

the LOUISVILLE
CHARTER

**BACKGROUND PAPER FOR REFORM NO. 3
OF THE LOUISVILLE CHARTER FOR SAFER CHEMICALS**

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SEPTEMBER 2005

Reform No. 3 of the Louisville Charter for Safer Chemicals reads:

**GIVE THE PUBLIC AND WORKERS THE FULL RIGHT-TO-KNOW
AND PARTICIPATE**

Give the Public and Workers the Full Right-to-Know and Participate:

Provide meaningful involvement for the public and workers in decisions on chemicals. Label products that contain chemicals, list quantities of chemicals produced, used, released, and exported, and provide public/worker access to chemical hazard data and government decisions.

ABSTRACT

Industrial toxic chemicals are often introduced into our environment without the knowledge or consent of those harmed and exposed. Limited disclosure laws and practices currently inform workers and communities of some toxic chemical sources and exposures, but these laws amount to islands of knowledge amid seas of ignorance. Systematic disclosure of use, release, and exposure to industrial toxic chemicals and other environmental health hazards helps people protect themselves, improves oversight of government and industry decisions, and encourages development of safer alternatives.

The means by which industries and governments provide information about environmental health hazards must be carefully constructed. Effective disclosure must provide both immediate and well-organized public access on both sides of the digital divide. Selected initiatives demonstrate the value, diversity, and limitations of current disclosure policies. Closely linked with our right-to-know is our essential right-to-participate in decisions about environmental hazards that affect our lives.

Problem Statement—Why Honor Our “Right-to Know”?

- We are exposed to toxic chemicals in our air, water, land, food, consumer products, homes, schools, and places of work and recreation.
- Over 100,000 chemicals are used in commerce, most of which have not been fully studied to determine potential short and long-term harm to human health and the environment.
- Disclosing environmental health hazards spurs development and marketing of safer alternatives.
- Right-to-know information engages more people, and involves different sets of people, in actions to improve our health and safety.
- Meaningful discussion of hazardous chemical science and policy depends on access to relevant data.
- Advocating right-to-know helps people build coalitions, create winning campaigns, focus on health, identify safer solutions, and communicate simple ideas to overcome ideological opposition and polluter’s money and influence.

What Do We Mean by “Right-to-Know”?

In this paper, our “right-to-know” refers to routine, systematic, mandatory, public reporting of toxic chemicals or other environmental health hazards, rather than access to government documents through the Freedom of Information Act.

How Could This Work?

What technical features make community right-to-know laws useful?

It is important to consider reporting

and notification mechanisms in the *design* of any right-to-know initiative. One must consider who reports what to whom, when, and in what format. Common attributes of effective reporting include:

- *Design for data management* – Standard, uniform reporting makes possible well-organized data systems. A well-organized database (distributed or centralized) is more powerful than information held in paper files or fragmented databases. For example, organized information enables people to identify top pollution sources, rank states, or compare facilities across an entire industry sector.

- *Dual notification* – Right-to-know laws can include both national electronic information (well-organized databases) and local direct notification (e.g., warning signs or inserts in water bills). A product label is a direct, local notification (it’s in your hand at the store) while an online database is electronic (it lets you access information from a desktop computer). Dual notification enables communication with both those who have computers and those who do not.

- *Standardized and specific reporting* – Successful right-to-know laws have standard reporting elements, such as facility identification, reporting periods, and units of measure. Standard reporting elements enable people to retrieve health hazard information for a specific location, product, or substance, as well as across a company or industry. Effective reporting is facility-specific, product-specific, substance-specific, “multi-media” (land, air, and water), publicly accessible,

periodic, and enforceable – and carefully limits claims of trade secrecy.

- *Electronic reporting* – Electronic reporting enables the power of well-organized databases, reduces transcription errors, saves money, helps overcome intergovernmental barriers to sharing information, and enables the use of “smart” reporting software that can flag and prevent potential reporting errors (similar to electronic tax reporting software). Electronic information flows more readily than information held in paper files, including through intermediaries to those who do not have computers.

- *Error correction* – Effective information systems have “feedback loops” for reporting and fixing data errors. Error correction in public databases improves data quality and reduces problems associated with inaccurate information.

What are some notable right-to-know initiatives, their features and limitations?

The following are *selected* initiatives that communicate environmental hazards to people. This selection is intended to illustrate and inspire – realistically – rather than to present a comprehensive list. Other significant right-to-know programs are not listed here (such as international right-to-know, product labeling, California’s Proposition 65 law, and reporting on chemical storage under the Emergency Planning and Community Right-to-Know Act).

- **Lead Paint Right-to-Know** – *Federal law recognizes our right-to-know about lead paint in houses and apart-*

ments. Under the Lead-Based Paint Hazard Reduction Act, sellers and landlords must inform buyers and renters about *known* lead paint hazards in property we rent or buy. *Limitations:* the law does not require landlords to become informed about lead paint hazards, only to communicate about lead paint they are aware of – the ‘don’t know loophole.’

- **Beach Pollution Right-to-Know** – The Beaches Environmental Assessment and Coastal Health Act (BEACH Act) requires states and EPA to test coastal waters and notify people when there is too much sewage or pollution for swimming and recreation. This law requires both posted warning signs at the beach and a national database of beach closures. *Limitations:* EPA’s national data map lists some beach closures but is cumbersome and lacks basic sampling data for many beaches.

- **Toxics Release Inventory (TRI)** – The nation’s first on-line federal environmental database provides well-organized public information on industrial chemical waste and pollution. Several countries have or are developing TRI equivalent systems (Canada, U.K, Japan, Mexico, and the European Union). TRI information is facility specific, chemical specific, multimedia (land, air, water), and designed for data management. Trade secrecy claims are carefully limited. *Limitations:* Many chemicals are not covered; small firms and some non-manufacturers are exempt (e.g., oil wells, medical waste incinerators, and agricultural producers); TRI does not link emissions and products, and; TRI does not provide sufficient information for pollution prevention: there is no materials accounting or information on waste per

unit of product – it’s akin to figuring out how a car works by examining the tailpipe.

- **Materials Accounting** – Two states, Massachusetts and New Jersey, require chemical industries to compute and report their *use* (in addition to release) of toxic chemicals. This “materials accounting” works with planning and technical assistance in pollution prevention programs. *Limitations:* Without technical assistance, it is challenging for citizens and communities to use the data to work with industry and prevent pollution.

- **Worker Right-to-Know** – The Occupational Safety and Health Administration requires, through the Hazard Communication Standard, that employers provide access to Material Safety Data Sheets (MSDS) for chemicals in the workplace, train workers on the chemical hazards they face, and label containers of hazardous chemicals. *Limitations:* Employers are not required to provide workers with individual copies of MSDS and workers often feel intimidated to request them; worker training on chemical hazards is a one-shot deal and is not required to be repeated; MSDS are often incomplete or contain inaccurate or conflicting information; MSDS are not required to reveal environmental effects and chemical reactions; MSDS have no “plain language” requirement and are often written in technical language that is hard for workers to interpret; MSDS are not required to undergo certification or third party review; MSDS are often not available in languages other than English; and, some employers are exempt from these requirements (small facilities, agricultural operations using pesticides, and public service sector facilities).

- **Risk Management Plans** – The Clean Air Act requires large industrial users of certain extremely hazardous chemicals to determine what could happen in a chemical spill or fire, from the most-likely accident to a worst-case scenario. These scenarios are part of larger plans that save lives, protect property, and prevent pollution. This planning process puts initial responsibility for public safety hazard assessment on industries that bring chemicals into communities. *Limitations:* there is no requirement that industries review or use safer chemicals and processes that can reduce or eliminate dangers to workers and communities. Off-site consequences (worst-case release) information is now available to the public only through designated federal reading rooms.

- **Pesticide Exports** – Exporters ship to other countries tons of pesticides that are highly toxic, banned, or restricted in the United States. However, no U.S. government agency collects, maintains, and makes publicly available precise, up-to-date data regarding production, trade, and use of pesticides. The Foundation for Advancements in Science and Education does compile and provide certain data from commercial transcriptions. *Limitations:* no agency has a mandate to collect comprehensive export data, automated reporting of certain exports only recently became mandatory (and does not include pesticide shipments), and there are serious gaps in public record data regarding the identities of substances shipped, quantities exported, names of shippers, and destination countries.

- **Drinking Water Right-to-Know** – The Safe Drinking Water Act establishes the public’s right-to-know about

contaminants in drinking water through “consumer confidence reports” that water utilities provide to customers. The law establishes “dual reporting” (local-national); water utilities notify people about contaminants through direct inserts in water bills as well as through a national drinking water contaminant database maintained online by EPA. *Limitations:* Consumer right-to-know reports tend to bury essential information. EPA should simplify these reports and require up front information on the health implications of contaminants. EPA has only begun to produce incomplete and somewhat unwieldy national public databases from selected drinking water monitoring information. EPA should require labs and utilities to report information from tests and consumer right-to-know reports in a format that the agency can immediately upload into the national database.

• **High Production Volume Chemical Challenge Program** – Under this initiative, the chemical industry “voluntarily” develops screening-level health hazard data for about 2,200 industrial chemicals produced or imported at over one million pounds per year – the so-called “high production volume” chemicals. Most high volume chemicals have not been studied to determine potential impacts on health and the environment. This program responds to public pressure from Environmental Defense and EPA’s threat to require the testing (under the Toxic Substances Control Act, section 4). *Limitations:* This program will provide only screening-level data and virtually no use or exposure information, which is insufficient to permit more than cursory evaluations of health and environmental effects. The program also

does not address the far greater number of chemicals produced and used in quantities of less than one million pounds per year.

• **California Pesticide Use Reporting** – In California, agricultural users of pesticides must file reports with the local County Agricultural Commissioner disclosing the names of the pesticides used, as well as the date, amount and location of application. These records are accessible to the public and can be used to correlate adverse health or environmental effects with pesticide exposures. *Limitations:* few states require agricultural applicators to report pesticide use, and county data is difficult to utilize to determine statewide trends.

• **New York Pesticide Reporting** – New York has pesticide purchase and use reporting by zip code. As a result, New Yorkers now know that tremendous quantities of pesticides are used routinely in New York State, in rural, urban and suburban areas. New York also has pesticide neighbor notification, offering local control to counties to require: pesticide applicators provide adjacent property owners 48 hour notice to neighbors for certain commercial lawn applications; posting of visual notification markers for most residential lawn applications; notice to occupants of multiple dwellings and other occupied structures; and information signs be posted by retailers who sell general use lawn pesticides. *Limitations:* Each of the 65 counties in New York must opt in separately, and cannot tailor the policy for their county, but must adopt it as is, or not at all.

• **“Toddler’s Right-to-Know”** – This approach adds a low-cost bitter tasting chemical to ethylene glycol

antifreeze so that children and animals do not get sick by ingesting the sweet-tasting antifreeze. California and Oregon have such requirements, as do some local communities elsewhere. Proposed federal legislation would require manufacturers to put an inexpensive bitter agent in antifreeze nationwide. *Limitation:* Ingesting even the small amount required to register the bitter taste would constitute negative exposure, although at a sub-lethal level.

• **Citizen Monitoring** – A variety of direct approaches enable people to generate information on environmental problems and pollution, including bucket brigade air monitors, pesticide drift catchers, cancer cluster surveys, and chemical body burden measurements. These methods enable people to spotlight problems and propose solutions in the news media and before policy makers. *Limitations:* these methods can be resource intensive, may be dismissed as unscientific, do not generally provide comprehensive information or direct correlations to harm, do not provide penalties for pollution, and leave communities facing corporate influence to resist regulations and safety changes.

For many of these and other right-to-know issues short fact sheets are at www.crtk.org.

What are some common arguments against right-to-know and responses to these arguments?

Some common arguments and responses against improved worker and community right-to-know include the following.

• *Right-to-know laws are a reporting burden on industry* – Disclosing information is the *least* burdensome way of

regulating chemical hazards. Right-to-know laws require businesses to understand and convey essential information without which they cannot control and prevent pollution, including knowledge of the hazardous properties of chemicals, what chemicals are brought on-site, where and why wastes are created, and how efficiently chemicals are used.

- *Right-to-know laws reveal trade secrets* – Right-to-know laws can easily protect legitimate trade secrets by using simple, common sense restrictions. For example, to be deemed a trade secret under the Toxics Release Inventory, information cannot already be public, be required under another law, or be readily discoverable through reverse engineering. Using these simple restrictions less than *one-tenth of one percent* of covered facilities ever make a trade secrecy claim under this program.

- *Right-to-know laws inform terrorists* – For most right-to-know areas, such as product labeling, chemical testing, and reporting routine releases, this argument is not relevant. For Bhopal-type release scenarios, secrecy reduces pressure to fix problems. Safer chemicals and processes can often reduce or eliminate chemical hazards, and adequate site security should address hazards that cannot be reduced or eliminated. (There are *no* federal security standards for chemical plants!) Withholding information can endanger the public, workers, police and fire fighters, and impedes public safety oversight. Secrecy does not mean safety. Secrecy is not *possible*. It is simply not possible to hide a 90-ton chemical rail car. In general, people have a right-to-know if a chemical plant can harm their family with a chemical release,

but details of how to cause such a release at a specific facility need not be made public. Eliminating unnecessary hazards and fixing vulnerabilities is better than trying and failing to hide them.

- *Only perfect data should be released* – The best way to improve data quality is to release data and use it (provided there are effective means to correct errors).

- *Right-to-know laws are not strong enough to solve problems* – Right-to-know laws are just one way of protecting health and environment, beyond regulations and other strategies. Of course people want to fix problems, not just know about them.

- *People will draw false conclusions with right-to-know data* – People have a right to draw their own conclusions. Industry and government often make false assurances of safety in the absence of information. Knowledge of hazards improves decision-making by government, industry, and the public.

- *Right-to-know laws only cause unnecessary worry and fear* – This view is pejorative. People have a right and a responsibility to make informed decisions. With accurate information, people can inform themselves about hazards and steps to protect themselves and their families.

How can the “Right to Participate” help protect community and worker health, safety, and the environment?

While the right-to-know has proved to be of great value to grassroots organizations campaigning against toxic hazards, it does not in itself clean-up dumpsites, plan for emergencies, or develop safer alternatives to toxic materials. To secure actual clean-up and prevention, workers and communities

need greater rights to be involved in decisions that affect their health, safety, and environment. These opportunities are, overall, the “right to participate.”

Participation includes traditional and innovative means of engaging communities and workers in decisions about environmental¹ health hazards and solutions. At the broadest level, these means include voting, freedom of speech and assembly, literacy, and the right to petition for a redress of grievances. They include service on local boards and commissions, citizen lobbying, notice and comment on government regulations, and the use of initiatives and referendums. In the workplace, participation includes training on health hazards and safer alternatives, labor-management committees, rights to organize, whistleblower protection, access to technical expertise, and opportunities to seek and accompany both occupational and environmental health inspections.

For example, under the Occupational Safety and Health Act (OSHA), workers have the right to request a workplace inspection and to participate in the inspection process, just as the company management has this right. However, there are only enough OSHA inspectors to inspect each workplace about once every 80 years! Government standards, inspection staff, and funding can never be sufficient to prevent the wide range of hazards faced by workers and communities from hundreds of thousands of facilities that make up the economy. More direct means are needed to involve affected workers in identifying problems, developing safer solutions, and enforcing legal standards *before* accidents or pollution occur.

Based on this analysis, advocates are proposing various specific rights to participate (also called the “right-to-act”) that are based upon community and worker empowerment and that avoid or complement traditional government regulation. This non-bureaucratic approach does not require expansion of government or major tax money. For example, the right to participate may include labor-management safety and health committees that have the authority to:

- Survey potential hazards;
- Preclude use of certain toxic substances;
- Shut down imminently dangerous operations;
- Investigate complaints and document any corrective actions;
- Require adequate safety training and protective processes and equipment;
- Access health, monitoring, and process records that have a bearing on health and safety; and
- Review and approve hazardous technologies, chemicals, and processes before use.

Such rights have precedent in many local union collective bargaining agreements. To be effective, labor-management committees require balanced representation and access to technical experts in health, safety, and safer design.

Labor-management committees also benefit from mandatory comprehensive training (beyond current OSHA training), including training on the assessment of safer alternatives. Training teaches workers to be proactive on health and safety, and not just recipients of management initiatives. Training makes participants more knowledgeable, facilitating the resolution of problems.

Advocates have also supported mechanisms of greater community participation in regulatory decision-making. These include public interest appointments to independent advisory and oversight boards, as well as new methods for representing the public interest in actual deliberation of regulatory assessments. Enabling this kind of participation generally requires public resources for building capacity, travel to meetings, and obtaining tech-

nical expertise (e.g., capacity grants). Critics have also suggested closing avenues of undue corporate influence in the regulatory process. While corporations have monetary interests in regulatory decisions, these interests are not on a par with citizens’ rights to participate in decisions that affect public health and welfare.

Participation includes a variety of means to identify and change factors that affect environmental health and safety; it means being fully engaged and involved in decision-making, not just being informed after the fact. Even under the best of circumstances there are nowhere near enough government inspectors to provide oversight at all of the facilities that pose environmental health hazards. For many problems, the most practical solution may be greater local rights to be involved in decisions that affect our lives.

ENDNOTES

- 1 The term “environmental” is used here to indicate both indoor and outdoor areas, including the workplace, residential, recreational, commercial, public, and other areas. Hazardous substances in the workplace often directly affect not only workers but also their families and communities.