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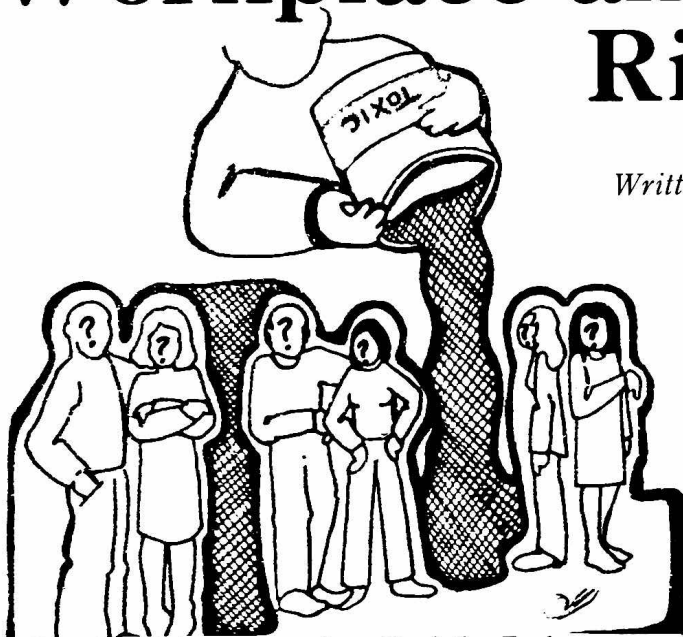
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Workplace and Community Right-to-Know

Written by David Stead, Ecology Center Issues Coordinator



The Board of Directors and staff of the Ecology Center have recently endorsed the concept that all members of the community and workplace have a fundamental right to know about the types and use of toxic and hazardous substances to which they are or may be exposed. The right to know is an important environmental and social issue which has been brought to light by the recent Bhopal disaster. This incident drives home the frightening fact that industrial and commercial workers are confronted with daily and direct exposure to highly concentrated chemicals, and an increasing number of community residents are potential victims of exposure to hazardous substances released or discharged by industrial and commercial activities or accidents. A study conducted by the National Institute for Occupational Safety and Health Administration (NIOSH) has estimated that as many as 100,000 people die each year from workplace exposure to hazardous substances and from resulting occupational diseases. However, the Federal Occupational Safety and Health Administration (OSHA) itself proposed that only 54% of chemically-related occupational illnesses occurred in the chemical manufacturing sector in 1981.

This estimation is taken from the final rule for the regulation of hazardous substances in the workplace promulgated by the OSHA, which fails to:

- * adequately address the crucial issue of chemical identification;
- * require adequate informational resources to employees for the safe handling of hazardous substances;
- * provide information to the community on hazardous substances in the event of an accidental spill, fire, leak, or natural catastrophe; and
- * provide any protection to employees other than the manufacturing and laboratory employees in SIC codes 20-39.

The OSHA standard excludes approximately 75% of the workforce including all public employees in transportation, utilities, construction, health care, and other occupations where chemicals are used.

Despite its obvious inadequacies, the Reagan Administration believes that this standard balances safety with manufacturers' concerns about chemical secrets, and that it would not affect community components in local laws. The Chemical Manufacturers Association and the State Chamber of Commerce support the adoption of the federal standard on the grounds that it pre-empts state and local laws. The Federal Third Circuit Court of Appeals recently ruled, however, that the scope of the federal standard should be expanded to include all employees that may be exposed to hazardous substances. The Court also ruled that the procedures for determining trade secret status for a substance were not adequate and would have to be rewritten.

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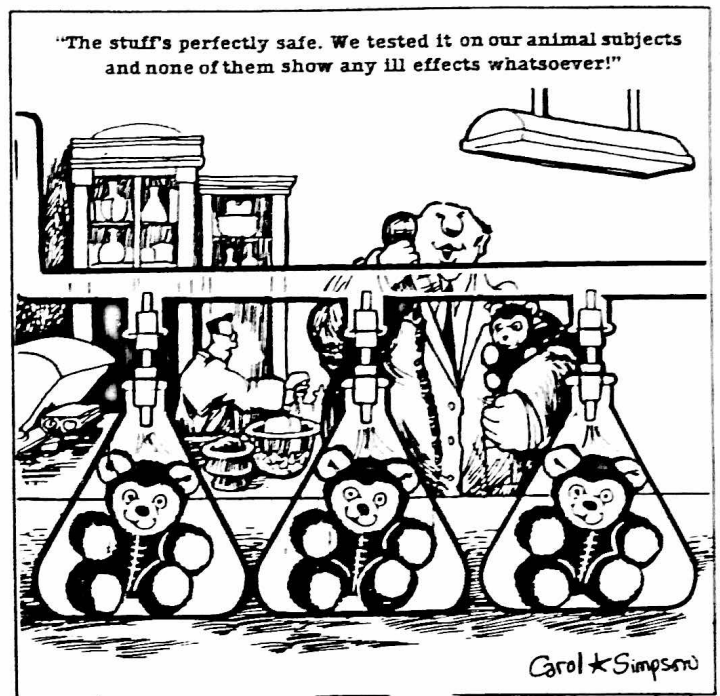
HOUSE BILL 4111

Responding to the federal standard, House Bill 4111, known as the Right-to-Know legislation, was introduced in the Michigan House of Representatives on February 6, 1985, by Representative Juanita Watkins (D-Detroit). The bill provides for community and worker access to information on hazardous substances through container labeling, Material Safety Data Sheets (MSDS), and employee training programs. The bill adopts the hazard communication standard promulgated by OSHA and addresses several deficiencies in the OSHA standard. The Ecology Center has been actively involved with developing strategies, presenting testimony, and lobbying individual representatives to insure the passage of this legislation. The bill was voted out of the democratic-controlled Labor Committee on May 29 by a 10-8 vote split along party lines.

On request of Governor Blanchard, a statement supporting the legislation was sent to Representative Watkins from the Directors of the Department of Commerce, Public Health, Labor, Natural Resources, and Agriculture. The Governor himself, however, is reluctant to become involved in the resolution of differences between labor and industrial manufacturers and businesses in the state concerning this piece of legislation. The current legislation is seen as a compromise by a right-to-know coalition comprised of environmental, labor, professional, and citizen organizations. The Ecology Center, the Michigan Environmental Council (MEC), the AFL-CIO, the UAW, firefighters union, and several health professional organizations have endorsed the legislation.

The risk of an exposure to a hazardous substance increases when maintenance personnel and employees receive inadequate training and information to respond to the use of hazardous substances, as new substances are introduced into the workplace, as safety procedures become outdated, and as industrial plants age without proper maintenance. The release of contaminants in the workplace environment through spills, dumping, discharges, or final products use have made it inevitable that community members would join with workers to demand the right to know. An informed citizenry is necessary in democratic societies to make the decisions required to maintain governmental integrity and legitimacy. It seems ironic that individuals entrusted with the means to control their country are not given the means to control the conditions necessary to insure their own health and well-being.

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The determination of potential acute and chronic health effects of hazardous substances in the workplace and the community is complicated by the fact that many of the effects or signs of symptoms occur in non-occupational populations, so that the effects of exposure are difficult to separate from normally occurring illnesses. In addition, most chemicals have not been adequately tested to determine their health hazard potential, and data do not exist to substantiate these effects. Chronic effects which generally occur as a result of long-term exposure often are not evident until many years later. If detailed records are kept, it will be easier to link health diseases to their occupational origins.

Aside from an increase in paperwork, industry is concerned about the lack of uniformity of requirements among various states and municipalities that enact right-to-know laws. Chemical industry officials contend that new regulations would increase business costs without improving safety. While industry does not object to limited disclosure, it fears that the outcome of greater disclosure will be an increase in the filing of compensation suits alleging health problems caused by chemical exposure. Employers seldom bear the cost of chronic occupational disease, therefore there is little incentive to control the workplace environment. However, if chemical manufacturers and other employers are held responsible for a larger percentage of workers' compensation, perhaps they will find it in their best interest to protect the health of their employees.

The quality of a hazard communication program is largely dependent upon the adequacy and accuracy of the hazard determination. The current OSHA standard requires information to be provided on approximately 600 chemicals. It further requires chemical manufacturers and importers to evaluate new chemicals produced in their workplaces or imported to them to

determine if they are hazardous. Chemical manufacturers, importers, and employers evaluating chemicals are not required to follow any specific methods for determining hazards, a process that fails to assure the protection of the public health and welfare. HB 4111 gives the Department of Public Health the authority to use the criteria of the OSHA standard to determine whether a substance should be categorized as hazardous and to add chemicals to the list of regulated substances. These provisions serve to limit the manufacturer's discretion and inherent bias in making a hazardous determination and establishes objectivity and uniformity in the standards.

Industry executives are legitimately concerned that the true beneficiaries of increased disclosure of alleged trade secrets will not be the general public but will be a company's competitors. The current OSHA standard provides no guidelines for determining trade secret claims and allows manufacturers to withhold any chemical identity as a trade secret, provided that the claim can be supported by HB 4111, that it provides criteria for the Department of Public Health for determining trade secrets, and that it requires the generic chemical classification to be included on the MSDS. In addition, the label must indicate that the specific identity is being withheld as a trade secret. A proposed amendment would prohibit chemicals to be withheld as a trade secret that are known carcinogens, mutagens, reproductive toxins, lung irritants, or sensitizers.

Workers may refuse to perform a job assignment which they reasonably believe will result in death or serious physical injury under the federal and state OSHA regulations. However, this right does not protect workers that are asked to handle unidentified materials. HB 4111 protects employees that refuse to handle containers which are not in compliance with the labeling and MSDS provisions of the OSHA standard.

Local officials are faced with impossible decisions about the threat to their communities relating to the use, storage, and disposal of hazardous substances. Adequate information on the increasing numbers and amounts of chemicals in common use must be available to protect the health and safety of the public. HB 4111 allows the provision of an inventory of hazardous substances to local fire departments, county health officials, or others, upon request to the Department of Public Health. Local officials may further request a MSDS sheet for a specific hazardous substance which is included in the inventory. The bill would allow authorized employee representatives, including medical and occupational health services, to receive information if the representative is in compliance with the requirements that the information remain confidential. This knowledge will allow employees and the community to take appropriate protective measures to reduce the possibility of exposure to toxic and hazardous substances, which will thereby result in reduced health costs, workers compensation costs, and environmental damage and impairment.

LOCAL REGULATION

The chances of the state right-to-know legislation becoming a law are not good considering the anti-regulatory climate in the state and country. Several communities and counties throughout the state have enacted or are in the process of developing local right-to-know laws in response to the lack of action in Lansing, with MacComb County enacting the first local right-to-know regulation. The Michigan State Chamber of Commerce has filed a civil action suit against the regulation based on the federal pre-emption of state and local law, due process, unconstitutional taking of property, and several other counts.

A Washtenaw County Right-to-Know Ordinance has been developed through the efforts of the County Health Department and the Right-to-Know task force. The Ecology Center Board of Directors and staff have extensively reviewed and commented on the regulation and endorse its adoption. A public hearing will be held before the County Commissioners vote on the proposed regulation, and the citizens of Washtenaw County must be prepared to urge the Commissioners' support in the face of certain efforts to prevent its enactment by the Chemical Manufacturers and the State Chamber of Commerce.

The scope and content of this regulation are similar to the legislation being considered at the state level. A major objective of the regulation is to improve the County's control and ability to respond to an emergency related to hazardous substances within Washtenaw County. The regulation contains several provisions that are improvements on the state legislation. These include:

- * the provision of an additional status sheet to be filed with the MSDS which will contain information on personnel for emergency notification;
- * manifests for storage and disposal;
- * a description of the storage and work area containing the substance; and,
- * the authority for the County Health Officer to issue citations for violations of the provisions of the regulations.

The cost of implementing the right-to-know laws is a small price to pay for the health of the environment and the welfare of the citizens of the State of Michigan. State and local governments must act in view of the inadequate provisions of the federal standard concerning the right to know about hazardous substances used in the workplace and in their communities. Eighteen states have enacted hazard communication legislation which goes beyond the OSHA standard. It is the responsibility of our public officials to enact legislation and regulatory mechanisms to protect the public health from exposure to toxic and hazardous substances.

WE DEMAND THE RIGHT TO KNOW!

by Ken Silver

chorus

What's in that business over there? WE DEMAND THE RIGHT TO KNOW! Is it a
 time bomb a - tick - in? Will it gas us or ex - plode? To
 protect us from death and disease we need the chem-i - cal i - den - ti - ties Of the
 stuff you're u - sing in that plant WE DE-MAND THE RIGHT TO KNOW! Now there's
 something that's a stirrin' a - cross this might-y land In
 places where the toxic threat has worked its e - vil hand folks are
 saying loud WE'VE HAD E - NOUGH, we're organized and we're getting tough On the
 companies who dump their stuff on our jobs and com - mun - i - ties Oh...



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