

SIERRA CLUB
PENNSYLVANIA
ENVIRONMENTAL LOBBY



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TESTIMONY OF
JEFF SCHMIDT

ON BEHALF OF THE
SIERRA CLUB,
PENNSYLVANIA CHAPTER.

AT A JOINT HEARING OF
THE HOUSE JUDICIARY COMMITTEE
AND
THE HOUSE LABOR RELATIONS COMMITTEE

REGARDING HOUSE BILL 916,
THE PENNSYLVANIA PRODUCT LIABILITY ACT,

OCTOBER 26, 1989

On behalf of the more than 17,000 members of the Sierra Club, Pennsylvania Chapter, I want to thank the chairman for the opportunity to present our views on House Bill 916, a bill we believe seriously undermines consumer rights and threatens environmental integrity and public health.

While many Sierra Club members oppose the bill based on its basic erosion of consumer rights, our executive committee's reasoning for its unanimous vote to oppose House Bill 916 centered on concern for victims of toxic exposure. Environmental and human health threats posed by poorly crafted consumer products containing toxic substances are our overriding concern.

Our objections to the proposed legislation begin with the statement contained in the Findings section, that liability limitations are consistent with public policy on product safety. Nothing could be further from the truth. If our public policy goal is to protect the public through product safety, the focus should be on eliminating artificial limitations on liability, thus increasing incentives to produce safe products.

STATUTE OF REPOSE

One of the most objectionable provisions of the proposed Pennsylvania Product Liability Act is the "statute of repose" provision. This section creates an artificial and arbitrary time limit within which a claim can be made for injuries due to defective products. Many victims of toxic exposure might not become ill or suffer from related illnesses until after the 15 year provision expired.

Recent environmental horror stories include widespread exposure to toxic substances with long latency periods: asbestos, vinyl chloride, trichloroethylene, benzene, PCB's and an array of dangerous pesticides. If House Bill 916 were to be enacted, exposed persons could lose their remedy long before the harm (in many cases, cancer) became apparent.

We support recent case law in Pennsylvania which has found that the statute of repose does not apply to manufacturers of products.

WARNINGS

Many consumer products containing toxic substances need special handling. The method of communicating the hazards of the products must allow for all potential users to be warned. House Bill 916 would remove liability for failure to warn if the warning about a product's hazards were generally known by a class of persons to whom the warning would have been provided. This eliminates one of the major outgrowths of product liability law, that is, warnings on products. What about the child who can't read, immigrants or illiterates who can't comprehend, or the uninformed who does not know what is "generally known"?

Manufacturers are finding that many consumers, once aware of the inherent dangers of given products, choose alternative products which are non-toxic. Instead of a policy which promotes hiding the dangerous properties of products, we should encourage the use of alternatives that represent less risk. Giving consumers a "right to know" allows them to make these choices to protect their health and the environment.

ADMISSIBILITY OF INDUSTRY STANDARDS

This provision is particularly disturbing, since it interjects concepts of negligence which have been prohibited by the Pennsylvania courts. The reason for not allowing industry standards to be admissible in a products liability action is to keep the focus on the product's safety and not on the conduct of the manufacturer. It does not matter whether everyone in the industry is making a dangerous product. Not only does this provision allow admission of industry standards, but compliance with state or federal agency standards is also admissible. The state and federal regulation of products has always been of a minimal nature and has generally not concerned itself with safe design of products. The product liability laws have gone beyond these minimum standards established by federal and state agencies whose resources allow them oftentimes to be nothing more than licensing agencies.

The threat of lawsuits for faulty or dangerous products is an important and effective deterrent to manufacturers who might not act as cautiously when designing or producing a new product. Such lawsuits become an essential safety net when government agencies charged with product

regulation fail to ensure that safe standards are met. "Evidence of adherence to government or industry standards," an evidentiary provision of the bill overlooks the history of government and industry failure to adopt adequate and meaningful standards to protect workers and the public.

ALTERATIONS

Many dangerous chemical exposures occur in the process of "recycling" or "reclaiming" substances. Examples include trichloroethylene ("TCE") and a variety of dangerous industrial solvents. Recycling or reclamation do not generally change the dangerous properties of these chemicals. Treating those processes as "alterations" -- which would preclude liability for their dangers -- serves no purpose other than to excuse suppliers of responsibility.

COMMON CONSUMER PRODUCTS

Finally, the definition of "common consumer products" is so vague that it will likely act to exonerate suppliers of notoriously dangerous products. Perhaps the clearest examples are the pesticides which the consumer may know present "a risk", but undoubtedly does not and cannot know the full extent of that risk. Chlordane, the manufacture of which is now banned, for example, is one of the most potent nerve toxins ever manufactured by man. Nevertheless, for years it was bought over the counter in hardware stores. Simply calling it a "poison", and putting a skull and cross-bones on the label could never sufficiently warn the consumer of its hazards. It should not be treated as a product with a "known" risk.

In summary, the Sierra Club opposes House Bill 916 because we view it as an unacceptable erosion of toxic (and other) victims' rights. Our industrialized society continues to introduce new hazardous substances into the environment. Often we learn too late of the dangers these chemicals represent. Strong product liability laws represent important incentives for manufacturers to do their utmost to make these products safe.