a "paperwork nightmare" which will burden business yet not provide needed information quickly enough.

RECOMMENDATIONS

Having made the above findings, the Committee makes the following recommendations:

1. The Hazardous Substances Labelling and Identification Study Committee should be extended by transforming it into a study commission. Such a change is justified because of the extreme breadth and complexity of the subject matter and the need for the greatest flexibility in reporting dates.

2. The extension of this Study should be accompanied by

   (a) A charge for the Commission to consider extension of coverage to all major employment sectors beyond manufacturing and chemicals;

   (b) An instruction to the Department of Crime Control and Public Safety to assist the Study by developing an emergency management plan to be integrated into future recommended legislation.

(c) An instruction to the Department of Human Resources, Department of Natural Resources and Community Development, and Department of Labor to assist the Study by developing an appropriate list of hazardous substances to be integrated into future recommended legislation.

Legislation implementing these recommendations may be found in Appendix G.

APPENDICES

APPENDIX A

HAZARDOUS SUBSTANCES IDENTIFICATION AND LABELLING

Committee Members:

President Pro Tempore's Appointments

Sen. Ollie Harris,
Cochairman
P. O. Box 627
Kings Mountain, N. C. 28086
Tel: 704/ 739-2591

Sen. Richard Barnes
Box 5825
Winston-Salem, N. C. 27103
Tel: 919/ 723-9441

Sen. J. J. Harrington
Oak Grove Rd.
Lewiston, N. C. 27849
Tel: 919/ 348-2531

Sen. George W. Marion, Jr.
P. O. Box 618
Dobson, N. C. 27017
Tel: 919/ 386-8272

Sen. Russell Walker
P. O. Box 1831
Asheboro, N. C. 27203
Tel: 919/ 625-6177

Speaker's Appointments

Rep. Harry E. Payne, Jr.,
Cochairman
P. O. Box 1147
Wilmington, N. C. 28402
Tel: 919/ 762-5505

Rep. David H. Diamont
P. O. Box 784
Pilot Mountain, N. C. 27041
Tel: 919/ 368-4591

Rep. Joe Hackney
P. O. Box 1329
Chapel Hill, N. C. 27514
Tel: 919/ 929-0323

Rep. Josephus L. Mavretic
Box 1982
Tarboro, N. C. 27886
Tel: 919/ 823-0366

Rep. Murray P. Pool
P. O. Box 779
Clinton, N. C. 28328
Tel: 919/ 592-2662

Professional Staff: Mr. Daniel Long Tel: 733-2578
Legislative Services Office
Clerical Staff: Mrs. Lillie Pearce Tel: 733-5853

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1983
RATIFIED BILL

CHAPTER 905
HOUSE BILL 1142

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION AND BY THE COMMISSION ON CHILDREN WITH SPECIAL NEEDS AND MAKING TECHNICAL AMENDMENTS RELATING THERETO.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1983 bill or resolution that originally proposed the study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

(1) Continuation of the Study of Revenue Laws (H.J.R. 16 - Lilley); and the ramifications, if enacted, of H.B. 746, Appraisal of Subdivided Tract (Auman) and H.B. 1250, No Intangible Tax/Income Surtax (Auman),

(2) Continuation of the Study on the Problems of the Aging (H.J.R. 44 - Economos; S.J.R. 16 - Gray),

(3) Continuation of the Study on Insurance Regulation (H.B. 63 - Seymour) and Insurance Laws and Regulation of Insurance Industry (H.B. 1243 - Hightower),

(4) Teaching of Computer Literacy in the Public Schools and Community Colleges (H.J.R. 191 - Berry) and the Continuation of Study of College Science Equipment (H.J.R. 898 - Enloe),

(5) Adequacy of State Management of Large-Scale Land Clearing and Peat Mining (H.J.R. 220 - Evans),

(6) Adequacy of Existing Water Pollution Control Programs to Improve and Protect Water Quality in the State (H.J.R. 232 - Evans),

(7) Marketing of Seafood by Fishermen (H.J.R. 896 - Chapin),

(8) Continuation of Study on the Economic Social and Legal Problems and Needs of Women (H.J.R. 904 - Easterling; S.J.R. 329 - Marvin),

(9) Regulation of Nonpublic and Public Post-Secondary Educational Institutions (Joint Resolution 33 (H.J.R. 988 - Thomas)),

(10) Readable Insurance Policies (H.B. 1069 - Ballance),

(11) State Government Risk Management (H.J.R. 1083 - Seymour),

(12) Biotechnology Development (H.B. 1122 - Etheridge, Bobby and H.J.R. 1282 - Etheridge, Bobby; S.J.R. 620 - Hancock),

(13) Continuation of Study of the State's Interest in Railroad Property (H.B. 1142 - Hunt),

(14) Restricting Driving by Minors (H.J.R. 1149 - J. Jordan),

(15) Health Professionals (H.J.R. 1194 - Diamont),
(16) Water Quality in Haw River and B. Everett Jordan Reservoir (H.J.R. 1257 - Hackney),
(17) Regulation of Alcoholic Beverages on State Property (H.J.R. 1292 - Clark),
(18) Disposition of Animals by Animal Shelters and Pounds (H.J.R. 1309 - Stamey),
(19) Boards, Commissions, and Councils in the Executive Branch (H.J.R. 1321 - Hunt),
(20) Feasibility of a Food Distribution Facility on Dix Farm Property in Raleigh (H.J.R. 1334 - James),
(21) Implementation of Identification and Labelling of Toxic or Hazardous Substances as Proposed by House Bill 1339 (Payne),
(22) Water Resources Issues Involving North Carolina and Virginia (H.J.R. 1404 - Church),
(23) Investment Guidelines for Eleemosynary Institutions and Funds (H.J.R. 1423 - Musselwhite),
(24) Child Support Collection Procedures (H.J.R. 1439 - Easterling; S.J.R. 675 - Woodard, W.),
(25) Contamination of Unpackaged Foods (H.J.R. 1441 - Stamey),
(26) Legislative Communications Confidentiality (H.R. 1461 - Miller),
(27) Continuation of the Study of Information Processing Resources in State Government (S.J.R. 44 - Alford),
(28) Regulation and Taxation of Banks, Savings and Loans and Credit Unions (S.J.R. 381 - Edwards of Caldwell),
(29) District Attorney Standards (S.B. 496 - Hipps),
(30) Cost of Providing Attorneys and Guardians Ad Litem to Indigents (S.J.R. 643 - Swain),
(31) Public Health Facility Laws (S.J.R. 656 - Hancock), and Review of Certificate of Need Procedures (H.J.R. 1294 - Economos),
(32) Life Care Arrangements (S.J.R. 657 - Hancock),
(33) Worthless Checks (S.J.R. 661 - Thomas of Henderson),
(34) State-owned Rental Housing as contained in Section 2 of this act,
(35) User Fees at State-owned Facilities, as contained in Section 3 of this act,
(36) Motorboat Titles and Liability Insurance, as contained in Section 4 of this act,
(37) Motor Vehicle Inspection Program, as contained in Section 5 of this act,
(38) Continuation of the Study of Day Care (H.J.R. 594 - Colton),
(39) Continuation of the Study on Twelfth Grade (H.J.R. 753 - Mauney; S.J.R. 343 - Tally),
(40) Procedure for Incorporating Municipalities (S.J.R. 445 - J. Edwards),
(41) Solar Law (S.J.R. 670 - Walker),

(42) Statutory Liens (S.J.R. 680 - Edwards of Caldwell),

(43) In-service Training of Teachers in North Carolina History, the American Economic System, Free Enterprise Concepts, and Legal Topics (H.B. 1281 - Foster).

Sec. 2. State-owned Rental Housing. (a) The Legislative Research Commission is authorized to conduct a study of all State-owned rental housing during the 1983-84 fiscal year and to recommend a comprehensive statewide rental policy, to be administered by the Department of Administration, to the 1984 Session of the General Assembly. This study shall be conducted in consultation with the department that owns the housing. In conducting this study, the Commission shall first determine the amount of nonessential rental housing currently owned by the State using the following criteria: The geographic location of the State property on which the housing is located and its proximity to alternative privately owned housing; the amount of time that would be required for employees to arrive at the State property on which housing is now located in the event of an emergency; the amount of security necessary for State property that is now being provided by State employees living in State-owned rental housing; and any other benefits to the State for employees to occupy said housing: The Commission shall recommend the disposition of nonessential rental property by one of three means: sale of the housing and property on which it is located; sale of the housing unit only with the stipulation that the house be removed from State property; and conversion of the housing unit to an alternative use.

(b) It is the policy of the State of North Carolina that the State provide rental housing only in cases in which an essential State purpose is served. Nothing in these sections shall be construed to mean that State departments may not continue to divest themselves of nonessential rental housing during the course of the Legislative Research Commission study.

Sec. 3. User Fees. The Legislative Research Commission is authorized to study the potential for user charges and admission fees at State-owned cultural, recreational and historical facilities. The study may cover museums, historic sites, marine resource centers as well as other facilities. The Legislative Research Commission may make an interim report to the 1984 Regular Session of the 1983 General Assembly and may make a final report to the 1985 General Assembly.

Sec. 4. Motorboat Titles and Liability Insurance. The Legislative Research Commission of the General Assembly is authorized to study the issue of motorboat titles and liability insurance. The study may include start-up and administrative costs, potential revenues, phase-in plans, financial institution requirements, etc. The Commission may report to the 1984 Session.

Sec. 5. Motor Vehicle Inspection Program Study. The Legislative Research Commission may study the effectiveness of the motor vehicle inspection program required by Article 3A of Chapter 20 of the General Statutes. The study may consider, among other aspects, the impact on highway safety, cost

effectiveness of the program, and probable impact of eliminating part or all of the program.

Sec. 6. For each of the topics the Legislative Research Commission decides to study, the Commission may report its findings, together with any recommended legislation, to the 1984 Session of the General Assembly or to the 1985 General Assembly, or the Commission may make an interim report to the 1984 Session and a final report to the 1985 General Assembly.

Sec. 7. G.S. 120-30.17 is amended by adding two new subsections to read:

"(7) to obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) to call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena."

Sec. 8. Section 1 of Chapter 1372, Session Laws of 1981, is amended by deleting "as authorized in Section 2 of Resolution 61, Session Laws of 1981".

Sec. 9. Section 1(3) of Chapter 1372, Session Laws of 1981, is amended by deleting "1983 Session", and inserting in lieu thereof "1983 and 1985 Sessions".

Sec. 10. G.S. 124-5 is amended by deleting "June 1, 1983", and inserting in lieu thereof "the date of convening of the 1985 Regular Session of the General Assembly".

Sec. 11. The last sentence of G.S. 124-5 is amended by deleting "11-month period", and inserting in lieu thereof "period ending on convening of the 1985 Regular Session."

Sec. 12. Deaf/Blind School Move--Commission on Children with Special Needs. (a) The Commission on Children with Special Needs, established by Article 12 of Chapter 120 of the General Statutes, may study the issue of transferring the State schools for the Deaf and the Governor Morehead School for the Blind to the jurisdiction of the State Board of Education.

(b) The Commission may make a final report to the Second Session of the 1983 General Assembly. (H.J.R. 246 - Fenner)

Sec. 13. Bills and Resolution References. The listing of the original bill or resolution in this act is for references purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 14. This act is effective upon ratification.
In the General Assembly read three times and ratified, this the 21st day of July, 1983.

JAMES C. GREEN

James C. Green
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1983

H

I

HOUSE BILL 1339

Short Title: Identify Toxic/Hazardous Substance. (Public)

Sponsors: Representatives Payne; McDowell, Ballance, Clark, Bruce Ethridge.

Referred to: Water and Air Resources.

June 22, 1983

A BILL TO BE ENTITLED

AN ACT REGARDING IDENTIFICATION AND LABELING OF TOXIC OR HAZARDOUS SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 32.

"Identification of Toxic or Hazardous Substances.

"§ 130-286. As used in this Article, unless the context requires otherwise:

(1) 'CAS number' means the identification number assigned to a chemical substance by the Chemical Abstract Service;

(2) 'chemical name' means the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstract Service;

(3) 'common name' means any designation other than a chemical name used by an employer to identify a substance;

(4) 'container' means a receptacle or formed or flexible covering for toxic or hazardous substances and includes a bag, barrel, bottle, box, can, cylinder, drum, carton, stationary or mobile storage tank, vessel, vat, or pipeline;

(5) 'emit' means to release a toxic or hazardous substance into the environment by any means;

(6) 'employee' means a person who works with or without compensation at a place of business;

(7) 'employer' means a person engaged in business who has employees, including the State and its political subdivisions but excluding an individual whose only employees are domestic workers or casual laborers hired to work at the individual's residence;

(8) 'EPA waste stream code' means the identification number assigned to types of hazardous waste by the United States Environmental Protection Agency;

(9) 'facility' means the area, regardless whether enclosed, used by an employer at a single location in the conduct of business;

(10) 'SIC code' means the identification number assigned to types of businesses by the Standard Industrial Classification Code;

(11) 'trace quantity' means a quantity in a substance that constitutes less than one one-hundreth of a percent (.01%) of the total volume of the substance; and

(12) 'toxic or hazardous substance' means a substance that contains more than a trace quantity of a toxic or hazardous substance listed in the most recent NIOSH Registry of Toxic

Effects of Chemical Substances or determined by the Secretary to pose a significant risk to public health or employee health and safety.

"§ 130-287. Labeling of toxic or hazardous substances by employer.--(a) Except as provided in this section, an employer who manufactures, processes, uses, stores, or produces toxic or hazardous substances at a facility in this State shall affix a label to every container of a toxic or hazardous substance that has a capacity greater than one gallon or seven and one-half pounds. The label shall be conspicuously placed on the container and shall contain the following information:

(1) the chemical name and the common name of the toxic or hazardous substance, unless the substance is a trade secret; and

(2) the category and degree of hazard of the substance, which information shall be conveyed by using the color and number coding system adopted by the National Fire Protection Association in its most recent edition of a 'Standard System for the Identification of the Fire Hazards of Materials'.

(b) An employer is not required to label a container of a toxic or hazardous substance that has a capacity of 10 gallons or less in volume, into which toxic or hazardous substances are transferred from labeled containers and used only by the employee who transfers the substance from the labeled container.

"§ 130-288. Material safety data sheet required for each toxic or hazardous substance.--(a) An employer who manufactures,

processes, uses, stores, or produces a toxic or hazardous substance at a facility in this State shall, on or before September 1 of each year, submit a material safety data sheet to the Secretary for each substance containing the following information:

(1) the chemical name, common name, and CAS number of the substance, unless it is a trade secret;

(2) the ways in which an employee can be exposed to the substance, such as by inhalation, ingestion, adsorption or absorption;

(3) any permissible or recommended exposure limits to the substance established by the Federal Occupational Safety and Health Administration, the National Institute for Occupational Safety and Health, or the American Conference of Governmental Industrial Hygienists;

(4) the acute and chronic effects or exposure to the substance at a hazardous level, including a description in lay terms of the potential health risks of the substance and a list of medical conditions that might be aggravated by exposure;

(5) symptoms of the effects of exposure to the substance, including a description of these symptoms in lay terms;

(6) the flammability, explosiveness, corrosiveness, and reactivity of the substance, including specific information on its reactivity with water, and any

other relevant hazards of the substance;

(7) the appropriate emergency and first aid procedures for spills, fires, explosions, or accidental emissions of the substance or exposure to the substance at hazardous levels;

(8) the necessary safety precautions and handling practices for safe use and exposure to the substance, including the use of personal protective equipment and recommended engineering controls;

(9) the date the information was compiled; and

(10) the name, address, and telephone number of the manufacturer of the substance.

(b) Whenever an employer receives new information from any source about a toxic or hazardous substance for which he has completed a material safety data sheet, the employer shall, if necessary, amend the material safety data sheet to correct any information previously reported and shall send an amended copy of the data sheet to the Secretary. Within 20 days of the initial manufacture, processing, use, storage, or production of a toxic or hazardous substance for which a data sheet has not been submitted, the employer shall submit a data sheet for that substance to the Secretary.

(c) An employer shall retain all material safety data sheets for at least 10 years after the toxic or hazardous substance described in a data sheet was last manufactured, processed, used, stored, or produced by the employer.

(d) An employer who manufactures a toxic or hazardous

substance shall provide a material safety data sheet for the substance to all persons to whom the employer sells or gives the substance.

"§ 130-289. Employer required to submit toxic or hazardous substance public disclosure form.--(a) Except as provided in this section, every employer required by G.S. 130-288 to submit material safety data sheets to the Secretary and every employer who emits toxic or hazardous substances from a facility in this State shall, on or before September 1 of each year, submit a toxic or hazardous substance public disclosure form to the Secretary containing the following information:

(1) a list by chemical name of all toxic or hazardous substances, except substances that are trade secrets, for which the employer has submitted a material safety data sheet;

(2) the EPA waste stream code of every toxic or hazardous substance emitted by the employer;

(3) the total amount by volume or weight of each toxic or hazardous substance manufactured, processed, used, stored, or produced by the employer during the previous 12-month period, and the anticipated maximum amount of each toxic or hazardous substance that will be manufactured, processed, used, stored, or produced by the employer in the following year;

(4) the type of container used to hold toxic or hazardous substances and the street address of the facility at which the substance is manufactured,

processed, used, stored, or produced;

(5) the total amount by volume or weight of each toxic or hazardous substance emitted by the employer during the previous 12-month period, the anticipated maximum amount of each toxic or hazardous substance that will be emitted by the employer in the following year, the maximum rate at which the toxic or hazardous substance is emitted, and the street address of the facility from which the substance is emitted;

(6) the approximate location within a facility of toxic or hazardous substances;

(7) the SIC code of the employer, if applicable; and

(8) any other information required by the Secretary.

(b) An employer who regularly manufactures, processes, uses, stores, or produces less than 10 gallons or 100 pounds of toxic or hazardous substances a month, whichever is less, exclusive of human or animal carcinogens, mutogens, or teratogens and substances for which the Secretary requires an employer to submit a disclosure form regardless of quantity is not required to file a disclosure statement under this section.

(c) Amended Form. An employer shall submit an amended toxic or hazardous substance public disclosure form within 15 days of:

(1) a significant change in the use or amount of a toxic or hazardous substance manufactured, processed, used, stored, produced, or emitted by the employer;

(2) the submission of an amended material safety data sheet; or

(3) a change in the employer's business name, address, or ownership.

"§ 130-290. Trade secrets.--(a) An employer may withhold the chemical name of a toxic or hazardous substance provided:

(1) The employer can establish that the substance is a trade secret by showing that it:

a. is a catalyst unknown to competitors or other intermediate unknown to competitors; or

b. cannot be practically and lawfully discovered by analytical techniques, laboratory procedures, or other means available to any potential competitor;

(2) The employer can establish that the substance is not a suspected or recognized carcinogen, mutagen, teratogen, or cause of significant irreversible damage to human organs or body systems, as demonstrated through human, animal, or other experimental media;

(3) The toxic or hazardous substance is identified by a generic chemical classification that provides sufficient information for a health professional to recommend adequate safeguards to prevent hazardous exposure to the substance and for fire and safety personnel to prepare adequate responses to emergencies involving the substance;

(4) All other required information on the properties and effects of the substance is provided;

(5) The material safety data sheet for the substance in question is posted in the facility where the substance is manufactured, processed, used, stored, or produced; and

(6) The withheld information is provided on a confidential basis to a treating physician who states in writing, except in an emergency situation, that a patient's health problems may be related to exposure to a toxic or hazardous substance. A statement to this effect with the name and telephone number of the person authorized, on a 24-hour a day basis, to disclose the withheld information shall be included on the material safety data sheet.

(b) An employer may withhold information as a trade secret if the employer can establish that the information was withheld by the employer's supplier pursuant to subsection (a).

(c) Every employer shall substantiate the withholding of information as a trade secret. The Secretary shall review an employer's substantiating information and determine whether the substance in question is a trade secret. If the Secretary determines that the substance is not a trade secret, the Secretary shall send written notification thereof to the employer. The employer may contest this determination by filing a written notice of his desire to do so with the Secretary within

15 days of receiving notice of the Secretary's determination. If the employer does not notify the Secretary within the time allowed, the Secretary's determination is final and is not subject to review by any court. An employer who does not contest the Secretary's determination shall accordingly disclose the withheld information.

An employer who contests the Secretary's determination shall be provided a hearing before the Commission. After the hearing the Commission shall issue an order, based on findings of fact, affirming or vacating the Secretary's determination. This order shall become final 30 days after its issuance.

(d) An employer may at any time institute an action in superior court for a declaratory judgment on whether the information withheld by the employer is a trade secret.

(e) No toxic or hazardous substance emitted by an employer may be a trade secret.

"§ 130-291. Local health and fire departments receive data sheets and disclosure forms.--The Secretary shall send copies of all material safety data sheets and toxic or hazardous substance public disclosure forms submitted to him to the local health department and the local fire department, if any, serving the area in which the employer is located. Local health departments shall index these forms alphabetically by the name of the employer, by the street address of the employer, and by the parcel number of the employer's address, if available, to make these forms readily available to the public.

"§ 130-292. Inspections and investigations by local health

director.--(a) The local health director shall annually inspect the premises of an employer who submits a material safety data sheet or a toxic or hazardous substance public disclosure form to the Secretary to determine the following:

(1) whether the employer has properly labeled all toxic or hazardous substances;

(2) whether the information contained in the data sheet or disclosure form is accurate; and

(3) whether the employer has appropriate safety, containment, and cleanup equipment.

(b) The local health director shall investigate complaints from employees and members of the public that an employer is not in compliance with this Article within three working days of the complaint. The local health director may not disclose the name of the complaining party.

(c) The local health director may request the assistance of the Office of Occupational Safety and Health in the Department of Labor in performing its duties under this section. That office shall cooperate with the local health director in making inspections and investigating complaints, and may make inspections on behalf of the local health director when making inspections pursuant to Article 16 of Chapter 95.

(d) The Secretary shall provide training for local health directors and their staff to enable the local health department to fulfill its responsibilities under this section.

"§ 130-293. Citations.--(a) The local health director may issue a citation against an employer if, upon inspection or

investigation, he finds that the employer is not in compliance with this Article. Each citation shall:

(1) state with particularity the nature of the violation;

(2) fix a reasonable time for abatement of the violation;

(3) state the penalty for the violation, if any, the local health director intends to recommend to the Secretary; and

(4) state that the employer may contest the citation or the proposed penalty by filing a written notice with the Secretary of his desire to do so within 15 days of the issuance of the citation.

If the employer does not notify the Secretary within the time allowed, the citation and the proposed penalty abatement are final and are not subject to review by any court. An employer who contests a citation or proposed penalty shall be provided a hearing before the Commission. After the hearing the Commission shall issue an order, based on findings of fact, affirming, modifying, or vacating the local health director's citation or proposed penalty or directing other appropriate relief. This order shall become final 30 days after its issuance.

(b) If a local health director finds that an employer has failed to correct a violation within the time allowed by a citation, the health director shall issue a citation to the employer for this failure. If the employer contested the former citation, the time allowed for abatement of the violation shall

not begin to run until the entry of an order by the Commission.

"§ 130-294. Injunction.--If, after a complaint and investigation, the local health director fails to issue a citation for an alleged violation, the complaining party may institute an action for injunctive relief in the superior court of the county in which the alleged violation occurred. Reasonable attorneys' fees may be awarded to the prevailing party.

"§ 130-295. Penalties.--The Secretary may impose an administrative penalty on an employer for violating this Article. Each day of a continuing violation constitutes a separate offense. The size of the penalty shall reflect the seriousness of the offense but may not exceed five thousand dollars ($5,000) for each day the violation continues.

"§ 130-296. Employee's rights concerning toxic or hazardous substances.--(a) Information. Every employer shall make copies of material safety data sheets and toxic or hazardous substances public disclosure forms available to all employees and their designated representatives free of charge. In addition, every employer shall post copies of the most recent data sheets and public disclosure form concerning substances at a facility at the location or locations in each facility where notices to employees are normally posted. Employers shall provide a copy of a material safety data sheet or a public disclosure form to an employee or the employee's designated representative within three working days of the request therefor. If an employer fails to provide the requested information within this time period, the

employee may refuse to work with the toxic or hazardous substance for which the information was requested until the employer provides the information.

(b) Education and Training. Every employer who manufactures, processes, uses, stores, produces, or emits a toxic or hazardous substance shall establish an education and training program to inform employees of the toxic or hazardous substances to which they may be exposed in the course of their employment. This training program shall review the information required to be submitted by the employer to the Secretary under G.S. 139-288. Every employer shall make the education and training program available to employees before they are assigned duties in which they may be exposed to toxic or hazardous substances. The education and training program required by this section shall be provided at no cost to the employee and shall be offered at least annually to employees and whenever the potential for exposure to toxic or hazardous substances is altered. Employees shall be compensated at their normal rate of pay for time spent participating in an education and training program. Employees may keep, free of charge, all training materials provided them in the training program.

(c) Inspection. An employee or a designated representative of an employee who submits a written statement to the local health director alleging that his employer is in violation of this Article and who requests to accompany the local health director on any inspection made by the director pursuant to the complaint may participate in the inspection. An employer may not reduce an

employee's pay or take any other action adverse to the employee for participating in the inspection.

(d) Protection from Discrimination. An employer may not discharge, discipline, or otherwise discriminate against an employee or job applicant because that employee or applicant has exercised his rights under this Article. Any disciplinary action taken against an employee within 90 days after the employee has exercised his rights under this Article is presumed to have been taken in retaliation for the exercise of these rights and to be unlawful discrimination against the employee. If an employer discriminates against an employee or job applicant in violation of this section, the employee or applicant may recover damages from the employer in a civil action and may obtain other appropriate relief, such as reinstatement and back pay. Attorneys' fees may be awarded to the prevailing party in an action alleging wrongful discrimination in violation of this subsection.

"§ 130-297. Public access to information about toxic or hazardous substances and employer compliance.--All information reported by an employer to the Secretary under this Article, except information that would disclose a trade secret, and all information concerning violations and alleged violations of this Article are public records. Public access to these records, however, is limited to records in the custody of a local health department or the Secretary. This limitation does not apply to requests by an employee or an employee representative to an employer to provide a copy of a material safety data sheet or a

toxic or hazardous substance public disclosure form pursuant to G.S. 130-296.

"§ 130-298. Exemptions to Article.--This Article does not apply to the following:

(1) toxic or hazardous substances while being transported in interstate commerce into or through this State; and

(2) toxic or hazardous substances contained in consumer products and food stuffs packaged for distribution to and use by the general public, except that the Secretary may require an employer to submit a material safety data sheet or a public disclosure form for a substance if, because of the quantity of the substance stored by the employer, the Secretary determines that the interests of employee and public health warrant the disclosure of this information.

"§ 130-299. Fees, use of fees and penalties.--The Secretary shall establish fees payable by an employer when submitting a material safety data sheet or public disclosure form to cover the cost of processing these forms and administering this Article. Three-fourths of the amount of fees collected under this Article shall be distributed to local health departments on a per capita basis. All fees and civil penalties collected by the Secretary pursuant to this Article may be used only to improve occupational and environmental health in this State.

"§ 130-300. Local law.--Counties and municipalities may enact ordinances imposing additional obligations concerning toxic or hazardous substances on employers, but may not enact ordinances relieving an employer from any obligation imposed by this

Article."

Sec. 2. Article 3 of Chapter 143B is amended by adding a new Part to read:

"Part 28. Toxic or Hazardous Substance Council.

"§ 143B-216.16. Council on Toxic or Hazardous Substances.--(a) The Council on Toxic or Hazardous Substances in the Department of Human Resources is created. The Council shall advise the Secretary on issues related to Article 32 of Chapter 130 of the General Statutes. The Council consists of the following members:

(1) the Secretary, who shall serve as Chairman;

(2) the Commissioner of Labor, who shall serve as Vice-Chairman;

(3) two members who represent the interests of labor, appointed by the Governor;

(4) one occupational health hygienist appointed by the Governor;

(5) one member who represents the interests of a large manufacturer, appointed by the Governor;

(6) one member who represents the interests of a small manufacturer, appointed by the Governor;

(7) one member who represents the interests of an environmental group, appointed by the Governor;

(8) one public health official appointed by the Governor;

(9) one county official appointed by the Governor; and

(10) one fireman appointed by the Governor.

(b) All members of the Council appointed by the Governor shall

serve three-year terms. Vacancies occurring before the expiration of a term shall be filled in the same manner as the original appointment. Interim appointees shall serve the remainder of the term for which they were appointed to fill. The Council shall meet at the call of the Chairman and on petition by a majority of the members. The Secretary shall provide clerical assistance to the Council."

Sec. 3. Notwithstanding G.S. 143B-216.16(b) as it appears in Section 2 of this act, the original appointees of the Governor to the Council on Toxic or Hazardous Substances shall serve the following terms:

(1) one of the members who represented labor, as designated by the Governor, the occupational health hygienist, and the member who represents a large manufacturer shall serve one-year terms;

(2) the members who represent a small manufacturer and an environmental group, and one of the members who represents labor, as designated by the Governor, shall serve two-year terms; and

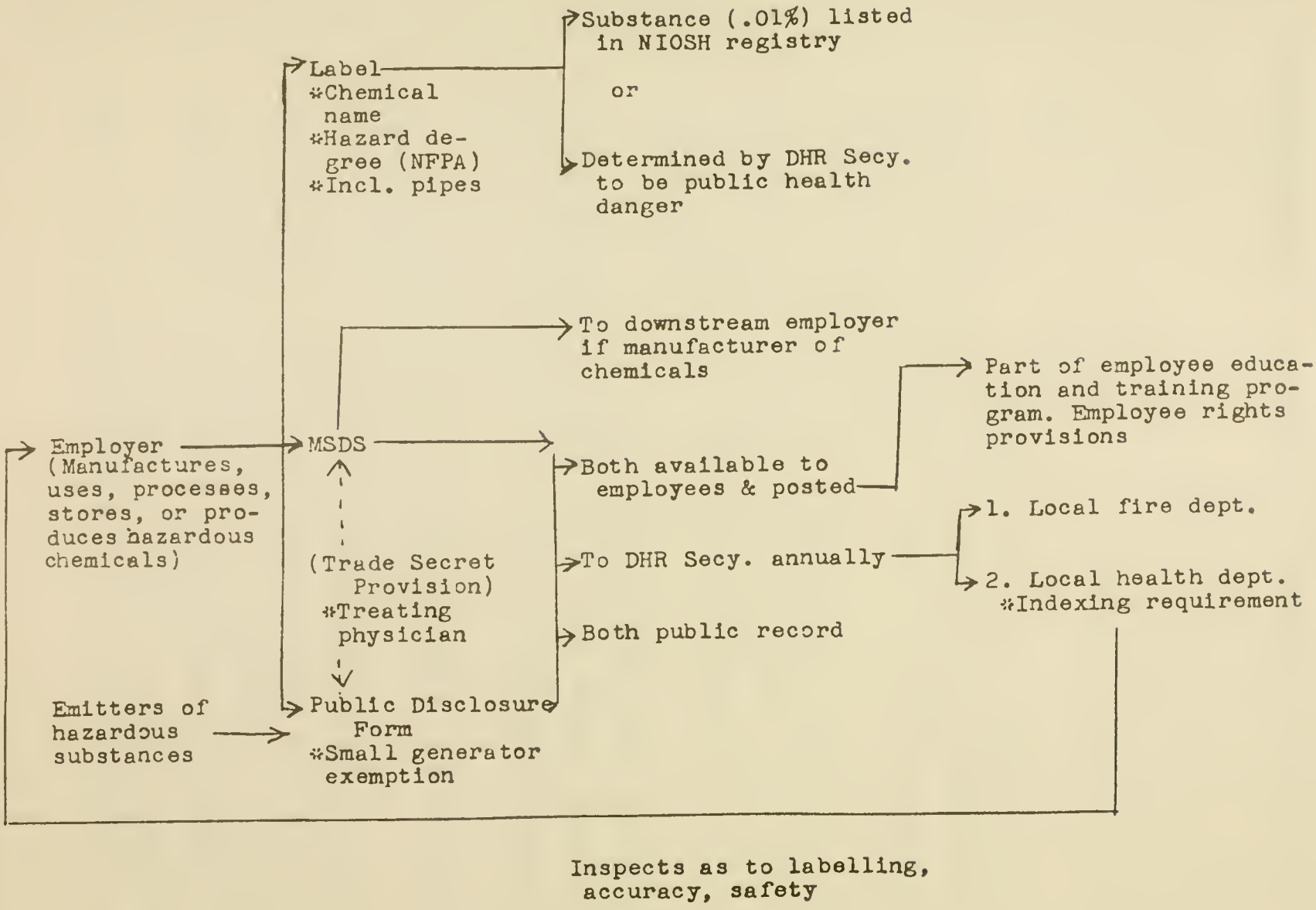
(3) the public health official, county official, and fireman shall serve three-year terms.

Sec. 4. There is appropriated from the General Fund to the Department of Human Resources for fiscal year 1983-84 the sum of two hundred thousand dollars ($200,000) to implement and assist counties in implementing the provisions of this act.

Sec. 5. Section 4 of this act shall become effective July 1, 1983. The remainder of this act shall become effective

January 1, 1984, for employers who have at least 10 employees, and shall become effective July 1, 1984, for all other employers.

H1339 FLOW



Exemptions:

1. Substances transported in interstate commerce.
2. Consumer products

APPENDIX B

B-1

DRAFT

HIGHLIGHTS OF OSHA'S HAZARD COMMUNICATION STANDARD

(29CFR Part 1910.1200)

Purpose

-- To ensure the evaluation of chemicals to determine their hazards.

-- To apprise workers in manufacturing industries of the hazards with which they work.

-- To preempt state laws covering hazard communication in states without state OSHA plans; to require OSHA approval for state hazard communication laws in states operating their own OSHA programs.

Scope

-- Covers 14 million employees in 300,000 manufacturing establishments in SIC codes 20-39. These industries include: 20) Food and Kindred Products; 21) Tobacco Manufacturers; 22) Textile Mill Products; 23) Apparel and Other Textile Products; 24) Lumber and Wood Products; 25) Furniture and Fixtures; 26) Paper and Allied Products; 27) Printing and Publishing; 28) Chemicals and Allied Products; 29) Petroleum and Coal Products; 30) Rubber and Plastic Products; 31) Leather and Leather Products; 32) Stone, Clay and Glass Products; 33) Primary Metal Industries; 34) Fabricated Metal Products; 35) Machinery, Except Electrical; 36) Electrical Equipment and Supplies; 37) Transportation Equipment; 38) Instruments and Related Products; and 39) Miscellaneous Manufacturing Products. (b)(1)

-- Requires chemical manufacturers and importers to assess hazards, develop labels and material safety data sheets and forward this information to manufacturers. (b)(1); (d)(1)-(6)

-- Makes manufacturing employers responsible for informing and training workers about the hazards in their workplaces, retaining warning labels and making available material safety data sheets supplied with hazardous products. (b)(1); (e)

-- Exempts chemical laboratories in manufacturing from labeling provisions of standard, but otherwise provides for limited coverage of laboratory employees. (b)(3)

-- Exempts hazardous wastes, wood, tobacco, "articles" and potentially hazardous substances such as drugs, food, and cosmetics brought into the workplace for the personal consumption of employees. (b)(5)

-- Permits the use of labels required by other federal agencies in lieu of those otherwise required under this standard. (b)(4)

Hazard Determination

-- Written hazard evaluation procedures are required. (e)(1)

-- Physical hazards include chemicals which are combustible liquids, compressed gases, explosive, flammable, organic peroxides, oxidizers, pyrophorics, unstable (reactive), or water-reactive. (c)

-more-

-- Health hazards include chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system and agents which damage the lungs, skin, eyes or mucous membranes. (See Appendix A of the standard.) (c)

-- Determining health hazards (Appendix B) See also (d)(5)

1) If one or more positive studies--human and/or animal data--which are conducted according to accepted scientific principles and have statistically significant results which show adverse health effects that may occur as a result of employee exposure, these must be reported. Negative data believed to be relevant also may be reported.

2) The standard establishes a "floor" of about 600 substances automatically considered health hazards--substances regulated by OSHA and/or listed by the American Conference of Governmental Industrial Hygienists in Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment.

3) In determining carcinogenicity, chemical manufacturers/importers are to rely on the National Toxicology Program, the International Agency for Research on Cancer and OSHA standards.

4) Mixtures are to be evaluated for health hazards on the basis of data covering them or on the basis of data on any constituent chemical which comprises 1 percent or more of the mixture. If a constituent chemical comprises 0.1 percent or more and is a carcinogen, the mixture must be considered carcinogenic. If a mixture component represents less than 1 percent but might result in workplace exposures exceeding OSHA permissible exposure limits or in harm to workers, this must be reported.

Written Hazard Communication Program (e)

-- To be in writing and to be available to employees, designated representatives, OSHA and NIOSH.

-- To cover container labeling, material safety data sheets and employee training.

-- To include a list of hazardous chemicals in each work area, describe how the employer will meet criteria of the standard, explain methods for communicating hazards to employees involved in nonroutine tasks and to those who work in areas where there are unlabeled pipes, explain the methods used to inform contractors of hazards to which their employees may be exposed.

Labels (f)

-- Affixed by manufacturer, importer or distributor to shipped containers. f(1)

-- Include identity (chemical and common names), hazard warnings and name and address of the manufacturer or responsible party. Must be legible, and in English. Must not be removed or defaced. May follow format required by other federal agency or foreign entity such as the European Economic Community. New labels not necessary if current ones provide required information. (f)(1)

-- Not conflict with labels required by the Department of Transportation under the Hazardous Materials Transportation Act. (f)(2)

-- Affixed by employer to other containers used in-plant by employees except: signs or placards or standard operating procedures, process sheets, batch tickets, blend tickets, etc. may be used for stationary containers. (f)(5)

-- Exempt: pipes and piping systems as well as in-plant containers for immediate use only of employee who transfers chemicals from labeled containers. (c); f(6)

Material Safety Data Sheets (g)

-- Manufacturers, importers and distributors to forward at the time of initial shipment to an employer. (g)(6)

-- Employers required to obtain and maintain MSDS for each hazardous chemical in their workplace. (g)(8)

-- Information must be in English, include identity and chemical and common names for the hazardous chemical. Mixtures to receive special treatment (see Hazard Determination above). (g)(2)

-- One MSDS may be used for similar mixtures with essentially the same hazards and contents. (g)(4)

-- MSDS must also include information specified on physical and chemical characteristics of the hazardous chemical; known acute and chronic health effects and related information; information on exposure limits and whether OSHA, the International Agency for Research on Cancer or the National Toxicology Program consider the chemical a carcinogen; precautionary measures; emergency and first aid procedures; date of preparation; and identification of the party responsible for the MSDS. (g)(2)

-- No blank spaces permitted; spaces should be marked when information is not found or not applicable. (g)(3)

-- New information to be incorporated on MSDS within three months following the manufacturer's receipt of the information. New MSDS to be transmitted with the next shipment of the chemical to the employer. (g)(5)

-- Copies of MSDS or comparable written document to be available in the workplace to employees, designated employee representatives, OSHA and NIOSH. (g)(8)

-more-

Emolovee Information and Training (h)

-- To take place upon initial assignment and when new hazards are introduced.

-- To include: requirements of the standard; operations in the workplace where hazardous chemicals are used; location of written hazard communication program, material safety data sheets, written hazard evaluation procedures and lists of hazardous chemicals; procedures for determining the presence of a hazardous chemical; specific hazards of specific chemicals in employees' work area; protective measures employer has instituted and emoloyees are to follow to protect themselves; how to read and interpret information on laoels and material safety data sheets and how to get and use the available hazard information.

Trade Secrets (i)

-- Manufacturer, importer or employer may withhold the specific chemical identity (chemical name, Chemical Abstracts Services registry number) from an MSDS if this information constitutas a trade secret; provided information on the hazardous nature of the chemical is disclosed on the MSDS and if the MSDS indicates that the specific chemical identity is being withheld because it is a trade secret. (i)(1)

-- Trade secret information must be disclosed to OSHA upon request. i(12)

-- Trade secret processes and percentage of mixture information are excluded from disclosure requirements. (i)(13)

-- In emergencies the specific identity must be provided immediately upon request to a treating physician or nurse. i(2)

-- Non-emergency situations i(3)

1) The specific chemical identity must be made available to health professionals such as physicians, industrial hygienists, toxicologists and others providing medical or occupational health services to exposed employees upon written request.

2) Written requests must describe the medical or occupational health need such as: to assess the hazards of chemicals to which employees will be exposed; to conduct or assass sampling of workplace atmosphere to determine employee exposure levels; to conduct pre-assignment or periodic medical surveillance of exposed employees; to provide medical treatment to exposed employees; to select or assass appropriate personal protective equipment for exposed employees; to design or assass engineering controls or other protective measures for exposed emoloyees; to conduct studies to determine the health effects of exposure.

3) The request must explain why the following types of information would be insufficient: properties and effects of the chemical; measures for controlling workers' exposure to the chemical; methods of monitoring and analyzing worker exposure to the chemical; methods of diagnosing and treating harmful exposures to the chemical.

-more-

-- Confidentiality

1) The request must describe procedures to be used to protect the confidentiality of the information and include a written agreement not to use the information for any purpose other than the health need or to release it except to OSHA and be signed by both the health professional and the employer or contractor of the health professional's services.

2) No penalty bond may be required; however, a liquidated damages agreement may be required and the parties may pursue non-contractual remedies to the extent permitted by law.

3) If the health professional decides to disclose the information to OSHA, he/she must inform the chemical manufacturer, importer or employer who provided the information.

-- Denials

1) Denials of health professionals' written requests for the specific identity of a chemical must be in writing within thirty days of the request and must include evidence to support the claim that the chemical identity is a trade secret, state the specific reasons for denial and explain in detail how alternative information may suffice.

2) If OSHA determines that the specific chemical identity does not represent a trade secret, the withholding manufacturer, importer or employer will be subject to citation. Likewise a citation may result if the specific chemical identity is a bona fide trade secret but the health professional has demonstrated a need to know the identity, executed a confidentiality agreement and shown adequate means for protecting the trade secret. Abatement of the citation will most likely involve divulging the information subject to confidentiality protections.

3) If the trade secret must be revealed, OSHA may impose additional limitations or conditions to assure that it is protected.

-- If the employer appeals the citation to the Occupational Safety and Health Review Commission, the administrative law judge may decide to review the matter in camera.

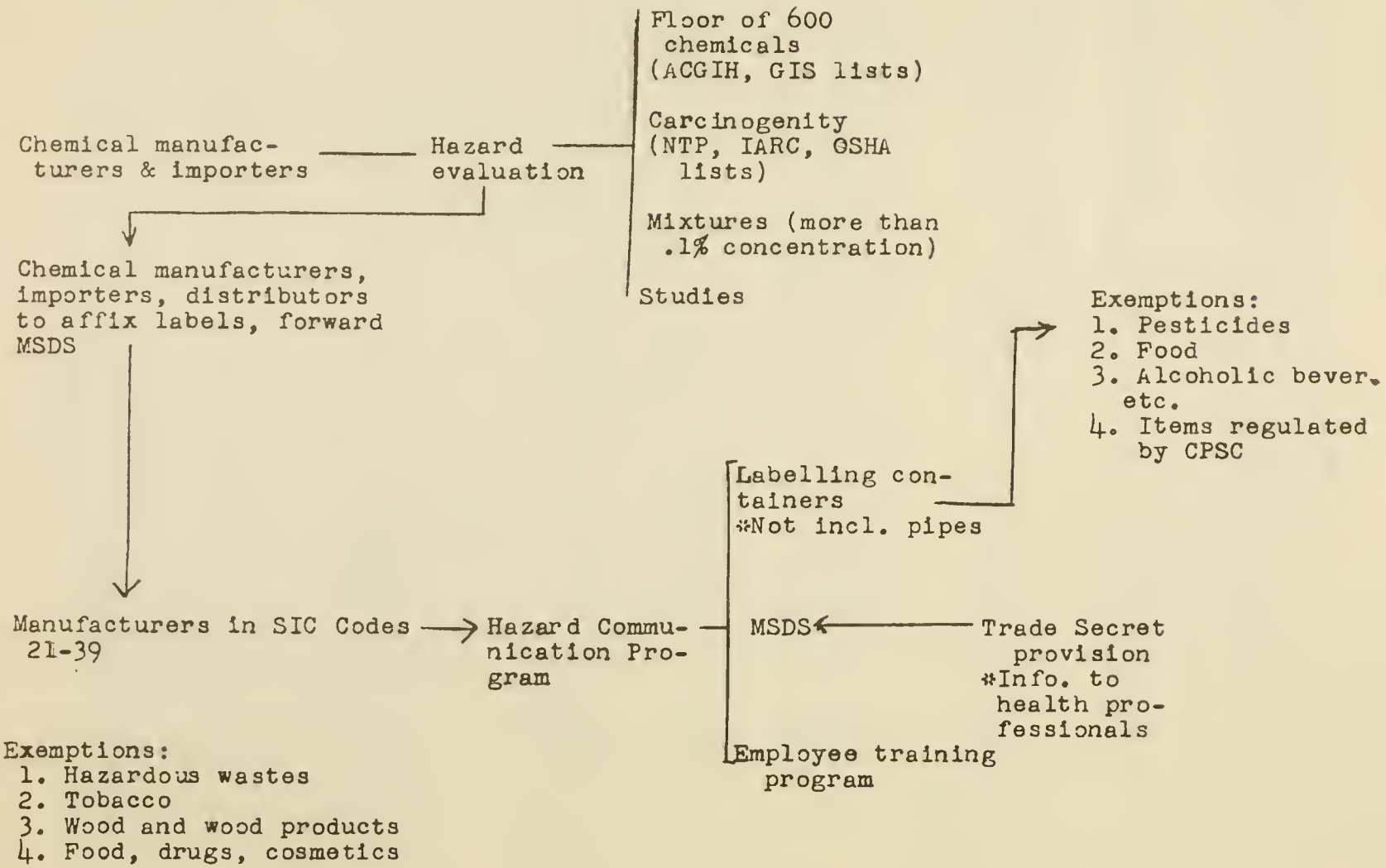
Effective Dates

-- November 25, 1985--Chemical manufacturers must complete labeling of containers shipped downstream and provide material safety data sheets to manufacturers. (g)(1)

-- May 25, 1986--All employers must be in compliance with all provisions of the standard. g(3)

# # #

48 Federal Regist[illegible]280, amending
29 CFR Part 1910--U.S. OSHA
FLOWCHART



OUTLINE OF PRESENTATION TO HAZARDOUS SUBSTANCES, LABELLING AND IDENTIFICATION STUDY COMMITTEE, January 5, 1984.

I. Study was authorized by C905 (H1142-Omnibus Studies bill) -

"The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study" (i.e., HB 1339). The issue is hazardous chemicals in the workplace affecting the health and safety of

A. Workers

B. Public safety officials, such as firemen

C. Public-at-large

The idea is that better labelling and identification of and education about these substances and their hazards for employees and others (a program known as "hazard communication" or "right-to-know") will improve health and safety.

II. The legal structure

A. Federal Occupational Safety and Health Administration (Federal OSHA)

1. 29 USCS 651--Congress asserted that under its powers to regulate commerce among the states and provide for the general welfare it sought to "assure so far as possible...safe and healthful working conditions."

2. 29 USCS 667(a)--Congress acknowledged a state role by providing "nothing in this Act shall prevent any state agency...from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect....." Subsection (b) and (c) allows a state wishing to "assume responsibility for development and enforcement therein of...standards" to submit a state plan for approval. These standards must be "at least as effective" as federal standards (at c(2).

3. North Carolina is a "state plan" state. 95-131 provides that all federal standards "shall in all respects be the rules of the Commissioner of this State" unless alternative rules "as effective as the federal requirement" are promulgated.

B. The "right to know" issue

1. There was no federal standard in this area until one was issued on November 25, 1983. 48 Federal Register 53280 (1983). North Carolina must adopt a "comparable standard" within 6 months (i.e., by May 25, 1984).

a. Scope of federal standard: Covers chemical manufacturers and importers and employers in SIC Codes 21-39 (manufacturing). This is said to cover 14 million workers in 300,000 manufacturing establishments nationwide. Initial cost estimates (in millions) are $603.926 ($43/employee) with annual costs of $158.87 ($11/employee). The N.C. Employment Security Commission estimates there are 800,900 workers in the manufacturing sector in N.C. out of total employment of 2,761,000 (or 29%).

2. H1339 was introduced in the 1983 Regular Session before Federal rules were promulgated.

   a. Scope of H1339: Much broader in that it covers users as well as manufacturers. Among the major differences are:

      1. Definition of "container" includes pipelines. (130-286(4))

      2. Threshold volume for definition of hazardous substance is lower (0.01% versus 1% or 0.1% if carcinogenic).

      3. Differing trade secret provisions

      4. Local health and fire departments to receive public disclosure forms

      5. More stringent local measures are allowed.

3. A number of states--including California, Conn., Me., Mich., NY, W.Va. and Wisc.---have adopted state right-to-know legislation, as have some local communities. The status of all of these laws (as well as H1339) is significantly affected by the "preemption" issue.

C. The preemption issue.

1. This is a complicated issue over which opinions differ considerably. Federal preemption derives its authority from the Supremacy Clause of the U.S. Constitution which provides that the Constitution and laws of the U.S. shall be the "supreme law of the land." When the Federal government legitimately asserts jurisdiction over an area, the state jurisdiction on the same topic is limited by the extent of the federal assertion. The Supreme Court has evolved several tests as to preemption:

   a. Federal scheme so pervasive and detailed as to suggest no room for state supplementation.

   b. Federal interest in a field is clearly predominant.

   c. Even where Congress has not completely foreclosed state regulation, a state statute can be void to the extent that it actually conflicts with a valid federal statute, especially where compliance with both would be impossible or would conflict with Congressional objectives.

      Findley and Farber, Environmental Law (1983)

2. Federal Intent--OSHA

a. 29 USCS 651 asserted federal interest based on commerce clause and general welfare clause to assure safe working conditions.

b. 29 USCS 667(a) exempted from preemption areas "with respect to which no standard is in effect."

c. 29 USCS 667(b) and (c) accepted ability of state to make rules "at least as effective" as federal rules; but they must be "required by compelling local conditions and do not unduly burden interstate commerce."

d. 48 Federal Register 53322. OSHA asserts that judicial review of the standards lies exclusively with the U.S. Court of Appeals. Furthermore, "as a standard it preempts competing state standards which do not meet certain procedural and substantive criteria." The document continues:

> "The Secretary intends to scrutinize carefully any state law or regulation submitted under an approved state plan...The purpose of this review is to assure not only equal or greater effectiveness but also that any additional requirements... do not conflict with or adversely affect the effectiveness of OSHA's standard...(The) Secretary intends to approve a state standard only if it is 'required by compelling local conditions and do(es) not unduly burden interstate commerce.'"

3. Arguably non-preempted areas

a. Areas bearing on public health and safety, as, for example, on behalf of firemen and for the protection of the general public.

b. Non-manufacturing areas such as health care, construction, utilities, laundries and other services.

III. Conclusions

A. The Committee must decide for itself whether a significant problem exists and the dimensions of that problem.

B. The Committee must decide what sorts of measures ought to be taken within the legal avenues it deems open to it.

C. The Committee may wish to assess what the Department of Labor is going to do relative to the Federal OSHA regulations on the manufacturing sector.

APPENDIX C

HAZARDOUS SUBSTANCE COMMITTEE

January 5, 1984

SPEAKERS

Mr. John Brooks, Commissioner of Labor

~~Mr.~~ Dr. Shirley Osterhaut, Duke Poison Control Center

Mr. Rick Maas, NCSU Water Quality Evaluation Project

Ms. Karen Murphey, North Carolina Hospital Association

Mr. Bill Connor, Wilmington Central Labor Union

Mr. Michael Okun, AFL-CIO of North Carolina

Mr. Gene Hill, N.C. Citizens for Business and Industry

Ms. Jan Ramquist, League of Women Voters

Mr. William Stenger, Dupont Chemical Company

Mr. Tom Pugh and Mr. Ed Harris, Emergency Management Division, Department of Crime Control and Public Safety

Mr. Ellis Stanley, Durham Emergency Management

Ms. Angela Waldorf, Petroleum Council

Mr. O. W. Strickland, Division of Health Services, Solid and Hazardous Wastes, Department of Human Resources

~~Mr. Keith Hundley,~~ Weyerhauser

Mr. David Austin, NCOSH

Mr. Joe Coyne, Roanoke Valley Central Labor Union, Roanoke Rapids

Mr. Dan Baucom, Occupational Safety and Health, Department of Human Resources

Mr. Zeke Paire, Electrical Workers, Durham

Mr. Sam Johnson, Attorney, NC Associated Industries

Mr. John May, Com. Workers of Am. (Local 3611, Ral.)

STATEMENT
BY
JOHN C. BROOKS

TO

LEGISLATIVE RESEARCH COMMISSION,
COMMITTEE ON HAZARDOUS SUBSTANCES
IDENTIFICATION AND LABELING

RALEIGH, N.C.

JANUARY 5, 1984

Thank you for the invitation to appear before your committee today to discuss the problem of communicating to workers and to the general public the hazards of substances being used or stored in the workplace. I commend this committee upon your willingness to tackle this timely and sensitive topic. As you sort out the competing claims between those with a right to know about hazards and those with a right to protect trade secrets, I offer you the assistance of my office in collecting information or providing analyses on any particular point which interests you. Please feel free, either individually or collectively, to call upon me.

In discussing the general problem of communicating information about hazardous substances, I find it helpful to consider three broad areas: first, the labeling of containers of such substances; second, the communication of information from employers to employees; and third, the communication of information from users to the general public. The first two areas are covered by the hazard communication standard recently issued by the U.S. Occupational Safety and Health Administration, or U.S. OSHA, while

the third has not been uniformly addressed. A few states have laws covering the third area and several cities across the nation have local ordinances which address this area. In North Carolina, at least three cities are now considering ordinances requiring the provision to fire departments of information regarding hazardous substances, and the City of Charlotte has already adopted such an ordinance. Your committee is in an excellent position to provide leadership and to establish a basis for State policy in this area.

A summary of the Hazard Communication Standard which addresses the first two areas that I enumerated has been provided to you. Under the standard, chemical manufacturers, importers, and distributors must make material safety data sheets available to their customers and must properly label all containers. In addition, the standard is intended to ensure that all employees in the manufacturing sector are apprised of the chemical hazards with which they work. The required hazard communication program in each manufacturing plant using hazardous substances must include the labeling of containers, the provision of material safety data sheets, and the training of employees in hazard identification and safety procedures. The scope of the standard is currently limited to the manufacturing sector, which U.S. OSHA has indicated represents its top priority. Other sectors may be regulated separately in the future.

Worthy of note is the effective date of the standard. While U.S. OSHA has adopted the standard effective November 25, 1983, and North Carolina OSHA has adopted the standard effective

February 1, 1984, manufacturers and importers of hazardous chemicals have two years, until November 25, 1985, to analyze the hazards of the chemicals, to label their containers, and to provide material safety data sheets to their customers. Manufacturers who use hazardous chemicals have until May 25, 1986, to come into compliance with the remaining requirements of the hazard communication program.

North Carolina will enforce this standard as we do all others. Safety officers and industrial hygienists during the course of their inspections will inform employers of the requirements of the new standard and the deadlines for compliance. Once the deadline has been reached, citations will be issued for employers who are found not to be in compliance.

We are also analyzing whether or not additional protections may be needed in North Carolina. Simply because we adopt what has been promulgated by federal OSHA does not mean that we may not need additional features at a later time. We welcome advice from this committee if, after review of the new standard, you believe that some particular additional features are desirable for North Carolina.

I would like to make one point with respect to North Carolina's adoption and enforcement of this and other health standards. Ever since I took office in 1977, I have been concerned about the lack of a standards development staff in our State OSHA program and about an inadequate number of industrial hygienists to conduct occupational health investigations. Researching an

issue as complex as the hazard communication standard and developing sound justification for adopting a standard and defending it in court, if necessary, requires professional staff. The labor department has never had a standards development staff, and my modest proposal in 1979 for a three-person standards development section was not approved by the General Assembly. If we are to carefully consider whether or not North Carolina needs OSHA standards different from or in addition to those promulgated by U.S. OSHA, then a standards development staff needs to be provided in the Department of Labor.

With respect to health standards enforcement, North Carolina continues to have fewer industrial hygienists than needed for occupational health work. We were pleased when the 1981 session of the General Assembly authorized six additional industrial hygienist positions, but we still have only 13 industrial hygienists to cover the 113,000 places of employment in North Carolina. To effectively enforce our occupational health standards, we need many more hygienists. In 1983 I proposed the addition of as many as 21 industrial hygienist positions and 8 support positions for each year of the biennium, but these positions were not funded. I will renew my proposal for an expansion of this staff in my next budget request.

One feature of the new standard deserves special note, and that is federal OSHA's claim of preemption. As you will read, federal OSHA claims that this standard preempts state laws on hazard communication. Whether or not this is true will be tested

in courts in other jurisdictions. What is clear to me and which I commend to you is the concept that regulating communications between employers and employees concerning hazardous substances is best left to the mechanism already established for regulating safety and health in the workplace -- the State's OSHA program. I would encourage the attention of this committee to that area for which there currently are no statutory provisions -- the communications between manufacturers, handlers and users of hazardous materials and the general public.

As recent incidents in Charlotte, Salisbury, Raleigh, Rocky Mount, Wilmington, and other locations have demonstrated, a spill or a fire involving a hazardous substance can be a life-threatening situation for citizens who reside near commercial and industrial establishments. To the extent that their safety is jeopardized, they should have the opportunity to know what hazardous materials are nearby. To the extent that local emergency crews -- including police, fire, and rescue units -- are expected to provide protective services to establishments handling hazardous materials, they need to know what materials are present and what safety precautions are appropriate in the event of an accident.

The direction taken by House Bill 1339 would require that a material safety data sheet on every hazardous substance be provided to the Secretary of Human Resources, and the Secretary would in turn provide this information to local fire and health departments. The provision of material safety data sheets is

consistent with the approach taken by OSHA, and I recommend to you that this approach be the basis for whatever public policy you propose.

This area of providing information to the general public and to county and municipal agencies concerning hazardous substances in their communities needs addressing by the General Assembly. Just as it is appropriate to have some national uniformity concerning the labeling of substances in the workplace, I believe that it is desirable to have some statewide uniformity in the communications to local communities regarding hazardous substances. I encourage your committee to carefully consider and to recommend some statewide policy in this regard.

Again, if I or my staff may be of assistance to you in any component of your work, please call upon me.

NCOSH
north carolina occupational safety and health project
box 2514
durham, n.c. 27705
(919) 286 9249

TESTIMONY BEFORE THE

LEGISLATIVE STUDY COMMISSION ON HAZARDOUS SUBSTANCES IDENTIFICATION AND LABELING

January 5, 1984

GOOD MORNING. I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO COME AND SPEAK TO YOU TODAY. MY NAME IS SUSAN LUPTON AND I AM HERE REPRESENTING NCOSH, THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH PROJECT. WE ARE A STATEWIDE ORGANIZATION FOCUSING ON OCCUPATIONAL SAFETY AND HEALTH. WE ARE ALSO A MEMBERSHIP ORGANIZATION REPRESENTING 14,000 WORKERS ACROSS THE STATE, AND A VOLUNTEER ORGANIZATION WITH VOLUNTEERS FROM A NUMBER OF TECHNICAL AREAS--PHYSICIANS AND OTHER HEALTH CARE PROVIDERS, INDUSTRIAL HYGIENISTS, HEALTH EDUCATORS, ETC.

I HAVE THREE MAJOR POINTS THAT I WOULD LIKE TO MAKE TODAY:

1. THERE IS A CRITICAL NEED FOR A STRONG RIGHT TO KNOW PROGRAM IN NORTH THAT COVERS ALL WORKERS AND THE GENERAL PUBLIC;
2. THE FEDERAL HAZARD COMMUNICATION STANDARD IS NOT GOING TO MEET THIS NEED; AND
3. AS A RESULT, WE NEED TO MOVE AHEAD WITH OUR OWN STATE RIGHT TO KNOW PROGRAM.

WE HAVE DEVELOPED AN ISSUE STATEMENT THAT INCLUDES DETAILS AND BACK-UP INFORMATION ABOUT EACH OF THESE POINTS. IN MY TESTIMONY, I WOULD LIKE TO SIMPLY HIGHLIGHT A FEW OF THE MOST SIGNIFICANT AREAS.

FIRST, IN TERMS OF THE NEED FOR A RIGHT TO KNOW PROGRAM, WE AT NCOSH HAVE BEEN WORKING FOR OVER 7 YEARS TO HELP WORKERS UNDERSTAND AND IMPROVE HEALTH AND SAFETY CONDITIONS ON THE JOB. THE MOST COMMON AND ONE OF THE MOST DIFFICULT PROBLEM WE RUN INTO IS THAT MOST WORKERS WHO COME TO US FOR HELP DO NOT KNOW WHAT CHEMICALS THEY ARE WORKING WITH, AND GENERALLY CANNOT FIND OUT FROM THEIR EMPLOYER. FOR EXAMPLE, I AM WORKING NOW WITH SOME WORKERS IN THE WESTERN PART OF THE STATE THAT USE ALOT OF CHEMICALS IN THE COURSE OF PAPER AND PLASTICS PROCESSING. THERE HAVE BEEN FOUR BIRTH DEFECTS AMONG THE CHILDREN OF THE WORKERS IN A SMALL DEPARTMENT OF THIS PLANT. IN TRYING TO DETERMINE IF THESE BIRTH DEFECTS MIGHT BE RELATED TO CHEMICAL EXPOSURES ON THE JOB, WE HAVE RUN INTO ROADBLOCK AFTER ROADBLOCK IN GETTING COMPREHENSIVE INFORMATION ABOUT THE CHEMICALS THESE PARTICULAR WORKERS ARE EXPOSED TO. FIGURES THAT GIVE A MORE COMPREHENSIVE PICTURE OF THE EXTENT OF CHEMICAL EXPOSURES IN NORTH CAROLINA AND RELATED HEALTH PROBLEMS ARE INCLUDED IN OUR ISSUE STATEMENT. THESE FIGURES SHOW THAT THE EXAMPLE I JUST GAVE IS NOT AN ISOLATED CASE, BUT RATHER ONE OF THOUSANDS.

THE SECOND POINT I WOULD LIKE TO MAKE IS THAT THE FEDERAL HAZARD COMMUNICATION STANDARD DOES NOT NOW AND WILL NEVER MEET THE NEED THAT NORTH CAROLINA WORKERS AND NORTH CAROLINA CITIZENS HAVE FOR INFORMATION ABOUT HAZARDOUS SUBSTANCES TO WHICH THEY ARE EXPOSED. TO BEGIN WITH, A MAJOR PART OF ANY COMPREHENSIVE RIGHT TO KNOW LAW IS GIVING LOCAL OFFICIALS AND COMMUNITY RESIDENTS INFORMATION ABOUT THE THE HAZARDOUS SUBSTANCES PRESENT IN THEOR COMMUNITY AS WELL AS WHAT'S BEING RELEASED INTO THE ENVIRONMENT. THE FEDERAL STANDARD DOES NOT ADDRESS THIS WHOLE ISSUE OF PUBLIC RIGHT TO KNOW. IN ADDITION, THE FEDERAL STANDARD DOES NOT COVER 71% OF THE WORKERS IN NORTH CAROLINA, ALMOST 2 MILLION PEOPLE WHO WORK IN NON-MANUFACTURING JOBS. IN ADDITION TO THESE OMISSIONS, WE SERIOUSLY DOUBT THAT THE FEDERAL STANDARD IS GOING TO BE EFFECTIVE IN PROVIDING INFORMATION TO WORKERS IN THE MANUFACTURING SECTOR, THE ONE GROUP THAT IT DOES COVER, BECAUSE OF THE

INCREDIBLE LOOPHOLES AND WEAK PROVISIONS INCLUDED IN THE STANDARD.

FINALLY, I WOULD LIKE TO FOCUS ON WHAT WE CAN DO IN NORTH CAROLINA. EVER SINCE THE FEDERAL STANDARD WAS RELEASED IN NOVEMBER, THERE HAS BEEN CONSIDERABLE DISCUSSION ABOUT PREEMPTION. THOUGH THIS ISSUE WILL DEFINITELY BE SETTLED IN THE COURTS OVER A LONG PERIOD OF TIME, IN OUR OPINION, SOME THINGS ARE CLEAR NOW:

1. PUBLIC RIGHT TO KNOW EFFORTS AND WORKER RIGHT TO KNOW EFFORTS THAT APPLY ONLY TO NON-MANUFACTURING WORKERS WOULD NOT BE PREEMPTED BY THIS STANDARD SINCE IT DOESN'T ADDRESS THESE TWO AREAS. IN FACT, THE FEDERAL OSHA TEAM LEADER FOR HAZARD COMMUNICATION HAS STATED THAT "IT COULD NOT PREEMPT PUBLIC RIGHT TO KNOW AND IT COULD NOT PREEMPT STATE LAWS THAT DEAL WITH OTHER INDUSTRIES".
2. THOUGH THE FEDERAL GOVERNMENT CLEARLY INTENDS TO PREEMPT STATE AND LOCAL LAWS DEALING WITH WORKERS IN THE MANUFACTURING SECTOR, IT MAY NOT BE SUCCESSFUL DUE TO LEGAL CHALLENGES. A NUMBER OF CONSUMER, LABOR AND OCCUPATIONAL HEALTH GROUPS HAVE ALREADY FILED LAWSUITS TO CHALLENGE THE STANDARD, PARTICULARLY THE PREEMPTIVE CLAUSE, AND A NUMBER OF STATES HAVE INDICATED THAT THEY WILL PROBABLY FILE SUIT AS WELL.

SO, WHERE DOES THAT LEAVE US IN NORTH CAROLINA? IN OUR OPINION, THE STATE HAS TO MOVE AHEAD ON A STATE RIGHT TO KNOW PROGRAM BECAUSE THE FEDERAL STANDARD IS CLEARLY NOT GOING TO DO IT FOR US. WE FEEL THAT YOU, AS THE LEGISLATIVE STUDY COMMISSION, AND THE GENERAL ASSEMBLY HAVE A NUMBER OF OPTIONS WHICH ARE OUTLINED IN OUR ISSUE STATEMENT. THE FIRST OF THESE OPTIONS, THE ONE THAT WE FEEL IS THE MOST APPROPRIATE, IS TO GO AHEAD AND PASS STATE RIGHT TO KNOW LEGISLATION THAT COVERS ALL WORKERS AND THE GENERAL PUBLIC, IN ESSENSE, PASS SOMETHING COMPARABLE TO HOUSE BILL 1339 AS IT WAS ORIGINALLY INTRODUCED. YOU HAVE TO BE SURE THAT THE LAW WAS WRITTEN SO THAT IT IS SEVERABLE, SO THAT TURN OUT THAT THE STATE IS PREEMPTED IN THE MANUFACTURING SECTOR, THE REST OF THE

LAW WOULD STILL BE IN EFFECT. SIMULTANEOUSLY, YOU WOULD ALSO NEED TO CODIFY AS A N.C. OSHA STANDARD THE PORTIONS OF THIS LAW THAT APPLY TO MANUFACTURING WORKERS AND SEEK APPROVAL FOR THAT STANDARD AS PART OF THE STATE OSHA PLAN. WE FEEL THAT THIS APPROACH MAKES SENSE, BECAUSE IF THE PREEMPTIVE CLAUSE DOES NOT GO INTO EFFECT OR IS DELAYED, YOU HAVE A COMPREHENSIVE RIGHT TO KNOW PROGRAM FOR THE STATE. IF YOU ARE PREEMPTED IN CERTAIN AREAS, YOU HAVE STILL DONE THE BEST YOU CAN FOR EVERYONE ELSE IN THE STATE.

WE REALIZE THAT THIS IS NOT A SIMPLE ISSUE, PARTICULARLY SINCE THE FEDERAL GOVERNMENT HAS GOTTEN INVOLVED IN THE PICTURE. HOWEVER, WE ENCOURAGE YOU TO TAKE THE TIME TO STUDY IT CAREFULLY AND COME UP WITH THE STRONGEST PROGRAM POSSIBLE FOR NORTH CAROLINA WORKERS AND NORTH CAROLINA CITIZENS. WE ARE CONVINCED THAT IMPLEMENTING A STRONG, COMPREHENSIVE RIGHT TO KNOW PROGRAM IN THIS STATE WILL DO MORE TO PREVENT FUTURE HEALTH PROBLEMS THAN ANY OTHER SINGLE STEP YOU COULD TAKE. THANK YOU VERY MUCH FOR YOU TIME.

Susan Lupton
NCOSH
P.O. Box 2514
Durham, N.C. 27705
(919)286-9249

NCOSH
north carolina occupational safety and health project
box 2514
durham, n.c. 27705
(919) 286 9249

ISSUE STATEMENT:

POLICY OPTIONS FOR A RIGHT TO KNOW PROGRAM IN NORTH CAROLINA

Prepared by the North Carolina Occupational Safety and Health Project (NCOSH) for presentation to the Legislative Study Commission on Hazardous Substances Identification and Labeling

January 5, 1984

CONTENTS

THE NEED FOR RIGHT TO KNOW LEGISLATION IN NORTH CAROLINA

WHAT IS A COMPREHENSIVE RIGHT TO KNOW LAW?

A comprehensive Right to Know law is a crucial first step in protecting workers and community residents from the dangers of exposure to hazardous substances. An effective Right to Know Law would include:

- o A comprehensive list of hazardous substances covered, which is updated regularly;
- o Identification of those substances in the workplace through labeling with chemical names (not common names or trade names), availability of complete material safety data sheets, and an on-going education and training program for the workers;
- o Disclosure of information about these substances to state and local officials and the general public including information about the release of these substances into the air, water, and land; and
- o Effective mechanisms for enforcement and funding.

House Bill 1339, An Act Regarding Identification and Labeling of Toxic or Hazardous Substances, as originally introduced in the 1983 session of the General Assembly, is an excellent draft of a comprehensive Right to Know bill for N.C.

WHO NEEDS THIS LAW?

Workers seldom have adequate information about toxic substances to which they are exposed. A National Institute for Occupational Safety and Health (NIOSH) survey of over 5,200 businesses found 95,000 brand names in use. In 90% of the cases, the workers and sometimes even the employer did not know the chemical composition of the substances.

Community Residents living near plants that use dangerous materials should know about possible emissions that may cause illness or contaminate the air, land or water. Chemicals can and do travel beyond plant gates.

Firefighters and emergency management personnel must know about the presence of hazardous chemicals ahead of time so that they can adequately prepare for emergencies. Otherwise they waste valuable time in a crisis situation and put themselves in considerable danger in dealing with chemical fires and spills.

Doctors and health care personnnel cannot diagnose and treat illness correctly without knowing the chemicals to which their patients are exposed.

Families are endangered by chemicals that travel home on clothing and belongings. Some exposures can cause spontaneous abortions, birth defects and other reproductive problems and, according to a recent study, up to 25% of all brain tumors in children.

Industry should benefit in the long run by the improved health of the workforce, reduced health insurance and worker's compensation claims, and reduced liability in cases of alleged negligence in the use of a substance.

HEALTH PROBLEMS ASSOCIATED WITH HAZARDOUS CHEMICALS

A report issued in 1978 by the Center for Disease Control concluded that"we are on the threshold of an epidemic of occupationally related disease." There are over 100,000 chemicals currently in use and a new chemical is introduced every half hour. According to a national survey, one out of every four workers were exposed to the chemicals surveyed (only 8,000 of the 100,000 in use). For North Carolina, these exposures and resulting health problems mean:

- Approximately 700,000 exposed workers. This figure would be much higher if we were considering exposure to all 100,000 chemicals, not just the 8,000 surveyed.

- According to NIOSH estimates, one would expect approximately 2,300 deaths and 9,000 new cases of occupational diseases in N. C. each year, with the bulk of these health problems being caused by overexposure to hazardous substances.

These figures don't even begin to consider health problems associated with chemical exposure among family members of workers or the public at large.

EXAMPLES OF THE NEED FOR RIGHT TO KNOW IN NORTH CAROLINA

The following are just a few examples of the need for a strong Right to Know program in North Carolina that provides comprehensive information about hazardous chemicals to workers, state and local officials, and community residents.

- In February, 1982, an explosion at a Greensboro chemical company threatened the heavily populated Pomona neighborhood. The resulting fire could have ignited a railroad car of propylene oxide, with serious consequences. Community residents did not know the contents of the car. During the fire, chemicals from old storage drums washed into city sewer lines, and employees of the firm could not identify the leaking chemicals. Firefighters on the scene did not know what chemical was burning (first reported as methanol, the next day as phosphorous oxychloride) nor what other flammable hazards existed, and therefore did not know what fire suppression techniques were appropriate. Treatment with water created irritating vapors which caused respiratory irritation among neighborhood residents for several days.

- In 1976, employees at a large tire-manufacturing plant in Fayetteville learned that recent UNC epidemiological studies showed excessive cancer rates for several work areas in tire plants. Despite this clear evidence of excessive cancer risk, and despite local screening clinic results showing high rates of respiratory problems among some local workers, management of the plant refused to provide a list of chemicals to which the workers were exposed. The employees' appeal to N.C. OSHA to require disclosure of the information was rejected.

- A chemical recycling plant in Durham has a water discharge permit allowing them to release up to 1,000 gallons of wastewater a day into the city storm sewer system. Concerned community residents living adjacent to the plant have been unable to find out from the company or the city what types and volumes of chemicals are being discharged.

- In Maiden, Catawba County, in 1982, a milky white material of unknown composition was reported contaminating a tributary of Maiden Creek. Investigation by state officials indicated that the material was furniture plant waste dumped from tank trucks during cleaning. After further investigation, it was found that the material was residue from a "Scotchguard" waterproofing process.

- In the late 70's and 80's, Southern Bell telephone workers in many parts of the state were using a pesticide called heptachlor as a fire ant and insect deterrent applied to small terminal connection boxes in residential neighborhoods. Initially, workers did not know the identity of the substance. When they were able to obtain the name, their research showed that heptachlor was a suspect carcinogen, which had been banned from production for over five years and Southern Bell had had to apply for a special permit to use it. After further research, workers found that the chemical was not being used safely, and that there are much safer chemicals that could be substituted. With this information the workers were able to successfully negotiate with Southern Bell to stop use of heptachlor in North Carolina.

- Employees at a paper manufacturing company in Western North Carolina are experiencing health problems including serious reproductive problems among workers in a particular department in which a considerable number of chemicals are used (there have been several birth defects among the children of the workers in this small department). Though the company has given the workers a partial list of the chemicals used in the plant many of the chemicals were listed by trade names or code numbers only (Dupont #56065, for example) which are useless in terms of researching that chemical. The names of other chemicals are being withheld presumably because they are trade secrets.

- In 1981, a woman working at a small electronics assembly plant in Durham, experienced serious neurological health problems (headaches and double vision) which forced her to quit her job. Although her symptoms persisted, her family physician suspected that workplace exposure to solvents or soldering fumes might have contributed to the health problem. Specific information about the chemicals was needed for diagnosis and prompt treatment, yet the woman did not know the identity of the substances with which she had worked. The management of the company claimed that they had never received a list of chemical ingredients from the manufacturer. N. C. OSHA refused to provide the results of its toxic substance measurements taken during an earlier inspection at the plant.

- In June, 1983, the owners of a small craft shop in a north Durham shopping mall reported nausea, headaches and respiratory irritation caused by fumes seeping in from the shop next door, a "sculptured nail boutique" (which produced the sculptured nails from plastic resins). The owners of the shop would not reveal the names of the chemicals they used. The craft shop owners' health was impaired to the extent that a medical examination was required, and their physician advised relocation of the business.

- At Cox Crossing in Pitt County in 1983, a fire destroyed a fertilizer and fuel company. Approximately 50,000 gallons of water used on the fire in fire-fighting efforts were contained on site with an earthen dam erected in a ditch. Subsequent analysis of the collected water showed a concentration of dinitrophenol, a toxic and explosive substance.

PROBLEMS WITH THE FEDERAL HAZARD COMMUNICATION STANDARD

OMISSIONS

When you compare the Federal Hazard Communication standard to what North Carolina needs in terms of a comprehensive Right to Know program, two major omissions are obvious:

- Public Right to Know is not covered. As a result, firefighters, emergency management personnel and other local officials will not have access to information about hazardous chemicals in their community. In addition, community residents will not be able to find out what substances are being handled and stored in their neighborhood or being released into the air, water or land. Public Right to Know is a major component of any comprehensive Right to Know program since Right to Know is a citizen information and an environmental issue as well as a workplace issue.

- 71% of the workers in North Carolina are not covered. The Federal standard only covers the manufacturing sector. Based on November 1983 figures from the Employment Security Commission, only 29% of the workers in North Carolina are employed in the manufacturing sector (800,900 out of 2,761,000 total workers in the state). This leaves almost 2 million N.C. workers who would not be covered by this Federal standard. A large number of these non-manufacturing workers are regularly exposed to hazardous chemicals on the job. For example, many hospital workers are exposed to ethylene oxide, a very toxic chemical used to sterilize medical equipment. Many construction workers are exposed to asbestos; lead fumes during demolition work, sand-blasting, certain types of painting, etc.; and carbon monoxide gases during welding and excavation work.

MAJOR WEAKNESSES IN THE STANDARD

We seriously doubt that the Federal Hazard Communication standard will even be effective in providing information to workers in the manufacturing sector (the one group that it does cover) due to significant loopholes and weaknesses in the standard. Major weaknesses include:

- Hazardous substance determination left largely to the employer: The decision about whether or not a substance is hazardous is left largely to the employer. With the exception of approximatley 600 chemicals (out of over 100,000 in use), employers have considerable leeway in using their professional judgement to determine what substances are hazardous. For years, many employers and manufacturers have downplayed the hazards of the chemicals they produce and use, and this standard is likely to perpetuate this pattern. Instead of this approach, a comprehensive list of substances should be covered, and this list should be updated regularly, as proposed in House Bill 1339.

- Huge trade secret loopholes: With a very lenient definition of trade secret, the Federal standard allows employers to decide whether or not a substance is a trade secret, and to withhold information accrodingly (most importantly, the chemical name). Workers have no direct mechanism for challenging a trade

secret claim. Many employers have a history of exaggerating trade secret claims under health and safety laws as well as environmental laws. For example, when the trade secret claims of the 3M Company in Milwaukee were challenged, the National Labor Relations Board determined that there was only one legitimate trade secret claim from an initial list of 700 chemicals. Instead of this approach, employers should have to justify their trade secret claims based on strict criteria, and workers should be able to challenge this claim, as proposed in House Bill 1339.

- Chemical names not required on the label: The standard does not require that the chemical name (which is the key to the scientific literature) of a substance be included on the label. Instead the chemical and common names should be required to be on the label, as proposed in House Bill 1339.

- Deadline for compliance is too long: Chemical manufacturers and importers have 2 2 years to comply with the requirements for labeling and providing material safety data sheets (November 1985). Other manufacturing employers have 2½ years to comply (May 1986). The compliance period should be much shorter, as proposed in House Bill 1339, and definitely no more than a year.

THE PREEMPTION QUESTION

Ever since the Federal Hazard Communication standard was released last November, there has been considerable discussion about the extent to which the Federal government has preempted the ability of state and local governments to move ahead with their own stronger Right to Know programs. In fact, it is quite obvious to us and many other people that the Federal standard is a deliberate attempt to undermine stronger state and local Right to Know laws that have been passed all across the country. Though this is an issue that is obviously unsettled at this point, in our opinion, some things are quite clear:

- Public Right to Know efforts and worker Right to Know efforts that apply to non-manufacturing workers would not be preempted by this standard. Since the Federal standard does not cover either of these areas, it seems that preemption is not possible. In fact, the Federal OSHA Team Leader for Hazard Communication has stated that "It could not preempt public right to know and it could not preempt state laws that deal with other industries".

- Though it is clearly the Federal government's intent to preempt state and local Right to Know laws that apply to workers in the manufacturing industry, they may not be successful due to legal challenges. The Federal government has written strong preemptive language into the Hazard Communication standard. However, a number of consumer, labor, and occupational health groups (including NCOSH)have already filed lawsuits to challenge the standard, particularly the preemptive clause. It is very likely that others (particularly state and local governments whose laws have been preempted) will also be filing lawsuits in the near future. The National AFL-CIO has said that it is prepared to stay in court for 10 years to force the Federal government to adopt a stronger standard. Undoubtedly, this dispute will be settled in the courts, and there is already legal precedent for allowing states to adopt stronger OSHA standards than the Federal government. Last year California fought the Federal government over the state's right to enact a workplace standard for ethylene dibromide that was 100 times stricter than the Federal limit. The courts sided with California, over-riding the claim of Federal OSHA that the state standard would interfere with interstate commerce.

OPTIONS FOR NORTH CAROLINA

It is clear that there is a need for an effective Right to Know program in North Carolina covering all workers and the public at large. It is also clear that the Federal Hazard Communication standard is not going to meet this need. For this reason, it is imperative that the N.C. General Assembly proceed in passing and implementing a strong Right to Know program for the state. As we see it the state has a number of options, including:

1. Pass state Right to Know legislation covering all workers and the general public: Under this approach, the General Assembly would pass Right to Know legislation comparable to House Bill 1339 which provides information to all workers and the public at large regarding hazardous substances to which they may be exposed. The legislation should be written so that it is severable. Therefore, if it is eventually determined that Federal OSHA does have sole authority over Right to Know programs in manufacturing industries, the remainder of the legislation would stay intact (coverage for the general public and for non-manufacturing workers). Simultaneously, codify as a N.C. OSHA Right to Know standard the portions of this law that apply to manufacturing workers, since, presumably, this would be a necessary part of the state OSHA plan if the Hazard Communication standard were still considered in effect.

   Comment: Though this approach is contrary to the Federal intent to preempt efforts in the manufacturing sector, it has a clear advantage over other approaches. If the Federal preemptive clause is overturned in the courts, or even if the implementation of the Federal standard is delayed, the state will have a single comprehensive Right to Know program.

2. Pass state Right to Know legislation covering only non-manufacturing workers and the general public: Under this approach, the General Assembly would pass Right to Know legislation comparable to House Bill 1339 for all groups not covered by the Federal standard, i.e. non-manufacturing workers and the general public.

   Comment: Though this approach avoids the potential for preemption, it has the clear disadvantage of setting up two parallel Right to Know programs in North Carolina, the Federal standard for manufacturing workers and a stronger state law for everyone else. Also, if implementation of the Federal standard is delayed, manufacturing workers would not be covered while everyone else in the state would be. Finally, if the preemptive clause were overturned the state would have to rewrite the state law to include this group.

3. Challenge the Federal Hazard Communication standard: North Carolina could initiate its own lawsuit or join other lawsuits in an attempt to a) force the Federal government to adopt a stronger Right to Know standard; and b) overturn the the preemptive clause.

Comment: This recommendation is obviously not mutually exclusive of the other recommendations.

4. Charge the N.C. Department of Labor with developing a strong N.C. OSHA Right to Know standard: The N.C. OSHA program would develop a strong Right to Know standard covering all workers in the state. N.C. OSHA would make a case for the compelling need for this standard in N.C., and would seek Federal approval for this standard as part of the OSHA state plan approval process.

   Comment: Obviously this approach would only cover workers, not the general public. Also, timing might be difficult, since the standard may need to be developed by May 1984, depending on how challenges to the Federal standard proceed.

LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA

Elizabeth W. Grant
President

2637 McDowell Street
Durham, N. C. 27705
919-493-1178

FACT PAPER: RIGHT TO KNOW LEGISLATION

SUMMARY STATEMENT: The League of Women Voters supports efforts to promote an "environment beneficial to life". It is within this position that League endorses the concept of state Right to Know legislation. We interpret the word "environment" to include the workplace. Every factory, laboratory and assembly line should represent a situation that is beneficial to life. This is not the case as present; it is an important goal for the future. A state Right to Know bill would go a long way toward meeting this goal.

WHO WOULD BENEFIT FROM A STATE RIGHT TO KNOW LAW?

This is more than a labor issue, though it is certainly appropriate for workers to lead the discussion. They are the most immediately affected by exposure to toxic substances in the workplace. An informed workforce is the first line of defense against more serious contamination in the community.

The general public, as consumers and members of the community at large, needs to know what toxic substances are being used in their neighborhoods.

It is critical that emergency response personnel (rescue, medical, fire are aware of the chemicals being used or stored at a particular site.

Information concerning workplace exposures to chemicals is often needed for physicians to properly diagnose and treat some health problems. In many situations this information has been difficult or impossible to acquire.

Accurate knowledge of chemicals on a site is critical to firefighters. It is needed to determine the proper method of handling the fire and to assess the appropriate precautions to avoid inhalation of toxic fumes.

The following case study provides an example of inadequate identification of toxic substances:

In February, 1982 an explosion at a Greensboro chemical company threatened the heavily populated Pomona neighborhood. The resulting fire threatened to ignite a railroad car of propylene oxide, with devastating consequences. Community residents did not know the contents of the car. During the fire, chemicals from old storage drums washed into city sewer lines--employees of the firm could not identify the leaking chemicals. Firefighters on the scene did not know what chemical was burning (first reported as methanol, the next day as phosphorous oxychloride) nor what other flammable hazards existed, and so had no idea of what fire supression techniques were appropriate. Treatment with water created irritating vapors which for several days afterwards affected the respiratory health of neighborhood residents.

WHY DOES NORTH CAROLINA NEED A RIGHT TO KNOW LAW?

The National Institute of Occupational Safety and Health (NIOSH, the research arm of OSHA) estimates that 90% of workers and employers in this country are generally unaware of hazardous chemicals in the workplace and the potential of these chemicals to seriously injure worker health.

There is a clear need for more knowledge in this area. North Carolina needs a state Right to Know standard because the federal regulations are inadequate.

Deficiencies of the Federal OSHA "Hazard Communication" Standard

-It covers only manufacturing workers. This represents about 29% of the North Carolina workforce. It ignores the other 71% employed in other types of jobs,including construction, laboratory research, transportation, health care, etc.

-It does not require labelling of containers in the workplace with the name of chemicals.

-The "trade secret" language is permissive. It allows the employer to ermine "trade secret" status without review by OSHA.

-It allows the employer to use "professional judgment" in determining what information on hazards will be released to workers.

-There are NO provisions for community right to know.

-It states that state and local laws would be preempted by provisions of the federal regulation. In nearly every case, the federal regulation is weaker that the state and local laws.

As a representative of US OSHA states, the regulation "could not preempt public right to know and it could not preempt state laws that deal with other industries".

A bill drafted to include: specific groups of workers instead of/in addition to manufacturing and public right to know could withstand preemption.

Most importantly, concern of preemption should not cloud the main point---North Carolina NEEDS a Right to Know law.

The philosophy of Right to Know is gaining grassroots support across the country. Regulations and ordinances have been passed in 15 states and 35 municipalities. Right to know ordinances are being seriously considered two North Carolina communities--Roanoke Rapids and Durham. Citizen groups and environmental organizations in other parts of the state have expressed interest in local ordinances.

The LWV-NC is supportive of these local efforts; however, we feel that a uniform state-wide standard is preferable.

The North Carolina Citizens for Business and Industry Environmental Concerns Committee appreciates the opportunity to make a statement before this Legislative Study Commission. (may wnat to use official name) The safe storage, handling and use of hazardous materials in the work place is indeed a common goal shared by employers and employees alike.

The NCCBI represents 1500 manufacturers and businesses across North Carolina and is here today to go on record in support of the safe storage, handling and use of hazardous materials in the workplace. On behalf of the NCCBI-ECC, we are hopeful this Commission will resolve this question in such a way as not to unduly burden businesses.

On November 25, 1983, after three contentious years, the Occupational Safety and Health Administration issued its final regulation on labeling hazardous chemicals in the work area and warning workers of their presence. The head of OSHA, Thorne G. Auchter has been quoted as saying, "This is the most significant regulatory action ever taken by OSHA." He further states the regulations "mandates communication about workplace hazards between employers and employees" and is designed to respond to changing workplace conditions. OSHA has adopted a minimum of 600 chemicals that have been cited by the American Conference of Governmental Industrial Hygienists as being considered hazardous. These already identified chemicals (as well as others which fail certain criteria) will be the basis for the regulations which further require:

1. labeling of containers of hazardous substances in the plant,
2. "complete" Material Safety Data Sheets (MSDS) on each hazardous substance,
3. In the case of an emergency, the manufacturer is required to give the identity of the chemical (i.e. trade secret, patented formulas) to the attending physician or nurse immediately for treatment purpose, and
4. other health professionals, including representatives of labor unions, can be given the information for nonemergency reasons, if requested in writing.

The cost of this program is estimated by OSHA to be at a minimum of $600 million per year to U.S. industry. OSHA further estimates that the National average cost per industrial employee to initiate the program will be $43, but with regard to the chemical and applied products industries these costs will be more likely to be $650 in the first year.

The North Carolina Citizens for Business and Industry feels the federal regulations issued in final form are adequate to protect employees from the dangers of hazardous material storage, handling and usage. Randal P. Schumachor, head of the Chemical Manufacturers Associations (CMA) Office of Health, Safety and Chemical Regulations has been quoted as saying the regulation "...ensures uniform and adequate protection for workers wherever they're found." The NCCBI further suggests that if a state equivalent program is deemed necessary, that the state regulations be substantially equivalent and consistent with the federal program.

The North Carolina Citizens for Business and Industry stands ready to assist this study commission in further discussion of our comments today (should questions arise) and also to offer our resources to the Commissic in developing a comprehensive and reasonable approach to the safe handling of materials in the workplace.

January 5, 1984

REMARKS BY
WILLIAM J. STENGER TO THE
STATE INDENTIFICATION & LABELING LRC STUDY COMMITTEE
JANUARY 5, 1984, RALEIGH, NORTH CAROLINA

Good morning, Mr. Chairman, members of the State Identification & Labeling Study Committee. I am William Stenger, Safety, Health & Environmental Affairs Supervisor at Du Pont's Cape Fear Plant in Brunswick County near Wilmington. Du Pont is a major employer in North Carolina with facilities in Brevard, Charlotte, Fayetteville, Healing Springs, Kinston and Wilmington and over 5,500 employees. I appreciate the opportunity to comment on employee safety and health programs and hazardous communications.

At Du Pont, protection of employees' safety and health is as fundamental as productivity, quality and cost. All persons are expected to participate in and work to make our safety and health programs as effective as they can be. As a result, the Du Pont safety record leads the chemical industry, which is itself traditionally one of the safest of the nation's principal industries, year after year.

As part of our safety and health program, we believe employees have a right to information concerning the hazards of the products to which they may be exposed. They must be provided with the knowledge and means to protect themselves from those hazards, beyond the safeguards built into the manufacturing process. We believe not only employees but emergency response personnel and the public as well must be appropriately informed about chemical hazards. We are concerned that state legislation which differs from the Federal OSHA Hazards Communication Standard issued November 25, 1983, would add tremendously to the state's administrative burden as well as to that of the large and small businesses operating in the state.

In explaining our concern, let me describe some of the policies and methods of our safety and health program, and our view of the principles on which a program of protecting employees and the public should be based.

We believe the goal can best be achieved first through a well-designed safety and health training program for employees and a good hazards communication system within the workplace. We also believe that persons outside the workplace should be provided information concerning the hazards of products to which they may be exposed, and that this can be done through well-designed labels imparting full and readily understandable information to users of the product. Further, we believe special effort should be made to provide information on hazards to emergency response personnel in a useful format to enable them to prepare for and respond to emergencies. In the event of an emergency, the public should have all necessary information on the hazards involved.

Following these principles, Du Pont has a comprehensive hazard protection program that does not stop with our employees. We provide essential information to our customers on the hazards of the products we sell and how to protect against those hazards. Our customers may then use the product without undue exposure to its hazards and, if they are employers, they may provide the information to their employees.

In addition, Du Pont plant sites work with members of the local communities in planning for and responding to emergencies such as an accidental release or a fire involving a chemical at one of our plants. As a member of the Chemical Manufacturers Association, we support Chemtrek, a system that provides immediate information to emergency response agencies in the event of a hazardous materials emergency. We also provide assistance in transportation incidents to minimize exposure of the public and environmental impact. At Cape Fear, we have a well equipped mobile response unit and team which responds to all Du Pont rail and highway incidents and has also responded to several non-Du Pont incidents at the request of emergency response coordinators and the Highway Patrol.

As I mentioned, the federal government, through the Occupational Safety and Health Administration, has issued a Hazards Communication Standard. This standard mandates and standardizes the dissemination of information on chemical identity and hazards in a positive and effective way while ensuring the rights of manufacturers to protect trade secrets and proprietary information.

It covers the four areas of hazards communication that we feel are most important:

1) training and education of employees;

2) container identification that emphasizes the hazards of the material;

3) preparation of material safety data sheets for every chemical on a site or for sale; and

4) provision of chemical names of hazardous substances to employees.

While House Bill 1339 and the OSHA Standard have the same intent to protect employees safety and health, Bill 1339 would require the State to collect, file and process voluminous information on chemicals used in the State. This would be expensive for the State to implement, and would place an extreme burden on businesses of all sizes. All employers, large and small, including hardware stores, service stations, farmers, contractors, automotive and chemical companies, and the State of North Carolina, could be required to provide voluminous records to the state. The state would be collecting thousands of documents on up to 60,000 chemicals from hundreds of employers. Such a task would obviously impose a tremendous burden on the designated receiving agency.

Trying to put the deluge of information into a useful format will be a second drain on the Agency's resources. It is quite likely that this mass of information, accumulated and sorted at enormous expense, may not reach the emergency response people. Or, if it does, it won't be in a form useful to them. Fire chiefs have testified to this point in other states where similar proposals have been made. Neither they, nor the general public are equipped to make use of the mass of information called for in Bill 1339.

A better solution is voluntary cooperation between manufacturers, suppliers and local and state emergency response authorities.

We support a federal standard over state regulation because it will provide uniform protection for all employees rather than a maze of conflicting requirements from state to state; because the training and education requirements are more rigorous than state laws; and because it uses comprehensive test criteria for identifying hazardous substances and mixtures rather than limiting coverage to certain lists of chemicals as the states have done.

In conclusion, we would like to invite the Committee to visit the Du Pont Cape Fear Plant to see how we communicate, train and protect our employees; and should the Committee desire to have a working session to discuss details and ramifications of proposals, Du Pont would be happy to provide individuals of considerable background with the Federal Standard and various State laws as well as Plant Safety & Health Programs.

WJS/spk
1/4/84
.41

NORTH CAROLINA HOSPITAL ASSOCIATION
STATEMENT
HAZARDOUS SUBSTANCES LRC STUDY COMMITTEE
Meeting, January 5, 1984

The North Carolina Hospital Association welcomes the opportunity to make the following comments on hazardous substances. We have reviewed House Bill 1339 and find that it covers any employer who "manufactures, processes, uses, stores or produces toxic or hazardous substances." This would apply to hospitals.

We support the reasonable regulation of hazardous substances. However, there must be a proper balance between regulation and the public interest. The hospitals are currently subject to regulation in every major aspect of health care services, including continuous inspections and certifications by governmental and non-governmental bodies. We are unaware of any major problems with chemicals or hazardous substances in hospitals. (See Addendum)

This N.C. bill (H.R. 1339) is similar to a recent federal OSHA regulation called "Hazard Communication," (29 CFR 1910.1200), although H.B. 1339 pre-dates this federal regulation. The federal standard requires that chemical manufacturers and importers evaluate chemical hazards, develop material safety data sheets, use labels and institute education and training programs to transmit this information. The federal regulation definition of "hazardous" is those chemicals already contained in the federal regulations, those listed by the American Conference of Governmental and Industrial Hygienists in the latest edition on this subject and certain stated carcinogen source documents. (29 CFR 1910.1200 (c). Note that the NIOSH Registry of Toxic Effects of Chemical Substances, which is the definition contained in House Bill 1339, is not part of the federal definition. The NIOSH Registry contains over 100,000 chemical substances in three volumes (approximately 1,000 pages each). The federal regulation refers to the NIOSH Registry as advisory. This is probably because the introduction to the Registry indicates that it covers substances that are common to everyday life and not automatically dangerous, including "drugs, food additives, dyes, detergents, soaps, lubricants, bleaches, and other household cleaning agents." The Registry is not a list of per se toxic substances, but a list of chemical substances which may potentially have toxic effects, as its title indicates. "The entry of a substance on this list does not automatically mean that it must be avoided. It does mean that the substance has documented potential of being harmful if misused and care must be exercised to prevent tragic consequences." (p. xiv)

If hospitals and other employers in North Carolina are required to maintain a safety data sheet on all the substances in the Registry, this would be a monumental task and beyond the expertise of most employers. The background information for federal OSHA regulation states that this new OSHA standard directs itself to "those employers who are in the best position to develop information concerning chemical hazards and/or are the primary users of chemicals in industry." Thus the federal standard only applies to chemical manufacturers, not all employers as does House Bill 1339. This is because they are considered to "have greater scientific expertise with respect to the chemicals they produce and also because they may be the only ones who know the identity of the chemicals in the first place." F.R. 53322--November 25, 1983. H.B. 1339 is unclear as to whether employers who are non-manufacturers can submit the manufacturer's data sheet. G.S. 130-292 subjects employers to inspections for determinations of accuracy of data sheets.

The federal OSHA standard has several exceptions which are not incorporated into the North Carolina law, including pesticides, fungicides, rodenticides, drugs or cosmetic materials, and solid waste disposal, if covered by their respective federal Acts. (29 CFR 1910.1200 (b)(4)) Implementation would be difficult with these conflicts.

The federal regulation requires that state OSHA offices, including North Carolina, develop a comparable standard within six months of the federal OSHA standard. We would suggest that the substance of this bill be coordinated through the N.C. OSHA office since it must follow the federal requirement of developing a comparable standard, otherwise House Bill 1339 may be duplicative.

Furthermore, House Bill 1339 amends the Public Health Law and does not make any changes in the OSHA Law which appears to be more appropriate because of the recent federal standard in this area and since the OSHA office responsibility is to regulate employers with respect to occupational health and safety. According to the Federal Register on the federal OSHA regulation, there is policy justification for uniform application of a system for a national "hazard communication" standard. The federal OSHA office will only approve a "different" state standard if it is "required by compelling local condition and does not unduly burden commerce." (F.R. 53323) Thus, it is unclear whether H.B. 1339 would not be pre-empted by the recent federal regulation which must be implemented by state OSHA.

With respect to disclosure of chemical substances to physicians, nurses and other health professionals, the federal regulation requires that a treating physician or nurse in a medical emergency may have access to otherwise trade secret information. House Bill 1339 limits all access to a treating physician. This is too restrictive since any health professional may be treating the patient under emergency or non-emergency conditions. In addition, under the federal regulation, in a non-emergency situation, any type of health professional may have access to otherwise trade secret information if they are providing medical or other occupational health services to the employee under certain conditions. House Bill 1339 limits access by health professionals to prevention and not to treatment.

Conclusion

The North Carolina Hospital Association has substantial concerns about many of the substantive provisions of this bill, its application to all employers, not solely chemical manufacturers, and the necessity of such additional regulation if the state OSHA office must promulgate a comparable standard to the new federal standard on this subject.

House Bill 1339 should be held in abeyance until the North Carolina OSHA office has had an opportunity to develop a comparable standard and that standard be approved by the federal OSHA office. Otherwise, House Bill 1339 will be duplicative of another federally required state OSHA law and implementation of conflicting provisions and obligations will be difficult, if not impossible.

ADDENDUM

Regulations of Hospitals --Hazardous Substances

North Carolina Hospitals are licensed under the Hospital Licensure Act. Hospitals and hospital personnel are different from other employers and employees in that most employees are licensed, registered or certified in a health discipline and must meet prerequisites in training and education before they are hired to perform certain tasks in the hospital.

There are two major categories of toxic or hazardous substances used in hospitals which may be of concern to this Committee: radioactive substances and laboratory or pharmaceutical substances.

The North Carolina Radiation Protection Act applies to all persons who "receive, possess, use, transfer, own or acquire any source of radiation." This Act is administered through the Division of Facility Services, Department of Human Resources, which licenses hospitals. The Act provides for registration of machines, licensing of use of radioactive materials, standards for disposal, records or exposure to individuals, and notice to employees of radiation exposure (Section .3100). (Approximately 200 pages of regulations)

The Medicare--Conditions for Particiation for hospitals have radiology safety requirements including periodic inspections and systems for monitoring radiation worker exposure by the use of meters or badges. With respect to laboratory and pharmaceutical substances, these conditions require proper facilities for disposal of infectious wastes and contain standards for the requirement of sanitary environment to avoid transmission of infections. As to pharmacy services, hospitals must have controls on all drugs and special control methods as to toxic or dangerous drugs, including detailed records on requisitions and dispensing.

The Joint Commission on Accreditation of Hospitals contains standards for the appropriate supervision of radiology services and nuclear medicine services which include education programs, proper supervision, safety precautions, exposure monitoring and contamination guidelines. The JCAH contains standards for pathology and medical lab services including qualifications and training of personnel, quality control systems for the lab, and special safety measures for the use of toxic materials including waste disposal of potentially hazardous wastes. In addition, most hospitals comply with the College of American Pathology standards on this subject. (Approximately 1,500 standards) JCAH standards also cover pharmaceutical services including proper filling and labeling of all drug containers, cautionary statements, educational programs, prescription labeling and reporting systems for drug product defects, etc. As part of the overall safety program of the hospital, the hospital must conduct a hazard surveillance program at specifically defined intervals.

The North Carolina Pharmacy Act and the North Carolina Control Substances Act apply to hospital pharmacies. These two Acts contain a comprehensive system of regulation of drugs including labeling, preparation, administration, compounding and dispensing

The North Carolina Hospital Licensure Act regulations cover lab tests, blood banks, inspections of sterilizing equipment, sewage disposal and incineration of contaminated waste and radiologic services.

As to general regulation of employer--employee relationships, the N.C. Occupational Safety and Health Act provides that every employer must

maintain a safe and healthful working environment. The N.C. OSHA office currently has regulations on hazardous materials and toxic and hazardous substances. This Act requires the employer to make the place of employment "free from recognized hazards that are causing or likely to cause death or serious injury or serious physical harm to employees." The Act allows employees to participate in any hearing, to request an inspection, and to be protected against being discriminated against on the basis of a complaint. (N.C.G.S. 95-130) In addition, the employer must maintain accurate records of employee exposure to potentially toxic materials and to allow each employee or former employee access to such records and that the employer shall promptly notify any employee who has been exposed at levels which exceed the standards. (G.S. 95-143) Further, the Act requires education and training programs in order to ensure adequate safety and health in a workplace.

Testimony by Angela S. Waldorf, Associate Director
North Carolina Petroleum Council

Hazardous Substances, Implementation of
Identification and Labelling of Toxics
January 5, 1984 - Raleigh, N.C.

My name is Angela Waldorf. I am the Associate Director of the North Carolina Petroleum Council - a division of the American Petroleum Institute. The membership of the American Petroleum Institute includes more than 300 domestic corporate and 8,000 individual members primarily, but not exclusively, within the petroleum industry. A broad and substantial consensus of our members support the concept of a safe and healthy working environment. To that end a number have voluntarily developed extensive training and labelling procedures to insure that their employees are protected from any dangers that might be encountered on the job.

Recently the Occupational Safety and Health Administration promulgated final regulations concerning the communication of hazards to workers in the work environment. These rules were adopted after extensive review and study. According to information accompanying the notice, the implementation of these rules will cost each employee approximately $43 per employee to implement and $11 per year to maintain.

The primary emphasis of these regulations is the effective communication to the worker of the type of hazard potentially encountered in the workplace. We feel that the emphasis of effective communication is the most important aspect of any regulation or law involving hazard communication. We also feel that uniformity and continuity of procedure is an important goal to insure that employees are not confused.

The members represented by the American Petroleum Institute and many other businesses currently located in North Carolina are national corporations with plants and facilities located allover the United States. Certainly the national uniformity of requirements as important, complicated and expensive as hazard communication is a laudable goal. We feel that following the national lead by adopting the newly promulgated OSHA rules is an important signal to industry that

they are encouraged to locate and continue to do business in North Carolina.

There are many aspects of proposed H 1339 that we feel are unworkable and would actually confuse workers in the communication of hazards. Pipelines which are currently specifically included within the bill often carry a mixture of products whose constituents may change as often as every few moments. The constant relabelling of a pipeline and valving system would be an extraordinarily burdensome procedure that would have little or no impact on the safeness of the workplace.

We also feel that requiring an extensive warning label system for every substance listed in the NIOSH Registry of Toxic Effects of Chemical Substances, which would include salt and Vitamin C, would severly dilute the effectiveness of any warning. There is great concern among our members that labelling everything as dangerous would tend to make employees more complacent about the dangers encountered.

In summary, we support the creation of a safe workplace not only because it limits our labilities, but because it helps us insure the continued efforts of valued employees. To that end we support the adoption of the newly promulgated OSHA rules as written to be applied to those SIC codes covered or all employees in North Carolina.

I appreciate the opportunity to appear before this committee and I look forward to providing any additional information needed during the course of your deliberations.

C-37 Tom Pugh

Mr. Chairman:

I appreciate the opportunity to address this study committee and look forward to working with each one of you in order to provide for the safety of our citizens. The problems associated with hazardous substances have become more evident to all of us over the past few years. It is a problem for which North Carolina citizens and local governments are looking to the State for guidance and assistance. Many of our industries now use chemicals that are classified as hazardous in their production processes. Many of the speakers here today will address the effects working with these substances might have on our workers and will (or have) suggested ways that we can make it safer for them. Even though I am also concerned about the safety and well-being of our industry workers, my comments must, from a professional side, be more aimed at the hazards that these substances pose for those response personnel who are called when an emergency situation arises.

The Department of Crime Control and Public Safety, and in particular the Division of Emergency Management, acts as a coordinating agency for the State's response to any emergency. In that role we have noticed an ever-increasing number of requests from local governments to assist in accidents involving hazardous chemicals. We currently are averaging approximately 30 requests per month. Local governments are, of course, responsible for the initial reaction to any accident. In many cases we are finding that the local fire departments and rescue squads are placing their own lives in jeopardy since they do not

know what chemical are being stored or used at the emergency site. The Department of Human Resources currently has regulations requiring emergency plans for all facilities that produce hazardous wastes. Currently there is no such requirement on facilities that use hazardous materials.

Through the efforts of our Division, the North Carolina State Fire Commission, the Department of Insurance, the Department of Transportation, the Community College System, and others we have distributed over 3,500 copies of the U. S. Department of Transportation Emergency Response Guidebook. This book provides a fairly comprehensive list of hazardous materials and the protective action that first responders should take. Copies of the new 1984 edition of this guidebook are now being made available. I have brought a few copies for those committee members that might be interested.

North Carolina, in cooperation with DuPont Chemical Company and New Hanover County, has produced a film entitled "Blueprint for Safety." This film depicts a transportation accident involving hazardous chemicals and shows the proper procedures that first responders should follow and the cooperation and communication from all levels of government necessary to deal with these problems.

The State response to these accidents has also been improved. Working under the umbrella concept of the State Emergency Response Team the Departments of Human Resources, Natural Resources and Community Developoment, Crime Control and Public Safety, and Transportation work in mutually supportive

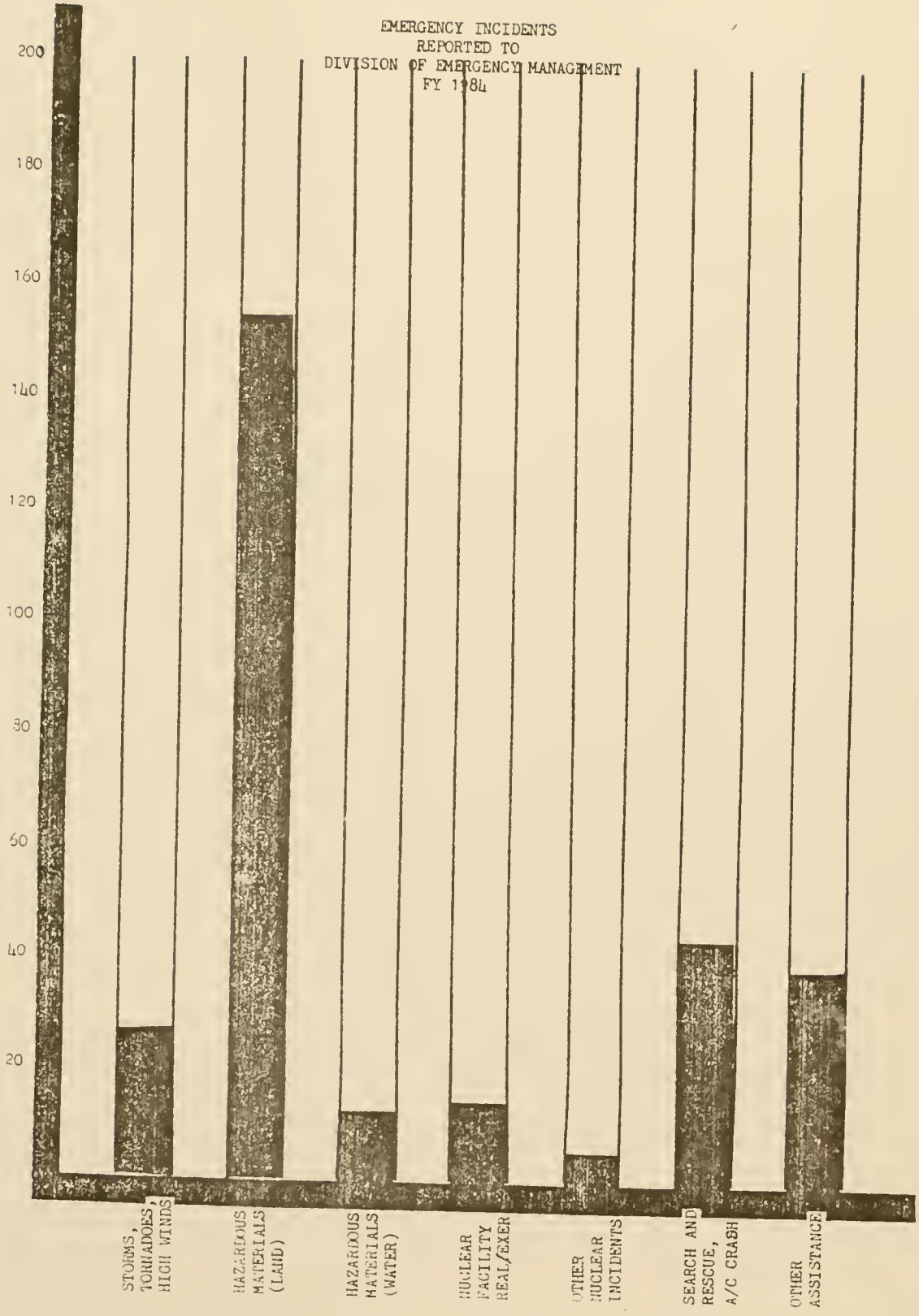
roles. Redundant notification procedures have been developed to ensure that all parties that need to be notified are and that they respond when necessary. These procedures are outlined in the State Hazardous Material Emergency Response Plan.

All these efforts are well and good since they have provided a greater aspect of safety to the citizens; however, they are far less than what we would desire. The introduction of House Bill 1339 last spring was greeted with a great deal of enthusiasm by all the State agencies that respond to hazardous chemical emergencies. We saw for the first time the problems with these substances were beginning to be addressed. We encourage this dialogue and offer our support. I believe, and I think I can speak with the support of these other agencies, that North Carolina needs to look very closely at the State response to these accidents. The hazardous materials guidebook that I referred to earlier is well and good as far as it goes. If containers and buildings are not marked in the same method as referenced in the book,then emergency responders cannot make a cross reference. Therefore, I encourage that a labeling system be adopted that is consistent with the UN numbering system. In addition, the information in that guidebook only provides for immediate emergency action. There needs to be a central repository of information regarding hazardous chemicals that is available to emergency responders 24 hours a day, 7 days a week. Each facility that uses or stores hazardous materials should be required to develop and submit an emergency response plan. This plan should be in accordance with State issued criteria and a

formal concurrence should be issued by the State. A copy of this plan would then be placed in the State's central repository and would also be available to the emergency responders.

There is much that it would be desirable for the State to do that is not addressed in House Bill 1339. One priority should be the establishment of response teams located throughout the State who are trained and equipped to help local governments in responding to these accidents. A statewide emergency communication system needs to be established. This system would allow the many agencies that have expertise and responsibility in dealing with these hazardous substances to communicate among one another. There needs to be established in conjunction with this central repository of information a State emergency communication center from which non-law enforcement emergencies are handled and from which citizens can get immediate information regarding these substances.

I believe there is much that we in North Carolina can do to better deliver the services that provide increased safety to our citizens. I commend this committee for the initial steps it has already taken and pledge my personal support in its continuing efforts.


EMERGENCY INCIDENTS
REPORTED TO
DIVISION OF EMERGENCY MANAGEMENT
FY 1984
200
180
160
140
120
100
80
60
40
20
STORMS, TORNADOES, HIGH WINDS
HAZARDOUS MATERIALS (LAND)
HAZARDOUS MATERIALS (WATER)
NUCLEAR FACILITY REAL/EXER
OTHER NUCLEAR INCIDENTS
SEARCH AND RESCUE, A/C CRASH
OTHER ASSISTANCE

APPENDIX D

Department of Labor
State of North Carolina
4 West Edenton Street
Raleigh 27601

John C. Brooks
Commissioner

February 2, 1984

Mr. Daniel Long
Committee Counsel
Legislative Research Commission
Room 545
Legislative Office Building
Raleigh, North Carolina 27611

Dear Mr. Long:

Thank you for your memorandum of January 16 requesting my specific suggestions with respect to House Bill 1339. I am glad to be of assistance on this important subject.

My suggestions cover four general areas: first, the determination of what constitutes a hazardous substance; second, the regulation of communications between employers and employees with respect to hazardous substances; third, requirements for emergency response plans in the event of accidents with respect to hazardous substances; and fourth, the provision of information to the general public concerning hazardous substances in their communities.

With respect to the first area, the determination of what constitutes a hazardous substance, I recommend that any state legislation adopt the approach of the OSHA standard which became effective in North Carolina on February 1, 1984. Of all the questions considered during U. S. OSHA's seven years of hearings and reviews on the hazard communication standard, the determination of what constitutes a hazardous substance was the most difficult issue to resolve. There are no easy methods or clear-cut benchmarks to determine whether or not a substance is hazardous, and, if so, in what concentrations. Such a determination requires professional judgment on a case-by-case basis.

The National Institute of Occupational Safety and Health (NIOSH) has identified more than 40,000 chemical substances which may have toxic effects in certain concentrations. The NIOSH listing is only a compilation of unevaluated toxicity data and is not a listing of hazardous substances. Its use as a basis for a "right-to-know" law is inappropriate.

After years of studying what would be an appropriate basis for a hazard communication standard, OSHA settled on

a two-part approach. First, a "floor" has been established which requires a minimum number of chemicals to be considered hazardous -- those identified as hazardous by OSHA in 29CFR Part 1910 Subpart Z, those identified by the American Conference of Governmental Industrial Hygienists (ACGIH) in their publication Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment, those identified by the National Toxicology Program in its Annual Report on Carcinogens, and those identified by the International Agency for Research on Cancer Monographs.

The second part of the OSHA approach requires manufacturers, using guidelines developed by OSHA, to evaluate the chemicals which they produce or import to determine whether or not they are hazardous. The OSHA guidelines specify data that must be considered in determining hazards and specify effects which, if found, must result in a substance being labeled as hazardous. Given the extremely difficult task of determining hazards and absent any public capability to independently test tens of thousands of substances, the burden for determining the hazardous nature of a substance must rest upon the producer or importer of the substance.

This two-part process for determining which substances are hazardous is well-conceived. While the system is not perfect, it is superior to the use of the NIOSH listing and has been adopted as a national standard. I recommend that House Bill 1339, rather than trying to define on its own what constitutes a hazardous substance, require that any substance considered hazardous pursuant to section 1910.1200 of the OSHA regulations be considered hazardous for the purposes of the bill.

My second suggestion concerns communications between employers and employees with respect to hazardous substances. As I said in my January 10 comments, the Occupational Safety and Health Act of North Carolina gives the State Department of Labor authority to adopt regulations in this area. No further legislation is needed.

The deadline for full compliance with the OSHA standard requiring that manufacturers evaluate the hazardous nature of chemicals which they produce is November 25, 1985. I have determined that the state labor department, between now and then, will consider the question of what additional groups of workers should be covered by the OSHA standard. Thus by the 1985 deadline we will have accomplished administratively

the goal of protecting workers in areas other than manufacturing, and no time will have been lost in the process. Since this process can be completed without further legislation, I recommend that those parts of House Bill 1339 which refer to employer-employee communications be deleted.

My third general area of concern is not currently addressed by the bill. At the hearing on January 10, several speakers discussed the importance of having fire, police, and rescue units prepared in the event of emergencies involving hazardous substances. The suggestion was made, which I endorse, to add to the bill a requirement that firms which handle a minimum volume of hazardous substances be required to file an emergency response plan similar to that already required to be filed for hazardous wastes. A working procedure for such plans has been established in the Solid and Hazardous Waste Branch of the Division of Health Services of the Department of Human Resources, and more than 600 employers are currently filing plans. I recommend extending this requirement to firms which handle large volumes of hazardous substances as a part of House Bill 1339.

The committee may also want to consider adopting a National Fire Protection Association (NFPA) recommendation, already being followed in Charlotte, which recommends that all buildings which house hazardous substances clearly display the standard NFPA symbol for the health hazard, the flammability, and the reactivity of the most hazardous substance inside.

The fourth general suggestion that I have concerns the public "right-to-know" provisions of the bill. By adopting OSHA's definition of what constitutes a hazardous substance, as suggested earlier, the burden upon employers to prepare two different sets of information, one for employees and one for the public, will be eliminated. This will encourage compliance with any such law that is enacted.

Further, the bill as proposed envisions an elaborate system of employers filing material safety data sheets (MSDS's) with the Secretary of Human Resources, then the Secretary sending the information back to local fire departments and public health departments, and local public health departments conducting compliance inspections. I believe that a much simpler system can be devised.

Rather than the Secretary sending all of those reports to local officials, a system can be established whereby local officials can request any information which

they or individual citizens desire. It would be most appropriate for this information to be maintained on the State computer network and available to anyone with a terminal hooked up to the network, but it could also be implemented on a paper basis initially.

Also, rather than having local officials conduct compliance inspections, this responsibility should rest at the State level with whatever agency collects the data. Any new system of inspections, however, should recognize that a single industrial hygienist inspection costs the State $1500, not including travel. Provided that the definition of hazardous substances and required MSDS's were the same for OSHA and for the public right-to-know purposes, OSHA industrial hygienists could be of assistance in verifying the filings of those firms which they otherwise inspect.

The recommendations which I have made may require further refinement. I encourage the study committee to take the necessary time to handle this delicate task properly from the beginning and not act in a rush. I and my staff stand prepared to assist in any manner that you request.

Sincerely,

John C. Brooks

John C. Brooks
Commissioner of Labor

JCB:CJ:swh

cc: Representative Harry E. Payne, Jr.

Ronald H. Levine, M.D., M.P.H.
STATE HEALTH DIRECTOR

DIVISION OF HEALTH SERVICES
P.O. Box 2091
Raleigh, N.C. 27602-2091

MEMORANDUM

TO: Daniel Long
Committee Council

FROM: Ronald H. Levine, M.D., M.P.H.

SUBJECT: Request From Legislative Review Committee on Hazardous Substances - Labeling of Toxic Substances for Comments on House Bill 1339

DATE: January 27, 1984

The Division of Health Services supports employee and community right to be made aware of toxic substances to which they may be exposed and which may result in an adverse health effect. The intent of House Bill 1339 is directed toward providing the necessary tools to provide awareness of toxic substances on the part of employee(s) and community(s). However, the following items should be considered by the study Commission:

1) North Carolina OSHA has adopted the federal OSHA Hazard Communication Standard which regulates the workplace and employees right to know. This standard covers only manufacturing industries (29% of the State's work-force) and will become effective in 1985. North Carolina already has a mechanism to address a worker's right to know. In addition, the Division of Health Services supports the consideration of expanding OSHA's Hazard Communication Standard to cover all industry divisions and the community right to know. The OSHA standards were intended to have preemptive authority over state and local regulations. Thus, it is possible that any attempt to include non-manufacturing employees and the community will result in litigation.

2) The benefits of annual reporting by industry may not justify the cost, and this issue of cost/benefit should be studied. An alternative would be to have initial reporting, new substance and new information reporting and a staggered reporting procedure set on a 3-year, 5-year, etc. schedule. Inspections can be performed between reporting periods. Another alternative is for industry to compile all the required information and make it available upon request by appropriate officials.

3) The bill as proposed relies heavily on the local health departments for inspection and enforcement. Because there are 83 local health depart-ments and 113,000 businesses in the State, annual inspections could not be conducted unless significant additions in resources are made available.

4) Many states have adopted right-to-know legislation resulting in a variety of diverse approaches to this issue. Some have one bill covering community and workers right-to-know while others have individual bills. There are different approaches to information flow, enforcement, funding, training requirements, the development of fact sheets instead of MSDS's, "lists of chemicals", identification of hazard, trade secrets and so on.

5) Because of the technical, procedural and legal implications of HB 1339, the Division of Health Services recommends that a task force of informed industrial, labor and environmental representatives meet with state representatives from the appropriate agencies. This task force could recommend a comprehensive program that not only protects the health and safety of workers, the public and emergency response groups, but also that can be effectively managed. A preliminary report of the task force findings should be made available to the Study Commission at the earliest possible time. It would be unfortunate to rush into legislation that proves to be ineffective or unmanageable as has happened in other states.

Again, the Division of Health Services supports the concept of right-to-know legislation. We will be happy to work with the Commission and supply any information that might be useful for your efforts.

RHL:lr

North Carolina Department of
Crime Control & Public Safety
116 West Jones Street Raleigh 27611

James B. Hunt, Jr., Governor
Heman R. Clark, Secretary

Division of Emergency Management
(919) 733-3867

January 26, 1984

MEMORANDUM

TO: Daniel Long

FROM: Tom Pugh

SUBJECT: House Bill 1339

Reference is made to your memorandum of January 16 regarding House Bill 1339. If this bill is to be considered intact I would suggest that the attached changes be made. These changes are the same that we had suggested to Sabra Faires earlier.

In reviewing House Bill 1339 it becomes readily apparent to me that in actuality this bill is comprised of three rather substantial parts. First, the right to know portion; secondly, submission of data sheets and disclosure forms; and third, the establishment of a respository for this information. It would be my preference, and I think one that would be more likely to be accepted both by the Legislature and industry, that we divide this bill into these three parts and address these issues separately.

kl

Attachment

Proposed Changes:

§130-286, add (13) "UN number" means the United Nations identification number assigned to hazardous materials as listed in DOT Pamphlet 5800.2.

add (14) "Secretary" means the Secretary of the Department of Human Resources

§130-287, change line 12 to read: "(1) the chemical name, common name, and UN number ...."

line 20 add: "(NFPA Standard 704)."

§130-288, change to read: "Toxic or hazardous substance emergency response plan required. (a) An employer who ... submit an emergency response plan to the Secretary for each site...."

line 6, change to read: "the chemical name, common name, and UN number...;"

NOTE: (6) - (8) are included in DOT P5800.2 if UN number available.

§130-291, change to read: "The Department of Crime Control and Public Safety receive data sheets, disclosure forms, and emergency response plans. The Secretary shall send copies of all emergency plans, material safety data sheets, and toxic or hazardous substances public disclosure forms submitted to the Division of Emergency Management, Department of Crime Control and Public Safety. The Division of Emergency Management, Department of Crime Control and Public Safety, will act as a repository for this information and insure that said information is available to all emergency response agencies on a 24-hour a day basis. If requested, copies of said information will be provided to local health departments, fire departments, and other interested affected agencies."

*§130-301, add new section: "Employer required to prepare a toxic or hazardous substance emergency response plan. The employer will submit a plan in accordance with criteria issued by the Department of Human Resources, after concurrence by the Department of Crime Control and Public Safety."

§143B-216.16, change line 26 to read: "(10) one local fire service official appointed by the Governor;"

add: "(11) one local emergency management/service director."

*This section really should be included earlier in the bill.

DAG1

North Carolina Hospital Association
POST OFFICE BOX 10937 112 COX AVENUE TELEPHONE 919-832-9550
RALEIGH, NORTH CAROLINA 27605

January 13, 1984

Senator Ollie Harris
Rep. Harry Payne
Co-Chairmen
Legislative Research Commission
Study Committee on Hazardous Substances
State Legislative Building
Raleigh, North Carolina

Dear Sen. Harris and Rep. Payne:

Regarding the Legislative Research Commission Study Committee on hazardous substances meeting on Thursday, January 5, 1984, two matters were raised about hazardous substances in hospitals, which I would like to address in this letter.

1. Inquiry from Representative Joe Hackney regarding the disposal of chemical substances into the drain or sewer system by hospitals: Although H.B. 1339 doesn't directly regulate the disposal of these substances, it does refer to employee and public disclosure as to use which includes disposal. In May, 1980, the Environmental Protection Agency (EPA), as part of its federal hazardous waste control system, issued regulations applicable to hospitals and other businesses that generate more than 1,000 killograms per month of chemical wastes in four categories - ignitable, corrosive, reactive and toxic. Hospitals must notify their regional EPA office and request a hazardous waste identification number. EPA has delegated this hazardous waste management program to the Solid and Hazardous Waste Management Branch of the N.C. Department of Human Resources, which is required to monitor these hospitals under the federal EPA standards as to the labeling, management, storage, emergency procedures and employee notification and training on hazardous substances. For all hospitals in North Carolina, the N.C. Solid Waste Management Act would apply. (G.S. 130A-290 et. seq.) This Act sets standards for the collection, source, separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes. The regulations do allow disposal into a sewer system depending on the nature of the chemical substance, its concentration and other factors.

In addition, since most hospital labs are accredited by the College of American Pathologists, they are subject to specific standards with respect to toxic and biological substances used in the lab, including proper notification of personnel, identification of the type of hazard, precautions, and instructions on accidental exposure. These standards incorporate OSHA standards on the use of chemicals considered to be carcinogenic.

Inspections pursuant to the Hospital Licensure Act, require that chemical substances be checked in order to ensure compliance with state law and regulation, and other applicable laws, accreditation standards, and local ordinances. In fact, the Raleigh City Council has recently adopted an ordinance entitled "Use of Sanitary Sewer System" which regulates the industrial, institutional and commercial processes and operations as to the discharge of certain enumerated "prohibited substances" in the sewer system. If a substance

is considered at an "unacceptable level of toxic waste," the business must pre-treat the waste prior to discharge. We understand that many other cities regulate discharges into the sewer system.

2. Ethylene Oxide cited in materials distributed by N.C. Occupational Safety and Health Project: Ethylene oxide is a sterilant used in hospitals for medical equipment susceptible to damage from exposure to heat and moisture from steam sterilization, including catheters, orthopedic prosthesis, and implantable medical devices. The hospital industry recognizes that ethylene oxide is a toxic substance which can only be used under carefully developed safety procedures to minimize exposure. This might include sterilizer design, safe worker practices, employee training, engineering controls, and exposure monitoring. The use of ethylene oxide is currently subject to a federal OSHA standard, which has been subject to a proposed amendment published in the April 21, 1983, Federal Register. The proposed amendment would cover requirements about methods of exposure control, personnel protective equipment, employee exposures and training, medical surveillance, signs and labels, regulated areas, emergency procedures and record keeping. The proposed standard would apply to hospitals. The federal OSHA office conducted a public hearing after issuance of the proposed standards and it is expected that they will issue a final standard within the next several months. One of the essential provisions of the proposed standard is an employee information and training program which requires the employer to provide a "substance data sheet" to employees which would function similar to a "material safety data sheet," to inform them of the identification of the substance, the health hazards, emergency use, protective devices, and other precautions.

With respect to the above mentioned issues, hospitals are currently subject to federal, state or local regulations as to their use and disposal of hazardous substances. House Bill 1339 would duplicate these efforts. I will be contacting you in the near future regarding our proposed amendments to House Bill 1339 along these lines. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Karen Murphy

Karen Murphy
Director of Legal Services

m/c
CC: Dan Long, Staff Counsel
Members, Study Committee

North Carolina Hospital Association
POST OFFICE BOX 10937 112 COX AVENUE TELEPHONE 919-832-9550
RALEIGH, NORTH CAROLINA 27605

January 24, 1984

Mr. Dan Long, Staff Counsel
General Research Division
N. C. General Assembly
Legislative Building
Raleigh, North Carolina 27611

Re: Hazardous Substances
Legislative Research Commission
Study Committee, H.B. 1339

Dear Dan:

Pursuant to your recent request for suggestions on House Bill 1339, the North Carolina Hospital Association would like to take this opportunity to comment.

We are opposed to House Bill 1339 in its present form. We hope our testimony has demonstrated the tremendous amount of regulation which hospitals in North Carolina are subject to in the area of hazardous substances. In addition, the implementation of H.B. 1339 would substantially increase operating costs which would have to be passed on to patients. We do not think there is a need for House Bill 1339 in light of the recent federal regulations on this subject, but we do recognize the concern of our legislators regarding hazardous substances.

At this time, we could support House Bill 1339 if it was limited to chemical manufacturers and other manufacturers in accordance with federal law. We could support a bill to require those manufacturers subject to the federal law to copy data sheets prepared or received and send them to a state central registry in the N.C. OSHA office. Then, any N.C. employers and employees could contact the registry to obtain access to data sheets on hazardous substances in order to augment their current information on these substances.

As an alternative to the above, hospitals should be excluded from the provisions of House Bill 1339 by amending G.S. 130-298 "Exemptions to Article," by adding a new subsection (3) "toxic or hazardous substances used by hospitals, directly or indirectly, in the provision of health care services."

In addition to this exclusion, the committee should redefine "toxic or hazardous substances" contained in G.S. 130-286(12) to delete the NIOSH Registry and substitute the federal definition which has been adopted by

reference by N.C. OSHA Office. Further, the Trade Secrets section should be expanded to allow confidential information "to any health professional," not just a "treating physician." (G.S. 130-290(a)(6)).

We hope these comments will be of assistance to you and the Committee in determining its course of action. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Karen Murphy

Karen Murphy
Director of Legal Services

m/c
Copy to Members of Committee

NCOSH
north carolina occupational safety and health project
box 2514
durham, n.c. 27705
(919) 286 9249

January 30, 1984

Daniel Long
Room 545 Legislative Office Building
Raleigh, N.C. 27611

Dear Dan:

We appreciate this opportunity to provide more comments about how North Carolina should be proceeding with a Right To Know program, using HB 1339 as a reference point as you suggested. We have limited our response to broad issues, feeling that the discussion is still at that level. If you would like our opinion about more specific or technical issues, please let us know. We would be happy to respond to those as well whenever you feel it is needed.

As an introduction, we would like to make the following general points:

- The need for a Right To Know program is clear, as stated in our Issue Statement (1/5/84). In addition, none of the testimony at the first meeting of the Legislative Study Commission suggested that workers and community residents don't need to know about hazardous substances to which they are exposed, should not know, or already know enough.

- The Federal Hazard Communication Standard is not adequate as a solution to our Right To Know problems for the reasons listed in our Issue Statement.

- The state must move ahead with its own Right To Know program until the Federal government comes up with a more stringent program covering all workers and the public at large.

- House Bill 1339, in our opinion, is an excellent first draft of a state Right To Know (RTK) bill based on the experiences in other part of the country at the time it was first drafted (about 9 months ago). Though we are not wedded to a number of the fine points in this bill, we do feel very strongly that there are a number of RTK principles that should not be compromised. These are listed later. In addition, there are a number of questions about the mechanics of how a RTK program would work in N.C. that need to be examined more closely and discussed in greater detail by people at the state and local level in N.C. This is also discussed in a later section.

- Finally, we recommend a continuation of the Legislative Study Commission. We feel that it is unrealistic for the LSC to tackle this problem in 3

meetings alone, with the third meeting devoted to approval of a final report. In addition, there are two important events in late 1984 that will significantly influence how the state can and should move ahead in this area: 1) preliminary decisions in the lawsuits being brought against the federal government; and 2) a possible change in administration that could influence implementation of the Federal Hazard Communication standard. For these reasons, we recommend that the Study Commission should request funds for continutation, should continue to outline state options through the end of '84, and should be prepared to move ahead aggressively on RTK in the '85 Session of the General Assembly. Given this timetable, it seems reasonable for the Study Commission in its April report to simply: 1) identify broad areas where there is concensus (such as the need for RTK); and 2) identify areas that need to be studied more thoroughly (preemption, the mechanics of a state program, etc.).

Right To Know Principles

Right To Know programs vary significantly across the country both in terms of their content and, we believe, their effectiveness. After talking to people in a number of other areas, we feel that a comprehensive RTK program must include the following:

1) A comprehensive list of hazardous substances covered, which is updated regularly. If it turns out that there is a general consensus that the NIOSH Registry is too long, there are a number of shorter lists that could be used. The two lists covered by the Federal standard are incomplete, however. Also, as discussed in our Issue Paper, we disagree with the Federal approach of leaving hazard determination to the manufacturer and employer, feeling that it will result in an ineffective and inconsistent program.

2) Identification of those substances in the workplace through labeling with chemical names (not common names or trade names), availability of complete material safety data sheets, and an on-going education and training program for the workers. A number of testifiers stated the inadequacies of material safety data sheets (MSDS's). We agree that MSDS's are not perfect and that often the information reported on them is incomplete. However, at this point we don't know of any alternative that is better.

3) Disclosure of information about these substances to state and local officials and the general public including information about the release of these substances into the air, water, and land. A key word in this sentence is local. Several people testifying predicted problems with the process of reporting public RTK information to the state and then passing this information on to local governments. Instead they suggested keeping the information in a central repository at the state level. In our opinion this approach totally defeats the purpose of the RTK program, and would, we feel, result in an almost useless program. People in state government are not the ones who need this information. The people who need and will use the information are all at the local level: workers, community residents living adjacent to chemical plants, local firefighters and emergency management personnel, local health providers, local land use planners, etc.

There are numerous examples of state repositories of information, and in our experience (OSHA, air and water quality permits, RCRA information, etc.) this information in theory may be available to people at the local level, but it is never accessible. And, as a result, it is seldom used. In short, in our opinion, the idea of a state repository alone would be a disaster. However, we do feel that there is an important role the state can play in: a) standardizing formats for collecting the information; b) suggesting standardized formats for storing the information; and c) reviewing trade secret requests. This is consistent with HB1339. Also if there is a mechanism where the state can maintain the information at the state level, but provide immediate access through computer retrieval for users at the local, this would deserve serious consideration.

4) Effective mechanisms for enforcement. Again, there a number of problems with relying solely on state enforcement. For example, under the OSHA program there are about a dozen industrial hygienists (based in DHR) available to do health inspections of over 100,000 workplaces statewide. However, at the local level there are other resources that could be drawn on for inspections without the significant time and cost of travel. And, in many cases, these local staff would have the added incentive that they want and need the information about hazardous substances present in their community. Even with local inspectors (from the health departments or fire departments, for instance) there would be added costs associated with training and inspection time.

5) Adequate funding. No RTK program will work unless it is adequately financed. This includes money for training and inspections, as just discussed, as well as funds to get word about the program out to businesses, workers, local government officials and the public at large; to collect, maintain and update the information, to evaluate the program, etc. However, these costs are minimal in comparison to the cost of dealing with toxics problems after the fact (removing asbestos, medical costs associated with illness, explosions or fires, etc.)

6) Strict trade secret burden on the employer. Trade secret claims are a classic loophole that have dramatically reduced (and sometimes eliminated) the effectiveness of occupational health and environemtnal programs. The burden of proof for designating a trade secret should be on the employer and the criteria should be quite rigid, as in HB1339 and some of the recently passed state RTK laws.

Mechanics of a Right To Know Program

During the first meeting of the Study Commission, there were a number of questions about how a RTK program would work in N.C. Though some of these questions, in our opinion, were smokescreens designed to avoid the real issues, others were good questions that need to be answered more carefully. We suggest surveying states with existing RTK program to find out how their

reason why we in N.C. should have to repeat the mistakes of the earlier programs (which, e.g. covered a small number of substances, allocated no money for implementation or enforcement, etc.). Questions that could be asked include:

1) Given the locality's definition of hazardous substances, what is the average number of chemicals reported by firms, by SIC code?

2) Does the state use a central repository? If yes, how is information disseminated on a timely basis to users at the local level? Where is the information stored? How is it stored?

3) How are trade secrets required to be documented? Does the system work?

4) How is an employer's reporting accuracy checked? What is done about inaccurate reports?

5) What is the enforcement experience?

   a) % of firms inspected?
   b) time spent per inspection?
   c) enforcement jurisdiction?
   d) adequacy of training for enforcement officers?
   e) number of inspections that were complaint-initiated?

6) How many requests for information have been made to a local repository?

7) Costs involved for employers? For state government? For local government? As part of worker RTK? Public RTK?

Finally, we recommend that the Study Commission review Community Right To Know: Hazardous Materials Disclosure Information Systems: A Handbook for Local Communities and Their Officials published by the Golden Empire Health Systems Agency in Sacramento, California. This is the most detailed resource we have seen covering issues such as: collection and management of data, lists of substances that could be covered, enforcement, financing, etc. (Coversheets are attached.)

Response to Other Points Raised During the Study Commission Hearing

There were several other points raised during the Commission meeting that we would like to respond to quickly:

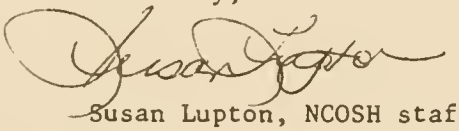
1) "Let's wait and see how the Federal Hazard Communication standard works": The first step in coming to grips with problems caused by toxics exposures is knowing what we are being exposed to and how (at work, through our drinking water, etc.) To force people to wait another 6 to 8 years for this information is irresponsible on the part of the state. Adn that is how long it would take to: a) implement the Federal standard (2½ years) b) evaluate the Federal standard (2 - 3 years, at a minimum); and c) design, pass and implement a state program if it is decided that the Federal standard is inadequate (2 years).

2) "We must stick to the Federal standard because of consistency, uniformity, fairness": When a stronger Federal RTK standard was being proposed under the Carter Administration, the business community was not talking about consistency, uniformity and fairness. In addition, what could be more unfair or inconsistent than a Federal standard that says that a person exposed to chemical XX in the manufacturing sector should be told about the chemical and trained in its safe use, but a person exposed to that same chemical in construction, chemical recycling, dry cleaning work, etc., should not be told or trained?

3) "Who should handle the program administratively at the state level?": We feel that DHR is the logical department given their other responsibilities in the realm of hazardous substances and hazardous wates, and given their interest in and concern for acute and chronic health problems. DOL has an obvious interest through their OSHA program, but could never assume total responsibility for a work and public RTK program. They could, however, coordinate with DHR as proposed in HB1339. Finally, we understand that the Department of Crime Control and Public Safety might be interested in administering this program. We have reservations about this since their primary RTK concern is acute exposure to toxics during emergencies, only a small facet of the problems that a good RTK program should be addressing. Much more significant, over the long run, are long-term exposures to hazardous substances causing chronic health problems, cancer and damage to numerous body systems: kidneys, liver, respiratory system, reproductive systems, central nervous system, etc.).

Again, we appreciate the opportunity to comment and are looking forward to the next meeting of the Study Commission.

Sincerely,



Susan Lupton, NCOSH staff

APPENDIX E

AGENDA

Hazardous Substances Labelling and Identification Study Committee

Second Meeting

February 10, 1984

I. Call to Order

II. Review of Last Meeting and Approval of the Minutes

III. Presentation by Committee Counsel, Daniel Long

IV. Speakers

Mr. Bill Holman, Sierra Club, Waste Management Board

Ms. Karen Murphey, N. C. Hospital Association

Mr. David Austin, NCOSH

Mr. Charles Jeffress, Assistant Commissioner of Labor

Mr. Howard L. Wilson, Assistant Fire Chief, Charlotte, N.C.

V. Committee Discussion

VI. Instructions to Staff

VII. Setting of Next Meeting Date

VIII. Adjournment

APPENDIX F

HAZARDOUS SUBSTANCES LABELLING AND IDENTIFICATION STUDY COMMITTEE

Second Subcommittee Meeting
February 24, 1984

I. Call to Order

II. Review of Last Meeting

III. Speakers

Mr. O.W. Strickland, Solid and Hazardous Waste Branch, Division of Health Services, Department of Human Resources.

Mr. John Campion, Burroughs-Wellcome

Mr. Paul Wilkinson, DuPont Chemical Company

Mr. Paul Wilms, Divison of Environmental Management, Department of Natural Resources and Community Development.

Mr. John Smith, Department of Agriculture

Dr. Ted Taylor, Division of Health Services, Department of Human Resources.

Bill Buffalo, Union Carbide (Ag chem. Assoc)

IV. Committee Discussion

V. Instructions to Staff

VI. Setting of Next Meeting Date

VII. Adjournment

FEDERAL LAWS AND REGULATIONS: RECORDKEEPING AND REPORTING REQUIREMENTS, AND INFORMATION AVAILABLE TO THE PUBLIC

There are numerous existing federal statutes and corresponding regulations which have been enacted to protect the public's health and the environment from potential risks of exposure to hazardous substances. Under those Acts, and through the Freedom of Information Act, the public has access to records dealing with these statutes. These major statutes, including FOIA and examples of major recordkeeping regulations promulgated thereunder, are briefly described below. This list is not exhaustive.

1. FREEDOM OF INFORMATION ACT 5 U.S.C 552 et seq.(1976)

The Freedom of Information Act (FOIA) is the basic disclosure statute within the federal government. Under the FOIA the public has access to certain records of federal agencies which are not otherwise specifically available by statute. FOIA provides that a federal agency must respond to a request for information within ten days and may only deny a request if it is for data which falls into one of the nine exemption categories which deal primarily with internal personnel documents, national security documents, and trade secret information.

40 CFR 2

40 CFR Part 2 Subparts A (Public Information) and B (Confidential Business Information) are the FOIA-like regulations applicable to U.S. EPA. The regulations state EPA's policy on records disclosure:

> "(a) EPA will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons in business information entitled to confidential treatment, and the need for EPA to promote frank internal policy deliberations and to pursue its official activities without undue disruption.
>
> (b) All EPA records shall be available to the public unless they are exempt from the disclosure requirements of 5 U.S.C 552.
>
> (c) All nonexempt EPA records shall be available to the public upon (written) request regardless of whether any justification or need for such records has been shown by the requestor."

2. Clean Air Act 42 U.S.C 7401 et seq.(1981)

The purpose of the Clean Air Act (CAA) is to protect and enhance the quality of the nation's air resources by regulating emissions, conducting research, and making technical information available to state and local governments.

The Clean Air Act directs EPA to set primary and secondary national ambient air quality standards (NAAQS) to protect public health and welfare, respectively. Plants located in portions of the country that are not in compliance with a national air quality standard (nonattainment areas) must reduce pollutant emissions to bring the area into attainment. Terms of this reduction are dictated by a federally approved state implementation plan. The Act also limits pollution from new sources in areas of the country where the air quality is better than the NAAQS through a prevention of significant deterioration (PSD) permit review. A ceiling on allowable increases in pollutant concentrations (increments) is specified by law, and new emission sources must demonstrate that they will not cause the increments to be exceeded.

Under Title 1 of the Act, states are required to develop plans which provide for implementation, maintenance, and enforcement of ambient air quality standards. The plan must include: (1) emission limitations, schedules and timetables for compliance with such limitations; (2) provisions for the establishment and operation of devices and methods needed to model and/or monitor, compile and analyze ambient air quality data; (3) an enforcement program; and (4) regulations addressing the modification and construction of stationary sources of air pollution. Additionally, states may develop and seek approval of plans for implementing and enforcing emission standards of hazardous air pollutants.

Title II of the Clean Air Act authorizes emissions control regulations for mobile sources of air pollution.

40 CFR 51

Pursuant to the state implementation plans described above, 40 CFR 51 Subpart Q requires that states annually submit emissions data (particulates, SO_x, hydrocarbons, CO, O_x, lead) to the EPA Regional Offices.

40 CFR 52

40 CFR 52.05 and 52.15 require that emission data and state implementation plans be publicly available.

40 CFR 58

This part of the Clean Air Act regulations contains criteria and requirements for ambient air quality monitoring and reporting of ambient air quality data. It applies to state and local air pollution control agencies and owners or operators of proposed air pollution sources.

40 CFR 60

40 CFR Part 60 is a compilation of standards for categories of new stationary sources. 40 CFR 60.7 itemizes the general notification and recordkeeping requirements for such sources. Notice must be given to EPA Regional Offices regarding the construction of certain new sources. Records must be kept regarding startup, shutdown and malfunction in the operation of a facility. Additional records must be kept of all measurements. Quarterly reports must be submitted to the EPA Regional Offices for excess emissions from continuous monitors.

40 CFR 61

Hazardous air pollutant control regulations are the subject of 40 CFR 61. 40 CFR 61.10 requires that owners or operators of existing sources of designated air pollutants submit reports to the appropriate Regional Office within 90 days of the effective date of any Part 61 standards. This subsection also itemizes the information which must be contained in the report. 40 CFR 61.15 makes any such information, subject to 40 CFR 2, available to the public.

40 CFR 62

This part sets forth requirements for state plans addressing designated pollutants and air pollution sources. 40 CFR 62.08 requires that any such state plans contain provisions for emissions inventories, maintaining records, making reports, and submitting information. A majority of states have approved plans for fluoride emissions and sulfuric acid mist.

40 CFR 85

40 CFR 85 addresses air pollution control regulations from motor vehicles and motor vehicle engines. Subpart E (85.407) requires that manufacturers participating in the NO_x research program submit annual reports summarizing their findings. Subpart S (85.1806) requires that manufacturers establish and maintain records and prepare reports in the event of product recall. Subpart T contains emission defect reporting requirements applicable to manufacturers of 1974 or later vehicles. Those requirements cover classes or models of motor vehicles.

40 CFR 86

This part establishes certification and test procedures for the control of air pollutants from new motor vehicles. 40 CFR 86.078-7 requires that manufacturers establish and maintain general and individual certification records as prescribed in this subpart.

3. Clean Water Act (Federal Water Pollution Control Act) 33 U.S.C 1251 et seq.(1983)

The Clean Water Act (CWA) was enacted to restore and protect the quality of the nation's waters by regulating pollutants released into waters of the United States. It prohibits any discharge to public waters without a National Pollutant Discharge Elimination System (NPDES) permit. The Act requires pollution control via water quality standards and technology-based standards. Currently, all facilities have permits designating a level of pollution control based on Best Engineering Judgement or Best Practicable Control Technology (BPT). However, the EPA has prepared more stringent pollution control requirements for numerous industrial categories. This Best Available Technology (BAT) is intended to minimize the release of toxic pollutants, and BAT must be installed by 1984. Those plants discharging to a municipal sewage treatment system rather than public waters will be required to comply with pretreatment regulations now being developed by the Agency. All information

obtained by the Agency during the development of effluent limitations or new source performance standards for certain industrial categories is part of the rulemaking record and is available to the public through a FOIA request of is available for reviewing in Washington, D.C., and at the EPA Regional Offices. The information includes wastewater characterization, facility descriptions, and technology costs.

Section 311 of the Act requires that all spills to navigable waters of listed substances in excess of reportable quantities must be reported to the National Response Center of EPA.

40 CFR 25

This part of EPA's regulations outlines requirements for public participation in programs under the CWA, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act. The following objective to be implemented by government agencies are listed in these regulations:

> (1) To assure that the public has the opportunity to understand official programs and proposed actions, and that the government fully considers the public's concerns;
> (2) To assure that the government does not make any significant decision on any activity covered by this part without consulting interested and affected segments of the public;
> (3) To assure that government action is as responsive as possible to public concerns;
> (4) To encourage public involvement in implementing environmental laws;
> (5) To keep the public informed about significant issues and proposed project or program changes as they arise;
> (6) To foster a spirit of openness and mutual trust among EPA, States, substate agencies and the public; and
> (7) To use all feasible means to create opportunities for public participation, and to stimulate and support participation.

40 CFR 110

40 CFR Part 110 requires that persons in charge of vessels or facilities must immediately notify the appropriate government agency of an oil discharge.

40 CFR 112

This part generally requires that procedures, methods, and equipment be developed and obtained to prevent the discharge of oil from non-transportation related onshore and offshore facilities into navigable waters. 40 CFR 112.3 specifically requires the developemnt and implementation of Spill Prevention Control and Countermeasure (SPCC) Plans.

40 CFR 122

These regulations govern the EPA administered, consolidated permit

programs (NPDES, hazardous waste, and underground injection control.) 40 CFR 122.11 states requirements for recording and reporting of monitoring results according to the permit provisions. 40 CFR 122.19 states that NPDES permit applications and permits are public information.

40 CFR 123

40 CFR Part 123 addresses state permit program requirements. 40 CFR 123.10 mandates that the appropriate state and federal government agencies shall share submitted information.

40 CFR 124

This part requires that ocean dumping permittees under Section 102 of the CWA maintain records regarding the types of material dumped, and the time and location of dumping. Periodic reports of this recorded information must be submitted to EPA.

40 CFR 403

40 CFR 403 is the general pretreatment regulations. 40 CFR 403.12 contains the reporting requirements for publicly owned treatment works (POTW) and their industrial users. Industrial users must report: (1) identifying information, (2) facility description, (3) list of environmental control permits, (4) flow measurement data, and (5) sampling results.

4. Comprehensive Environmental Response, Compensation, and Liability Act 42 U.S.C 9601 et seq.(1982)

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund") contains a number of provisions designed to allow the federal government to identify, respond to, and assess liability for spills and other releases into the environment of hazardous substances. Section 103(a) of CERCLA requires that companies immediately notify the National Response Center of releases of hazardous substances in greater than reportable quantities. Section 103(c) requires that certain persons notify the EPA of the existence of former hazardous wastes sites by June 3, 1981. The Act further provides for a $1.6 billion fund to be accumulated through a feedstock tax on petroleum and other chemicals over the next five years. This fund shall be used to cover the costs for cleanup of identified former hazardous waste sites according to the National Contingency Plan. CERCLA also imposes strict liability on companies for cleanup costs and national resource damages resulting from hazardous substances releases.

40 CFR 117, 302

These two sets of regulations require that notice be given to the appropriate government agency in the event of a release of a listed substance(s) in excess of the corresponding reportable quantity.

40 CFR 300

The National Contingency Plan (NCP) regulations (40 CFR 300) require

that the On-Scene Coordinator (OSC) collect and coordinate the documentation of any remedial action. 400.56 requires that the OSC prepare reports on the response operations and remedial actions taken within 60 days of a major discharge.

5. Consumer Product Safety Act 15 U.S.C 2051 et seq.(1983)

The purposes of the Consumer Product Safety Act are to protect the public against unreasonable risks of injury associated with consumer products, to assist consumers in evaluating the comparative safety of consumer products, and to develop uniform safety standards including warning and instructions. The Consumer Product Safety Commission maintains an Injury Information Clearinghouse to collect, investigate, analyze, and disseminate injury data and information obtained from manufacturers. This information is available to the public unless it is privileged under FOIA. The Commission has the authority under this Act to ban hazardous products which present an unreasonable risk of injury and for which no feasible safety standard can be promulgated protecting the consumer against such unreasonable risk.

6. Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C 136 et seq.(1980)

The goal of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of 1947, as amended by the Federal Environmental Pesticide Control Act of 1972, is to control environmental contamination of potentially toxic pesticides by assuring that the chemicals are produced and used in a manner that will avoid unreasonable adverse effects on health or the environment. As such, the Act provides for the registration of pesticides and producing facilities, classifies pesticides into general, restricted, and experimental use categories, and charges the Environmental Protection Agency with developing a program to control transportation and disposal.

40 CFR 162

This Part of the FIFRA regulations outlines the requirements for the registration of pesticides. 40 CFR 162.8 lists the information requirements for registration and classification. 40 CFR 162.18-2 lists the data which must be submitted to EPA in support of conditional registration of a pesticide.

40 CFR 167

40 CFR 167.5 requires that annual pesticide reports be submitted to EPA by pesticide producers, including foreign producers. The report contains the name and address of the producer, the type and amount of pesticide product, and the sales or distribution of the pesticide product.

40 CFR 169

All pesticide producers shall maintain for two years records as prescribed by this Part. The information required is comprehensive including identification, production, distribution, disposal, labeling, and research data.

40 CFR 172

This Part (40 CFR 172.11) mandates that applications and approvals for experimental use permits shall be noticed in the Federal Register. The notice includes descriptive information regarding the experimental pesticide use.

7. Federal Food, Drug and Cosmetic Act 21 U.S.C 301 et seq.(1980)

The Food, Drug and Cosmetic Act is another consumer protection law. It was enacted in 1938 and has been significantly amended several times. Especially noteworthy are: the Pesticide Chemicals Amendment of 1954; the Food Additive Amendment of 1958, including the Delaney Clause which embodies the concept of zero-risk for carcinogenic food additives; the Color Additive Amendments of 1960; and the Drug Amendments of 1962. The existing law: (1) requires truthful and informative labeling; (2) provides consumer protection against false weights and measures through the promulgation of standards; and (3) attempts to provide for the safety of foods, and the safety and effectiveness of drugs. The law contains general prohibitions against adulteration and misbranding. It also provides for premarketing controls on certain drugs and food, such as food additives, color additives, and pesticide chemicals.

8. Hazardous Materials Transportation Act 49 U.S.C 1801 et seq.(1978)

The Hazardous Materials Transportation Act authorizes the Secretary of Transportation to promulgate regulations controlling the transportation in commerce of hazardous materials. The regulations apply to persons who move hazardous materials by any mode. These safety regulations include specifications, packsing, handling, mailing, placarding, and routing of hazardous materials in commerce. Shipping papers must also accompany transported hazardous materials.

49 CFR 171

49 CFR 171 itemizes the general regulatory requirements of the Hazardous Materials Transportation Act. 49 CFR 171.15 requires immediate notice to the Department of Transportation (DOT) of certain hazardous materials incidents. 49 CFR 171.16 requires detailed, written reports of such hazardous materials incidents. 49 CFR 171.17 requires notice to the Coast Guard of discharges of hazardous substances in excess of reportable quantities.

49 CFR 191

This Part requires that leaks from pipelines be reported to the DOT Materials Transporation Bureau.

49 CFR 195

This Part requires that accidents caused by the transportation of hazardous liquids through pipelines be reported to the DOT Materials Transportation Bureau.

9. Occupational Safety and Health Act 29 U.S.C 651 et seq.(1974)

The Occupational Safety and Health Act (OSHAct) requires the Occupational Safety and Health Administration (OSHA) to promulgate mandatory standards protecting workplace health and safety. OSHA is also allowed to conduct inspections to enforce the requirements of this Act. It also creates the Occupational Safety and Health Review Commission to conduct adjucatory hearings. The OSHAct provides for research and recommendations for standards relating to occupational safety and health to be conducted by the National Institute for Occupational Safety and Health. States may seek authorization for the federal program through the submission of Plan to OSHA.

29 CFR 1904

Employers are required to log and summarize occupational injury and illness records. These records must be maintained for five years and must be posted annually. The Bureau of Labor Statistics is authorized to periodically collect, analyze and publish occupational safety and health statistics according to 29 CFR 1904.20.

29 CFR 1907

This Part prescribes criteria and procedures for the accreditation of laboratories whict test for safety specified products, devices, systems, materials, or installations.

29 CFR 1910

29 CFR 1910 contains the general industry standards. 29 CFR 1910.20 provides employees and their designated representatives access to relevant exposure and medical records. Such records must be maintained for thirty years. Recordkeeping requirements are also listed under each of the substance specific standards, 29 CFR 1910.1001 thru 1050. Also, OSHA has proposed a hazard communication rule, 29 CFR 1910.1200, which makes material safety data sheets and training available to employees and their designated representatives.

10. National Environmental Policy Act 42 U.S.C 4341 (1975)

The National Environmental Policy Act (NEPA) established the Council on Environmental Quality (CEQ) and stated a national environmental policy. Regulations promulgated under NEPA require the preparation of an environmental impact statement (EIS) whenever an action may significantly impact on the environment.

11. Resource Conservation and Recovery Act 42 U.S.C 3251 et seq.(1982)

The Resource Conservation and Recovery Act of 1976 (RCRA) imposes requirements on the management and recycling of all solid wastes, but its principal regulations focus on hazardous waste. A national "cradle-to-grave" manifest system to track hazardous wastes from generation through transportation to the site of disposal has been instituted. Permits are required for new and existing facilities that store, treat, or dispose of hazardous waste.

40 CFR 25

This Part of EPA's regulations outlines requirements for public participation in programs under the Clean Water Act, RCRA, and the Safe Drinking Water Act. (See CWA.)

40 CFR 122

These regulations govern the EPA administered, consolidated permit programs (NPDES, hazardous waste, and underground injection control.) (See CWA.)

40 CFR 123

40 CFR 123 addresses state permit program requirements. (See CWA.)

40 CFR 260

Part 260 is the general hazardous waste management system regulations. Part 260.2 makes any information provided to EPA under Parts 260 through 265 available to the public subject to FOIA restrictions and Section 3007(b) of RCRA.

40 CFR 262

40 CFR Part 262 prescribes hazardous waste generator regulatory requirements. Subpart D establishes recordkeeping and reporting requirements for generators. Generators must maintain copies of each manifest, annual report and exception report for three years (40 CFR 262.40). Generators must submit annual reports (40 CFR 262.41). If a generator does not receive a returned, completed manifest, he/she must file with EPA an exception report within 45 days (40 CFR 262.42).

40 CFR 264

These regulations prescribe standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. Each subpart contains recordkeeping and/or reporting requirements. Subpart B contains transfer notice, waste analysis, self-inspection and personnel training requirements. Subpart C mandates that arrangements be made with local authorities to prepare for potential emergencies. Such arrangements must be documented. A contingency plan containing emergency procedures for the facility must be prepared and submitted (Subpart D). The manifest system requires that owners or operators maintain such transportation records and submit annual reports to EPA and/or the state. A groundwater plan must be prepared, records maintained, and periodic reports submitted for land treatment, storage, or disposal facilities. Subpart G requires that a closure and post-closure plan be prepared and maintained for the facility. Financial responsibility documentation must be submitted to the government (Subpart H).

40 CFR 265

Part 265 contains interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. The same types of recordkeeping and reporting requirements described under 40 CFR 264 apply to interim status facilities.

12. SAFE DRINKING WATER ACT 42 U.S.C. 300f et seq.(1980)

The Safe Drinking Water Act (SDWA) was passed in 1974. With a stated purpose of assuring the public an adequate supply of uncontaminated drinking water, the Act provides for regulations to protect water supplies. The Environmental Protection Agency was given the task of setting primary and secondary standards. The primary standards, designed to protect public health, were initially issued in 1975 and have been revised periodically as new information on toxics has become available. The secondary standards, dating from 1977, set limits for aesthetically disturbing contaminants and are designed to protect the public welfare. The Act also authorized the development of State Programs for controlling the underground injection of wastes, with special protection for the recharge zones of sole source aquifers.

40 CFR 25

These regulations outline requirements for public participation in programs under the CWA, RCRA, and SDWA. (See CWA.)

40 CFR 122

These regulations govern the EPA administered, consolidated permit programs. (NPDES, RCRA, and underground injection control.) (See CWA.)

40 CFR 123

40 CFR Part 123 addresses state permit program requirements. (See CWA.)

40 CFR 141

Part 141 establishes the National Interim Primary Drinking Water regulations. Subpart D outlines recordkeeping and reporting requirements. 40 CFR 141.31 mandates that water suppliers report test measurements and analytical results to the appropriate state agency. Exceedances must be reported within 48 hours. Continuing failure to comply with the primary drinking water standards mandates public notice (141.32). Owners or operators of public water systems must maintain analytic records, variance records, and records of action taken for at least five years (40 CFR 141.33).

40 CFR 142

This part outlines implementation and enforcement of the national primary drinking water regulations. 40 CFR 142.14 and 142.15 establish state recordkeeping and reporting requirements. 40 CFR Part 146 outlines the underground injection control program. The regulations require reporting of certain information for each injection well class. The quarterly reporting requirements include characterization of injection fluids, monthly flow rates, and monitoring results.

13. TOXIC SUBSTANCES CONTROL ACT 15 U.S.C. 2601 et seq.(1981)

The purpose of the Toxic Substances Control Act (TSCA) is to develop health and environmental effects data on chemicals. EPA has published an inventory of greater than 55,000 existing chemicals. Section 4 authorizes EPA to

promulgate rules that require manufacturers and/or processors to test specified chemical substances or mixtures in order to evaluate their human health or environmental effects. Such testing can be required for chemicals that are suspected of being harmful or that have uncommonly large human or environmental exposure. Under certain circumstances, EPA may prescribe the procedures and methodology used to conduct testing. Testing costs are to be borne by manufacturers and/or processors of the test chemical. If these firms cannot allocate test costs on a voluntary basis, EPA is empowered to make such an allocation itself. To assist EPA in developing testing priorities, the statute creates an Interagency Testing Committee comprised of representatives from various federal agencies.

Section 5 empowers EPA to screen new chemical substances and existing chemical substances employed for significant new uses before the commencement of manufacture. To facilitate such screening, a notice describing the chemical and its uses must be submitted to EPA at least 90 days before the scheduled start of production. EPA has broad power to prevent or limit manufacture or use if the Agency concludes that the chemical is hazardous or if it may present an unreasonable risk and significant unanswered questions exist concerning its safety. Over 600 premanufacture notices have been submitted since the initiation of this program in 1979.

Section 6 authorizes EPA to impose a range of regulatory controls when it finds that the manufacture, processing, distribution, use, or disposal of a chemical substance or mixture presents an "unreasonable risk of injury to health or the environment." These restrictions, which must be imposed by rule, include banning the substance or mixture entirely, prohibiting or limiting certain uses, or requiring labeling or other forms of public notification. In applying the all-important concept of unreasonable risk, EPA must balance a chemical's harm to human health or the environment against the economic and social disadvantages of eliminating or restricting the chemical's availability.

Section 8 authorizes EPA to require the gathering, retention, and reporting of information concerning the health or environmental effects of chemical substances and mixtures. Section 8(a) authorizes EPA to promulgate rules requiring such recordkeeping and reporting of information as EPA "may reasonably require." In addition, EPA is directed to compile an inventory of all chemical substances in commerce (Section 8(b)), may require companies to keep records of allegations of significant adverse reactions caused by chemicals (Section 8(c)), may require the submission of lists and copies of health and safety studies (Section 8(d)), and may require companies to notify EPA of substantial health or environmental risks caused by chemicals (Section 8(e)).

40 CFR 704

Part 704 addresses recordkeeping and reporting requirements under TSCA. Subpart E--Specific Chemical reporting--prescribes information requirements which must be submitted to EPA from persons who manufacture or import polybrominated biphenyls (PBB).

40 CFR 707

EPA requires that exporting chemical manufacturers submit certain information under Part 707.

40 CFR 710

40 CFR Part 710 governs the inventory reporting by firms of chemicals which are manufactured, imported or processed for a commercial purpose.

40 CFR 712

This part establishes procedures for chemical manufacturers and processors to report production, use, and exposure-related information on listed chemical substances.

40 CFR 717

This rule requires manufacturers and certain processors of chemical substances and mixtures to keep records of significant adverse reactions to health or the environment alleged to have been caused by a substance or mixture. Reporting of such records is also required. This part implements Section 8(c) of TSCA. Section 8(c) requires that allegations of adverse reactions be kept for thirty (30) years.

40 CFR 761

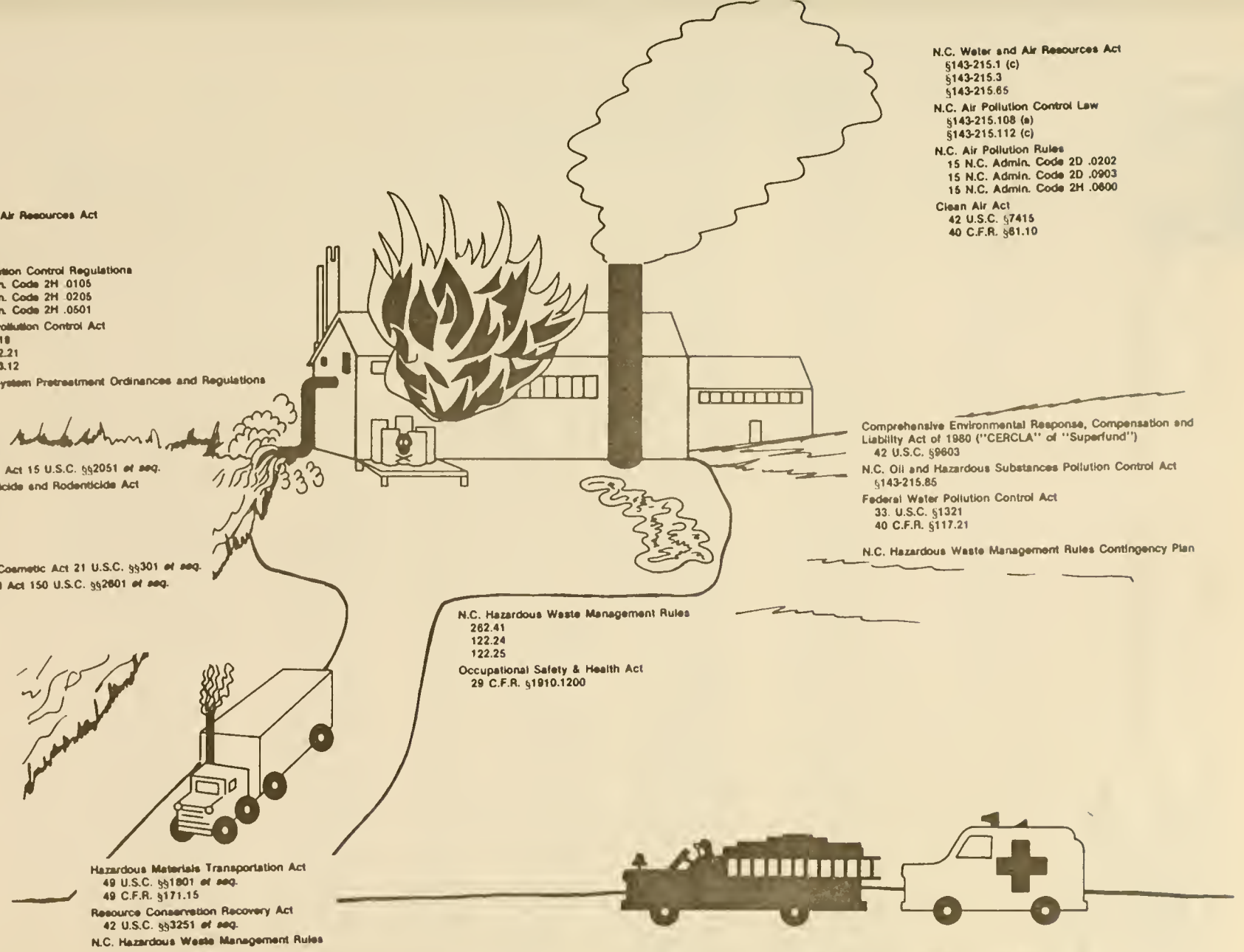
Subpart J of Part 761 requires that records be maintained for the manufacturing, processing, distribution, use, disposal, storage and marking of polychlorinated biphenyls (PCB).

40 CFR 762

This rule mandates general and annual reporting requirements for manufacturers and processors of fully halogenated chlorothioroalkanes.

40 CFR 763

This part governs asbestos reporting requirements.



N.C. Hazardous Waste Management Rules Contingency Plan

NCOSH
north carolina occupational safety and health project
box 2514
durham, n.c. 27705
(919) 286 9249

March 5, 1984

To: Members of the Hazardous Substances Legislative Study Subcommittee and N.C. citizens attending the Subcommittee meetings.

From: NCOSH

Several comments at the last Subcommittee meeting on "Right To Know" contained contradictions and flaws of logic which confused some of the issues which the Subcommittee is addressing. We attempt here to point these out in the hope that the comments will assist the Subcommittee in addressing the issues at its next meeting.

1) One participant stated that "there should be no Right To Know, because there is no community need to know. There is no need to know because community residents already have access to the information." The person cited the Clean Water, Clean Air, and Hazardous Waste (RCRA) Acts and regulations as providing information about hazardous chemical exposures.

   Clarification: The regulations cited are, indeed, partially information disclosure regulations. But it is very misleading to imply that these regulations give community residents all of the information that they need to identify what they're exposed to.

   a) First, each of these laws themselves depend on a list of toxic substances defined by specific criteria about which the legislation is concerned. Because the laws are regulatory (i.e. more than just disclosure) the criteria are very narrow.

      For example, the definition of priority air pollutants is limited to a list of 6 "criteria pollutants" and 9 "noncriteria pollutants". The Clean Water Act covers only 129 substances. RCRA defines 445 hazardous wastes, but many of these are generic, not specific (e.g. "sludge from electroplating") (see attached sample sheet).

   b) The form of the information is often oriented towards the permitting process for certain hazard abatement equipment -- not toward the disclosure of the toxics that a company may be using or emitting. The attached "Permit for the Discharge of Air Contaminants into the Atmosphere" and other materials from the file of one Durham company will reveal the futility of trying to answer the question: what toxic chemicals does this plant use or emit?" through use of this information source.

c) The trade secrets provisions for each of the regulations is very broad, allowing a company to declare information a trade secret without justifying the claim -- the information is then automatically withheld from the public;

d) In some cases it is very costly to access the information. For example, the state wanted $25 for a simple 2-page listing of the industries in Durham that have water quality permits;

e) The amount of material in a single file means that the information is in effect not available on the local level, since, for financial reasons, the file would have to be reviewed before copying. (see, again, the materials from the file of Golden Belt in Durham which constituted only one small part of this company's file).

2) The concept of "risk" was brought up in several confusing and sometimes irrelvant contexts, thereby confusing the concept of "need".

a) There was the implication that "every substance (even water) is 'toxic', so therefore it is futile or unnecessary or unfair to label (and warn about) those hazards which are known to be especially toxic."

Clarification: Even if one accepts this overly broad definition of toxic, why should there not be an attempt to alleviate those areas of highest hazard (risk)? If labeling and warning systems are necessary to alleviate risk, why should they not be used?

b) A parallel argument was that "everything (crossing the street....letting a child play in a house where handguns might be present) involves risk....so it is unfair or unnecessary to attempt to identify and alleviate a certain type of risk (toxic chemical exposures).

Clarification: The important difference between voluntary and non-voluntary risk was pointed out in the Subcommittee meeting. Government action may be necessary where non-voluntary and uncompensated risks are imposed on citizens. Exposure to unidentified toxic substances is one such risk. If the nature of a chemical exposure risk is not known, it cannot justifiably be said to be "voluntary".

c) "If risk levels are unknown, then no type of regulation can be justified." (This argument was implied in the statements about citizens being "apprehensive" about unproven risks. The answer to one of Representative Payne's questions was that people were "apprehensive" about witches in colonial days, and the Salem witch trials resulted.....thus "apprehensions" were no basis for public policy.).

Of course some risk levels are not known with precision. A primary purpose of hazard identification under Right To Know is to allow each individual the freedom to make his/her own assessment of risk to him/herself. The proponents of the "witch hunt" argument really argue that only the corporate

Secondly, it is not at all clear that traditional categories always separate industries with "high" and "low" number of chemical exposures. Previous testimony to the Committee by Communications Workers noted their exposure to heptachlor as late as 1983, although the chemical was banned from production by the EPA in 1974. Similarly, other non-manufacturing industries carry chemical exposure risks (see, for example, the attached sheets developed by NCOSH for hospitals, the construction industry, and printing and publishing.) If, in fact, a particular industry already handles its hazardous chemicals with great safety (as was implied in previous Committee testimony), this argues that the industry would have little trouble complying with (or may already be complying with) Right To Know requirements.

3) The need for Right To Know is often misrepresented by claims that RTK cannot accomplish "objectives" which are in fact never claimed for it. Right To Know cannot -- by itself -- alleviate an environmental health hazard exposure problem. It is, after all, only the provision of information. The resulting action following the transmittal of information can accomplish that objective. Right To Know is an absolutely necessary, but insufficient policy for alleviating a hazard. In some cases the mode of action following the identification of a toxic is well established; in other cases a mode of action is less routinized. However, because some modes of action are not well established or practiced is no argument that Right To Know is not necessary. For example:

a) Some workers already have access to a system facilitating action to alleviate hazards. Such systems a) assist them in researching the known hazards of the toxics to which they're exposed (once they know the toxic's identity); b) inform them of the methods they and management might take to alleviate the hazard. It was implied that because many workers are not now familiar with systems for action available to them ("the chemical names are just too big to mean anything") that RTK would be ineffective. That logic is suspect. The implementation of RTK in no way prevents companies, unions, or other private or government groups from implementing and improving systems for action on identified hazards. Right To Know may, indeed, promote the further development of systems of action. The claim that some workers will not use such systems ("worker apathy is the problem") is a) not a legitimate argument that RTK should not be implemented; b) perhaps a telling comment on the time, effort and resources that have been expended to make the systems for action useful for workers (i.e. very little). The choice to take action or remain apathetic is the question that RTK addresses, however.

b) In a bizarre reversal of the above argument, it was implied that because some firefighters already have an available mode of action -- i.e. they have access to the "Chem-Trec" hazard information system -- they don't need a Right To Know system. Chem-trec does allow a relatively quick determination of the hazards of a known toxic chemical. However, the toxic chemical must first be known. Access to Chem-trec is of no use unless the chemical is somehow identified.

c) A spokesperson for the Dept. of Health Services foresaw the opposite "problem" -- that communities and workers would see DHS as the available "system for action" and overwhelm it.

First -- DHS is not the only resource available. Secondly, if implementation of RTK unleashes a great demand for assistance, perhaps a real need is there that will need to be examined. Finally, it is not at all clear that DHS must "provide the answers" -- it could instead inform people of resources they could use to find answers themselves (e.g. how to write a company to request a Material Safety Data Sheet)

manufacturer should make this assessment, which would then be handed over only to emergency response personnel. The concept of Right To Know is based on the individual's right to be involved in the interpretation of personal risk level. It is argued that individuals potentially affected should have this right, rather than delegating it entirely to a party which has conflicting interests.

It should also be mentioned that the requirement to label toxic substances is hardly comparable to the results of the witch trials. Providing information can, indeed, provide a certain legal protection to the corporation.

d) In another context it was implied that many exact risk levels are not known because a toxic chemical may be diluted , and the toxicity of the resultant mixture is not known. (e.g. 100% Sulfuric Acid is a risk....but what about 2%? ....4%.....6% ?) The fact that exact risk levels are in some cases unknown was then used to argue that labeling decisions would be impossible. In fact, this argument makes no sense.

Clarification: If it is known that 100% Sulfuric acid is toxic, that 1% Sulfuric Acid is safe....but it is now known which intermediate dilutions are "safe" or unsafe, then a prudent policy would be to require all mixtures greater than 1% to be labeled. There will always be some degree of "uncertainty" at some gray area -- a prudent policy, <u>especially where only information disclosure is required</u>, would simply error on the side of greater public safety.

e) "The community need not be informed, because it is less intensely exposed then workers (i.e. community risks are trivial)".

Clarification: Communities are <u>sometimes</u> (but not always) less intensely exposed to specific pollutants than are workers in a plant working 8 hours per day directly with the raw material or product. However, it does not follow at all that the risks are acceptable -- as Times Beach and Love Canal residents would tell us.

f) A related comment confused the concept of statistical risk and need. First it was suggested that because non-manufacturing jobs are less chemical intensive, there is no reason to provide the Right To Know to workers in these jobs.

Clarification: First, insofar as Right To Know would provide a procedural right, this reasoning would be paralleled by a claim that EEO laws should not apply in those industries where little discrimination was going on in the first place. Statistics are little comfort to the rare person who is discriminated against in such a place of employment -- the results are just as personally damaging. Similarly, even if fewer exposures were shown to take place in non-manufacturing industries (and the injury and illness statistics are really poor indicators of whether or not this is the case), the non-manufacturing worker who is damaged by the relatively rarer exposure will find no consolation in his/her statistical "safety". What <u>is</u> relevant, of course, in the case of such industries, is the fact that employers in sectors where risks are low will need to expend many fewer resources in complying with labeling and warning requirements.

4) There was the related implication that no course of action by a citizen or worker could be effective or would be appropriate: "the need to know arises when exposure occurs -- and then the appropriate agency capable of action should be notified." The implication is that a neighborhood resident has no possible course of action.

First, a citizen would always have the possible action of self-protection: leaving. Second, many courses of possible citizen action are available and can prevent, not simply react to, potential toxic hazard problems. One of these courses of action may be seeking an outside, independent assessment of risk. The question is: should the citizen right of self-protection and action be denied in order to protect a corporate right to privacy?

5) The question of the definition of toxic substances has been confused by several strands of conflicting arguments. As noted in Committee meetings, several different lists have been generated, using different criteria because the lists were to be used for different purposes.

It would seem to us, first, that a review of these lists, their criteria, and the reasons other states (e.g. New Jersey, California) have chosen a certain combination of lists, should be made, entirely separately from the question of resource requirements resulting from a particular choice of lists. The initial choice (admittedly, as DHS staff Ted Taylor noted, arbitrary to a certain extent) should be: which chemicals can result in human health effects?

The trade-off between health protection and resource requirements should be made consciously -- and thus after an initial determination made entirely on the basis of health protection. A separate effort to consider resource requirements (given a certain list size) should also consider: what are the costs to the state of not providing this information -- of firefighters or workers not knowing about their exposures. DHS testimony on this issue of "cost" has thus far been extremely narrow.

If a combination of lists meets the health protection criteria, it makes little sense to use the OSHA Z list only, together with the "hazard determination" procedure prescribed by the Federal OSHA Hazard Communication Standard, because:

a) the procedure itself is somewhat suspect;
b) as Terry Piersen pointed out, it would actually be less burdensome on chemical manufacturing industries to go ahead and define substances as toxic which are generally recognized as being so, rather than insisting they go through the paperwork of the "hazard determination" procedure.

6) Several testifiers claimed that , in their opinion, HB 1339 would not meet the needs of firefighters. Review of HB 1339 on this point might prove useful -- several sections deal with provision of information to firefighters. On two occasions N.C. firefighters have strongly supported Right To Know before the Committee:

a) A representative of the Charlotte fire department testified at the February 10th meeting about Right To Know as a first line of defense for firefighters. He emphasized that firefighters have numerous resources at their fingertips once they know the identity of chemicals they are up against.

b) In early February John Doran, President of the N.C Professional Firefighters Association, sent all the members of the Legislative Study Commission an issue paper strongly endorsing the need for Right to Know legislation in N.C., and listing specific provisions that are particularly important to firefighters. These provisions include: a) a toxic substance list by work area (providing chemical and common names; and b) Material Safety Data Sheets for each of these substances, two provisions contained in HB 1339 (See Sections 130-288, 130-289).

In addition, there was an implication in testimony at the last meeting that information collected as part of a Right To Know program would not "filter down" to local fire departments and would instead be sitting "either somewhere in Raleigh in a state repository or in the basement of a county building in the county seat. Actually HB 1339 requires that local fire departments receive comprehensive information about the toxic substances present in their community, including, for example:

a) lists of the substances used by each industry;
b) MSDS's for each substances (which would include information about flammability, explosiveness, corrosiveness, and reactivity.
c) the approximate volume of the substance used;
d) where the substances are within the facility .

(See Sections 130-288 and 130-289 and 130-291 for details.

7) It was claimed that non-manufacturing worker would not need coverage because labels and MSDS's required for manufacturing workers would inevitably find their way "downstream". It is our impression, from interaction with hundreds of workers, that the "inevitability" claimed here is little more than wishful thinking. For whatever reason, many substances now used in the manufacturing sector which originally were labeled, do not end up labeled.

The fact that labels and MSDS's will be required from chemical manufacturers does argue, however, that compliance in the non-manufacturing sector would not be difficult.

8) There have been several references to the "vast numbers" of MSDS's that will "inundate" the state government. These comments have been made:

a) without any basis for the numbers;
b) without any indication of the current and future capacity of the state to deal with submitted information, given modern information processing technology.

We would only suggest that some hard data from the experience of other states be collected, and a systematic look at the State's ability to process various magnitudes of information be undertaken.

We hope these comments will be of some assistance to the Subcommittee. Please feel free to get in touch with us if questions arise.

Sincerely,

David Austin

Susan Lupton

RIGHT-TO-KNOW LEGISLATION

INTRODUCTION

Most fire fighters and fire departments in this country have little or no information about the hazardous and toxic materials they may be exposed to during emergency operations. Containers and drums of chemicals are often poorly labeled and when limited chemical information is available, the chemicals are often identified only by trade names or code numbers. Complete toxicity and hazard information is rarely provided. To combat this situation the labor movement, including the International Association of Fire Fighters, has been fighting for tough federal standards, with fire fighter coverage, that guarantees workers the right to know what they come into contact with and the effects of that exposure. Due to the failure of the federal government through the Occupational Health and Safety Administration to issue strong uniform regulations on chemical substance information, state and local activity on the right-to-know has evolved.

Given the weak federal legislation that has been promulgated, it is our opinion that state and local right-to-know initiatives are the only way to gain adequate protections. Also the varying requirements of these state and local legislative activities may provide the IAFF some leverage in seeking a strong uniform federal standard for fire fighters. Until such a strong federal standard is secured, it is the IAFF policy, mandated by convention action, to seek right-to-know protections at a state and local level.

FEDERAL vs STATE & LOCAL INITIATIVES

Those that are opposed to any right-to-know legislation will repeatedly state that U.S. OSHA "has completed plans to occupy the field in terms of communicating hazards to employees in the manufacturing field". To such statements we would like to offer the following information. The U.S. Occupational Safety and Health Administration first became involved with "Right-To-Know" issues in 1974 when it established an Advisory Committee on Hazardous Materials Labeling. From that point, and despite Congressional recommendations in 1976 and 1977 that OSHA should require disclosure of toxic ingredients to workers, it took OSHA until January 16, 1981 to propose such a rule. The proposal

was promptly withdrawn on February 12, 1981 by the Reagan Administration and followed more than a year later (March 1982) by a new proposal which was finally issued as a final standard on November 22, 1983. This "Hazard Communication" standard essentially lets the chemical manufacturers and employers decide what they will tell workers about hazardous and toxic substances, without requiring them to actually tell the workers what the hazardous and toxic substances are.

More specifically:

- One of the major inadequacies of the proposed Federal standard is the severe limitation of its scope. Only employers in Standard Industrial Classification (SIC) Codes 20 - 39 (manufacturing) are to be covered by the standard. Fire Departments and other employers will have no obligation to identify the chemicals present in their workplace, assess the hazards of workplace substances, or provide identity and hazard information through Material Safety Data Sheets and training and education to employees, designated representatives or other downstream users (including downstream employers). The National AFL-CIO has calculated, using U.S. Department of Labor's Bureau of Labor Statistics employment statistics, that 60 million workers nationally, or about seventy five percent (75%) of all workers covered by the Occupational Safety and Health Act are excluded from the standard's scope. More importantly, from our perspective, public employers and employees are excluded from coverage, thus fire departments will not be able to obtain this vital information.

- In addition to the restrictions on the industries covered, the federal standard is further limited by exclusion of certain chemicals from coverage. Only chemicals which meet the employer's definition of "hazardous" under evaluation procedures devised by the employer are covered. Thus, what constitutes a "hazard" is left soley to employer utilizing evaluation procedures provide by OSHA. Specifically, in the final rule for the federal standard, two mandatory appendices are included to provide an employer guidance on what constitutes a "scientifically well-established hazard" so that this information is listed in warning information.

- One of the primary concerns of the federal standard is that of trade secrets. The federal legislation in effect in this area is to deny access to chemical identity information necessary to detect and prevent occupational disease, thus sacrificing the core objectives of the Occupational Safety and Health Act to the protection of unfounded trade secret claims. OSHA has bent over backwards to protect the trade secret claims of manufacturers without including a provision permitting workers to challenge specious trade secret claims be employers.

- The federal standard will attempt to preempt state and local right-to-know legislation in those states within the jurisdiction of Federal OSHA (non-state plan states). This will eliminate those laws in such states as Rhode Island, New Jersey, New York, Ohio, etc. where fire fighter efforts have been served as the driving force in securing such legislation. Those states operating their own safety and health programs will have six months to submit plans to OSHA seeking approval of a standard that is at least as effective as the federal standard. It is presently uncertain how OSHA react to more stringent legislation as provided by some states such as Minnesota which recently sent their legislation into OSHA for review and is prepared to take OSHA to court to assure that it maintains its present legislation.

The National AFL-CIO legal counsel has extensively reviewed the preemption issue. It is their opinion that a federal OSHA standard will only preempt state and local initiatives if:

1. the OSHA standard is stronger than state or local protections; or

2. the state laws are in direct conflict with provisions of the federal standard (i.e. have conflicting requirements).

The AFL-CIO believes, and we concur, that since the proposed OSHA standard will not cover many industrial sectors, and will not at all cover the public sector, it is unlikely it can preempt all state activity. As it presently looks, the final determination will only come from the courts, probably after the federal standard is issued. However, federal preemption should not be a barrier to any state or local initiatives.

PRESENT STATUS OF FEDERAL LEGISLATION

The AFL-CIO through the United Steelworkers of America have filed suit in the U.S. Court of Appeals for the Third Circuit (United Steelworkers of America v. Thorne G. Auchter (No. 83-3554). The IAFF is also preparing to join with the Steelworkers and other International Unions, challenging the limited coverage under the standard, for including overly protective trade secret provisions, and for contending that the federal rule pre-empts state right-to-know laws, even where a state rule may be more stringent than the federal legislation. Additionally, three states--Connecticut, New Jersey, and New York--jointly challenged OSHA and filed as intervenors in the Steelworkers suit. Additionally, New York filed a separate suit in the U.S. Court of Appeals for the Second Court.

STRATEGY

Irregardless of the above cited litigation, the IAFF and our affiliates must continue to fight for right-to-know initiatives at the state and local levels. Of key importance to the IAFF is the issues of fire department inclusion in any worker right to know legislation, the broadest possible scope of toxic and hazardous substances and trade secret provisions that never outweigh the need to protect workers from hazards to their health. The following minimal model sections should be considered in attempts at drafting or in reviewing State and Local right to know legislation.

FIRE SERVICE RIGHT-TO-KNOW PROVISIONS

This particular section, is most important for our concerns and we have used it in many state and city legislative actions.

(A) An employer shall provide to the person responsible for the administration and direction of a fire department in a county, municipality, or political subdivision, including a fire chief or fire administrator, or that person's designee:

(1) A list of work areas, sufficiently identified by name and location, where hazardous or toxic substances are present, containing the chemical and common name of each substance regularly present; and

(2) Upon request, material safety data sheets for each hazardous or toxic substance included in this list.

(B) The person responsible for the administration and direction of a fire department in a county, municipality, or political subdivision, including a fire chief or fire administrator, or that person's designee shall maintain the information provided by the employer under subsection (a)(1) of this section and shall provide copies of this information:

(1) To the fire suppression companies primarily responsible for fire suppression at the workplaces within their jurisdiction;

(2) To fire inspection divisions within the same jurisdiction; and

(3) Upon request, to any fire department employee or a representative of fire department employees.

SCOPE OF TOXIC AND HAZARDOUS MATERIALS

We are also sure that industry attempts will be made to have the determination of toxic substances weakened. As we discussed, the IAFF believes that the latest Current File of the National Institute for Occupational Safety and Health (NIOSH), Registry of Toxic Effects of Chemical Substances, should be utilized instead of the OSHA 29CFR 1910.1000 Table Z. The OSHA "Z List" (as it is referred) was adopted from the American Conference of Governmental Industrial Hygienists' (neither a part of nor an official government agency) TLVs: Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment. This list provides allowable airborne concentrations of substances and represents conditions under which it is believed that nearly all workers may be repeatedly exposed day after day without adverse effect. Unfortunately, the list essentially addresses the acute effects of exposure. For many of the approximately 400 chemical substances included in Table Z-1, the limits placed on worker exposure fail to take into account information developed within the last 10 to 15 years linking the substances to cancer, birth defects and chronic diseases which occur over a period of several years' exposure.

The NIOSH list is not a "nonenforceable research document which simply catalogs" as many would hope you to believe. The NIOSH Registry of Toxic Effects of Chemical Substances (RTECS), is a comprehensive publication that provides basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. This registry is compiled by NIOSH under the direction of the U.S. Congress (Section 20 (a)(6) of the U.S. Occupational Safety and Health Act of 1970) and is the most comprehensive listing of chemicals for which health hazard information is available. The list is widely available in printed versions, microfilm, and in computer accessible forms. Hence, the NIOSH RTECS has the three advantages of (1) applying the right-to-know provisions to virtually all substances for which there is reported evidence of toxicity, (2) providing a base of chemical hazards which is updated annually without the need for further action by the state government, and (3) providing employers with a single, inexpensive source to aid in determining what is expected of them.

TRADE SECRET PROVISIONS

The trade secret provisions should never impede the protection of a workers health and safety. The following minimal provisions should be considered:

(A) Subject to the provisions of subsections (B) and (C) of this section, an employer, chemical manufacturer, or distributor may withhold from a purchaser the precise chemical name of a hazardous or toxic substance if:

(1) The employer, chemical manufacturer, or distributor provides written substantiation of the trade secret to the purchaser within 30 days after asserting the trade secret claim:

(2) The substance is not a carcinogen, mutagen, or reproductive toxin; and

(3) The substance would not cause significant material impairment of health.

(B) An employer, chemical manufacturer, or distributor shall provide to the purchaser:

(1) An identification of the chemical by generic chemical classification that would permit independent toxicological evaluation by a health professional; and

(2) All information required by this section other than the precise chemical name.

(C) The information withheld under subsection (A) of this section shall be provided to:

(1) A physician who states in writing that a patient's health problems may be the result of occupational exposure;

(2) A physician who in an emergency situation requests the information; or

(3) A health professional, including an industrial hygienist, toxicologist, or physician who states in writing that the information is needed to evaluate potential health problems from actual exposure.

(D) For any substance regulated by subsection (A) of this section, the material safety data sheet shall include:

(1) An indication of which category of information is being withheld on trade secret grounds;

(2) The name of the manufacturer and

(3) An emergency telephone number where information could be obtained under subsection (C) of this section.

DEVELOPMENT OF CHEMICAL LISTS AND INFORMATION

The requirement for the development of material safety data sheets and other hazard information must be placed primarily on the chemical manufacturer, even if they are out of state. Manufacturers, not employers, possess this information and are in the best position to develop safety data sheets. Mechanisms must be in placed to provide legal recourse to automatically obtain the information required by the legislation.

ADMINISTRATION

In developing and revamping right-to-know legislation, one should consider and develop the administrative and enforcement mechanisms for the legislation carefully. State or local agencies should be picked with expertise and a track record for action. It will do little good to work for the passage of legislation that will not be enforced.

IAFF ASSISTANCE

The International Association of Fire Fighters has offered advise, counsel, expert witnesses, and testimony to many of our State and Local affiliates on right-to-know legislation, and stands ready to assist our other affiliates without such legislation gain protection for fire fighters through this issue--THE RIGHT-TO-KNOW.

FOR FURTHER INFORMATION CONTACT

Richard M. Duffy
Health & Safety Coordinator
International Association of Fire Fighters
1750 New York Avenue, N.W.
Washington, D.C 20006
(202) 872-8484

APPENDIX G

SESSION 19 83

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A HAZARDOUS SUBSTANCES RIGHT-TO-KNOW STUDY COMMISSION.

Whereas, the dangers associated with exposure to hazardous substances are real and growing; and

Whereas, it is in the public interest for workers, homeowners, and emergency personnel to have a right-to-know concerning the presence, use, and storage of such substances; and

Whereas, right-to-know issues are exceedingly complex and require within an atmosphere of maximum administrative flexibility careful policy decisions; and

Whereas, progress has been made on this issue but much remains to be done;

The General Assembly of North Carolina enacts:

Section 1. The Study authorized by Chapter 905, Section 21 (1983 S.L.) is terminated and is replaced by the Hazardous Substances Right-To-Know Study Commission. It shall consist of 10 members, five Representatives to be appointed by the Speaker of the House of Representatives and five Senators by the President of the Senate. A vacancy in membership shall be filled by the appointing authority making the initial appointment.

Sec. 2. It shall be the duty of the Commission to study the issue of information access about hazardous substances in the workplace by workers, citizens, emergency management personnel,

and environmental management personnel. The Commission may consider bills previously introduced on the subject together with pertinent legislative reports and records. The Commission is charged to consider the most appropriate means to extend right-to-know coverage beyond federally designated categories.

Sec. 3. The Commission shall report to the 1985 Session of the General Assembly no later than January 31, 1985.

Sec. 4. The President of the Senate and the Speaker of the House of Representatives shall appoint the cochairmen of the Commission from their respective appointees. The Commission shall meet at such times and places as the cochairmen shall designate. The facilities of the State Legislative Building and the Legislative Office Building shall be available to the Commission, subject to the approval of the Legislative Services Commission. The members of the Commission shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1.

Sec. 5. The Commission may solicit, employ, or contract for technical assistance and clerical assistance, and may purchase or contract for the materials and services it needs. Subject to the approval of the Legislative Services Commission, the staff resources of the Legislative Services Commission shall be available to this Commission without cost except for travel, subsistence, supplies, and materials.

Sec. 6. There is hereby appropriated from the General Fund to the General Assembly the sum of ten thousand dollars ($10,000) for the fiscal year 1984-85 to carry out the purposes of the Hazardous Substances Right-to-Know Study Commission.

Sec. 7. Sections 1 through 5 of this act are effective upon ratification. Section 6 shall become effective on July 1, 1984.

SESSION 19 83 Short Title: Study Right-to-Know Issues

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENTS OF LABOR, CRIME CONTROL AND PUBLIC SAFETY, NATURAL RESOURCES AND COMMUNITY DEVELOPMENT, AND HUMAN RESOURCES TO STUDY ASPECTS OF THE HAZARDOUS SUBSTANCES RIGHT-TO-KNOW ISSUE.

The General Assembly of North Carolina enacts:

Section 1. The Department of Crime Control and Public Safety is directed to study the needs and requirements of emergency personnel for information concerning hazardous chemical substances in the workplaces of employers and to report findings and proposals to the General Assembly no later than December 1, 1984.

Sec. 2. The Department of Labor, the Department of Human Resources, and the Department of Natural Resources and Community Development are directed to study the various definitions of hazardous chemical substances for the purpose of arriving at an appropriate definition concerning their presence in and from the workplaces of employers. The Departments are to report findings and proposals to the General Assembly no later than December 1, 1984.

Sec. 3. This act is effective upon ratification.