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Right to Know Legislation in Minnesota

LEO UZYCH*

ABSTRACT -- In June 1983, Minnesota approved a right to know law pertaining to the disclosure of information to workers about chemical hazards emanating from the workplace. A federal hazard communication disseminated in November 1983 may affect Minnesota's right to know law.

Introduction

Legislation enacted by the state of Minnesota in 1983 establishes an employee's right to know about chemical hazards emanating from the workplace (1). Standards implementing this right to know legislation were subsequently disseminated in March 1984 (2). A hazard communication promulgated by the federal Occupational Safety and Health Administration (OSHA) in November 1983 may affect Minnesota's right to know law and standards (3).

The United States is a highly chemically polluted society. Industry uses an estimated 63,000 chemicals to create a large number of products, ranging from plastics and pharmaceuticals to paints and pesticides (4). Almost a billion tons of pesticides and herbicides were produced in a recent year in the United States (5). More than 8 people in 10 in the United States have measurable pesticide residues in their bodies (6). The amount of hazardous wastes generated each year in the United States is estimated to be between 150 and 275 million metric tons (7).

Chemical Pollution in the Workplace

Many American workers are exposed to potentially harmful chemicals. In 1972 the National Institute for Occupational Safety and Health (NIOSH) conducted a National Occupational Hazards Survey (NOHS). Based on the NOHS data, about 25 million American workers, or one in four, were possibly exposed to 1 or more of the nearly 8,000 hazards identified by NIOSH (8).

For several reasons, however, it may be difficult to establish a direct association between exposure to chemical and physical substances in the workplace and resultant health problems. Although about 1,000 new chemicals are produced annually, only a few of the possibly toxic new chemicals are tested to determine potential risks associated with long-term exposure (9). In some instances, there may be a latency period of months, or even years, between the time of initial exposure to a toxin and the onset of distinct clinical signs and symptoms. Still, on the basis of available data, exposure to various chemicals in the workplace may indeed be associated with significant health hazards. The Bureau of Labor Statistics, for example, reported approximately 162,000 new cases of occupational illness in 1977, and 143,500 in 1978. Based on information in the *Federal Register*, 57.9% of occupational

illnesses in 1977, and 60.5% in 1978, fall into categories of illnesses most likely to be related to chemical exposures (8). These figures do not include the number of workers with malignant or benign tumors or those totally disabled from occupational illness associated with chemical exposure who have left the workforce. The United States Public Health Service estimates that up to 390,000 workers contract work-related diseases each year. And between 4% and 20% of all cancer cases may be associated with exposure to occupational carcinogens (9).

Chemical Pollution in the Community

Community residents also may be exposed to chemical hazards emanating from the workplace. On June 6, 1984, Minnesota Congressman Bruce Vento testified before the United States Congressional Committee on Education and Labor on proposed legislation pertaining to the right to know about hazardous substances (10). Congressman Vento testified in part that the dangers posed by exposure to hazardous substances extend well beyond the workplace, and specifically noted the example of a May 1982 fire that destroyed the Alberta Chemical Company in Duluth, Minnesota. According to the Congressman's testimony, firefighters and community residents did not know what substances were involved in this chemical emergency for almost two hours. Over 3,000 residents of Duluth and neighboring Superior, Wisconsin, were evacuated to locations outside the affected area. Many people were confused and frightened because they did not know to what extent they were in danger of chemical contamination.

Community residents may further be endangered by chemicals in toxic waste dumps. There are at least 16,000 uncontrolled hazardous waste dumps in the U.S. (6). An estimated 90% or more of the hazardous waste produced in this country is disposed of in ways that present an actual or potential threat to the public health; one study found that areas of New Jersey where toxic waste dumps were located had cancer death rates up to 50% above average (7). According to a survey conducted by a United States Senate committee, many of the 53 largest chemical companies claim that they do not have records indicating where they dumped their wastes prior to 1968 (6).

NOHS data indicates that as many as 40 to 50 million Americans, or 23% of the entire United States population, may have been exposed at some point in their lives to one or more

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of the hazardous chemicals regulated by OSHA (8).

In the author's opinion, everyone --workers as well as community residents-- should be legislatively afforded the right to know when they are handling or are being exposed to hazardous substances that may imperil their health. Awareness of potentially harmful exposure may help people exposed to hazardous substances obtain adequate medical care and pursue (in appropriate instances) available legal remedies under state worker compensation programs and federal programs. The right to know about suspected or known health hazards possibly associated with exposure to hazardous substances may also help people make knowledgeable decisions about employment or residence at a particular place. Industry and other potential sources of chemical contamination should be obligated to provide adequate information about potential chemical risks in terms that are clear to lay persons (6).

Many states, in fact, have enacted laws giving workers, in some instances community residents as well, the right to know about chemical hazards. At least 21 states now require that employees be told about the hazards of the materials they handle (11). Minnesota is one of the states that has enacted such a right to know law for its workers.

Minnesota Right to Know Legislation

The Minnesota right to know law, known as the "Employee Right to Know Act of 1983," was passed in June 1983 (1). Standards implementing the provisions of the Employee Right to Know Act of 1983 were published in the *State Register* on March 5, 1984 (2). The law and standards established a workers' training program concerning hazardous substances, harmful physical agents, and infectious agents. Lists of "hazardous substances," "harmful physical agents," and "infectious agents" are provided in the standards. In general, information and training programs may relate to specific exposure hazards or to the hazards of a complete production operation. Specific information on individual hazardous substances, harmful physical agents, and infectious agents must be available in writing for employee use. Training must be provided to an employee before an initial assignment to a workplace where the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent. In addition, the employer must maintain current information for training employees and for answering their requests for information.

Training programs for employees who might be routinely exposed to hazardous substances must include information about known acute and chronic effects of exposure at hazardous levels; known symptoms of the effects; appropriate emergency treatment; known proper conditions for the use of the substance; and the name, phone number, and address of the manufacturer of the hazardous substance. This information must similarly be included in the training program for employees who may be routinely exposed to harmful physical agents at levels that might approximate or exceed the permissible exposure limit or applicable action level. A written copy of the information included in the employee training program also must be readily accessible in area(s) where the hazardous substance is used or handled, or in the area(s) where the harmful physical agent is present and where the employee may be exposed to it.

The training program for employees routinely exposed to infectious agents must include information about the chain of infection, or infectious disease process; proper techniques for

avoiding self-contamination consistent with good patient care; hazards to special at-risk employee groups; recommended immunization practices; and means of obtaining more information concerning the location, contents, and availability of materials that explain symptoms and effects of each infectious agent.

The Minnesota right to know law further states that an employee acting in good faith has the right to refuse to work under conditions that the employee reasonably believes present an imminent danger of death or serious physical harm.

Labeling requirements are also specified in the standards implementing the state's right to know law. Original shipping containers for a hazardous substance must be labeled and should list the generic names of the components that contribute substantially to the hazards of the substance or mixture and should provide precautionary information on those components. Equipment or work areas that generate harmful physical agents at levels that might approximate or exceed the permissible limit of exposure must also be labeled. This label should include the name(s) of the physical agent; the level at which exposure to the physical agent has been restricted; the known acute and chronic effects of exposure at hazardous levels; the known symptoms of the effects; appropriate emergency treatment; the known proper conditions for use of and/or exposure to the physical agent; and the name, address, and phone number, if appropriate, of the manufacturer of the harmful substance.

Federal Hazard Communication

In November 1983, a federal hazard communication was published in the *Federal Register* (3). This communication requires chemical manufacturers and importers to assess the hazards of chemicals that they produce or import. Additionally, all employers working in the manufacturing division (Standard Industrial Classification codes 20 to 39) must provide their employees with information about hazardous chemicals through hazard communication programs. These programs call for labels, material safety data sheets, training, and access to written records. The federal hazard communication is intended to preempt any state law pertaining to evaluating and communicating information about chemical hazards with respect to workers in the manufacturing division.

It is the author's view that the federal hazard communication is less protective of the public health than many extant state right to know laws. One measure of the possible efficacy of a right to know law is the range of chemicals covered. The federal communication explicitly covers about 600 substances (9). In contrast, the number of substances regulated under various state right to know laws ranges from 300 to nearly 30,000 (12). Another factor associated with the potential effectiveness of a right to know law is the number of industries and employees covered. The federal communication is limited specifically to the manufacturing division, which accounted for less than 30% of total employment in 1978 (8). Currently it is estimated that there are 14 million employees in 300,000 manufacturing establishments (13). This leaves an estimated 60 million workers in transportation, construction, and other jobs unprotected by the federal communication (14). OSHA estimates that 54% of chemically related occupational illnesses in 1981 occurred in the manufacturing sector (9). Even within the manufacturing sector, this communication allows an employer to withhold information about specific chemical identity from the material safety data sheet if certain

requirements are met.

The fate of the federal hazard communication and its possible effect on right to know legislation in Minnesota and elsewhere are currently uncertain. Petitions for judicial review of the communication were filed in federal court in November 1983 by a coalition of groups, including the United Steelworkers of America and the Public Citizen Health Research Group. The petition charged in part that the federal communication is arbitrary and capricious for failing to provide workers with adequate information about workplace hazards. Several states, including New York, Illinois, and Massachusetts, also petitioned for review of the hazard communication. The state petitions were subsequently consolidated with the United Steelworkers' petition.

The United States Court of Appeals for the Third Circuit in May 1985, ruled in part that the federal hazard communication preempts state hazard laws with respect to disclosure to employees in the manufacturing sector (15). The Third Circuit did not specifically answer the question of whether the federal communication may further preclude state right to know laws affecting workers outside the manufacturing sector. However, the Court did note that there is evidence that workers in sectors other than manufacturing are exposed to the hazards associated with the use of toxic materials and other harmful agents. The Court also noted that the Secretary of Labor has not yet provided reasons for excluding other working sectors from the standards. The Court called for the Secretary of Labor to consider applying the federal communication to employees in non manufacturing sectors, and to order its application to those sectors unless the secretary can state reasons why such action would not be feasible.

The federal hazard communication was challenged in part on the grounds that OSHA had defined "trade secrets" — information possibly conferring a competitive advantage — too broadly, and that the conditions under which workers may obtain information claimed to be a trade secret are unduly burdensome to the worker. The Third Circuit concluded that OSHA's definition of "trade secret" is invalid, and directed the Secretary of Labor to consider a new definition that would not include chemical identity information that is readily discoverable through reverse engineering. The Court further concluded that the restriction in the hazard communication of access to trade secret information to health professionals is not supported by substantial evidence. The trade secret access rule is therefore invalid insofar as it limits access to health professionals, and the Secretary of Labor will be directed to adopt a rule permitting access by employees to such information.

Because of continuing legal developments affecting the federal hazard communication, it is the author's view that it may be helpful to have a *severability clause* in the Minnesota right to know law. The Pennsylvania Worker and Community Right to Know Act, for example, provides that the provisions of the act are "severable" (16), meaning if any provision(s) of the act is held invalid, the invalidity would not affect other provisions of the act that may be put into effect without the invalid provision(s).

Proposed Federal Right To Know Legislation

Congressman Vento has introduced a resolution (H.J. Res. 225) in the 99th Congress pertaining to the right to know about chemical hazards (17). This resolution, entitled "The Hazardous Substances 'Right to Know' Resolution," states that OSHA's hazard communication is grossly inadequate and will not protect the health of all workers because it applies only

under limited circumstances to the approximately 30% of the labor force employed in manufacturing and affords no protection to the rest of the workforce. The resolution states that all workers have a fundamental right to know when they are handling or are exposed to a hazardous substance on the job that may threaten their health. The resolution further states that OSHA should immediately revise its hazard communication so as to extend right to know protection to workers in all industries and services that are not currently covered by the federal communication. As of July 1985, this resolution had been referred for consideration to the Subcommittee on Labor Standards of the Education and Labor Committee.

The Right to Know and Community Residents

Certain measures may increase the effectiveness of the Minnesota right to know law and standards in protecting the general public health. Since as many as 40 to 50 million Americans may have been exposed to hazardous chemicals, it is the author's view that provisions specifically recognizing that community residents have a right to know about chemical hazards should be included in Minnesota's right to know legislation (8). Legislation enacted in other states may help Minnesota lawmakers design legislation that provides right to know protection to community residents.

For example, the Pennsylvania Worker and Community Right to Know Act states specifically that employees, their families, and the general public have a right to know the identity of chemicals they may be exposed to, the possible health hazards they pose, and the symptoms that may be experienced because of exposure (16). The Pennsylvania legislation further recognizes that employees and the general public are often in the best position to discover serious health problems, provided that they are aware of the nature of the substances to which they are exposed.

The Iowa Hazardous Chemicals Risks Right to Know Act specifically recognizes that the public has a right to be informed about the presence of hazardous chemicals in the community and the possible health and environmental hazards that the chemicals pose (18).

Conclusion

Right to know legislation raises major issues affecting the public health. It is therefore the author's view that the scientific community should become actively involved in the continuing legal developments in this area and that careful consideration should be given to federal legislation that provides comprehensive right to know protection to all potentially affected workers. In addition, close consideration should be given to state legislative measures that are concerned specifically with providing right to know protection to community residents.

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