

# Rachel's Environment & Health News

## #42 - New Jersey Workers Gain Right To Refuse Tasks They Believe Are Hazardous Or Polluting September 13, 1987

New Jersey has passed a far-reaching law giving workers the right to refuse to participate in activities that the worker "reasonably believes" are "incompatible with a clear mandate of public policy concerning the public health, safety or welfare."

Over the years, many public policy statements by the U.S. Congress and by executive agencies within government have established clearly that death, disease and injury should be avoided on the job. Therefore, the law, though untested, on its face gives workers the right to refuse to allow themselves to be exposed to chemicals that they believe may be harmful, even though the chemicals do not violate any particular standard or regulation. According to the language of the law, the worker's "reasonable belief" that he or she is at risk gives him or her the right to refuse to participate.

Furthermore, public policy statements by Congress and by executive agencies have clearly established environmental protection as a national goal: polluting, degrading and damaging the natural environment run counter to America's established public policies.

Thus, from the language of the law, it appears that New Jersey workers can also refuse to participate in any activity that they reasonably believe would pollute or damage the natural environment.

S-1105, the "Conscientious Employee Protection Act" was passed in late May, 1986 and signed by Governor Thomas Kean shortly thereafter with no fanfare and little publicity. Yet the law gives New Jersey workers rights that workers elsewhere do not have.

Most of the law basically provides "whistle blower protection." The bulk of the language prevents any employer from retaliating against an employee who blows the whistle on illegal acts by the employer. Specifically, Section 3 of the law provides that an employer "shall not take any retaliatory action" [defined as "the discharge, suspension, or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment"] against any employee because the employee does any of the following:

"(a) discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of a law, or rule or regulation promulgated pursuant to law;

"(b) Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or rule or regulation promulgated pursuant to law by the employer; or

"(c) Objects to, or refuses to participate in any activity, policy, or practice which the employee reasonably believes:

"(1) is in violation of a law, or a rule or regulation promulgated pursuant to law;

"(2) is fraudulent or criminal; or

"(3) is incompatible with a clear mandate of public policy concerning the public health, safety and welfare."

On the face of it, this law gives workers the right to refuse polluting work, hazardous work and illegal or fraud-related work. There is no need for the worker to prove the existence of an imminent hazard: the worker simply has to "reasonably believe" that the work is dangerous, polluting, fraud-related or illegal.

Copies of S-1105 are available from the New Jersey Secretary of State, 125 West State Street, Trenton, NJ 08625; phone (609) 984-1900.

--Peter Montague

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### FEDERAL OSHA RIGHT-TO-KNOW RULE NOW WILL COVER MANY MORE WORKERS

The federal Occupational Safety and Health Administration (OSHA) on August 19 extended to "almost every workplace in the country" the Hazard Communication Standard, which is OSHA's "worker right to know" rule.

The old rule covered 14 million workers (employed in 300,000 shops), requiring employers to inform their workers about hazardous chemicals in the workplace and to label containers holding any of 2300 OSHA-listed hazardous chemicals. The revised rule adds another 18.5 million workers (in 3.5 million shops). The old rule covered only manufacturing jobs; the new rule covers the construction and transportation industries, service industries, plus wholesale and retail trades, so long as those workers are exposed to hazardous substances on the job.

Requirements of the new rule will be phased in and will become fully effective on May 20, 1988. OSHA estimates that the expanded coverage will prevent 4100 cancer deaths per year, cutting cancer deaths in the nonmanufacturing sector by 20%.

The revised rule is expected to preempt many state and local right-to-know laws. Issuance of the revised rule was required by a judge in response to a lawsuit originally filed by the United Steelworkers of America.

The revised rule appeared in the FEDERAL REGISTER August 24, 1987, pgs. 31851-31886. The entire law appears in 29 CFR [Code of Federal Regulations] Parts 1910, 1915, 1917, 1918, 1926, and 1928. For further information, contact Akio Konoshima, OSHA, Office of Information, Room N3647, 200 Constitution Ave., NW, Washington, DC 20210; phone (202) 523-8151.

--Peter Montague

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### EPA SENDS CONGRESS ITS PLAN FOR MANAGING INDOOR AIR POLLUTION

The Federal Environmental Protection Agency (EPA) has sent Congress an EPA INDOOR AIR QUALITY IMPLEMENTATION PLAN, including a separate Appendix called "Preliminary Indoor Air Pollution Information Assessment," which describes current knowledge of indoor air quality. In the Plan, EPA says how it intends to tackle the recently-recognized contamination of homes by hazardous chemicals oozing out of building materials and consumer products. The Plan is available free from: EPA Public Information Center, 401 M Street, SW, Washington, DC 20460; phone (202) 3822080. Be sure to request the separate Appendix.

--Peter Montague

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Descriptor terms: whistle blowing; whistle blowers; right to act; occupational safety and health; conscientious employee protection act; nj; laws; indoor air pollution; epa; planning;