HOW DOES THE MACHINE WORK?

AN EXAMINATION OF THE POLICY IMPLEMENTATION PROCESS

AND ITS APPLICATION TO THE MASSACHUSETTS RIGHT-TO-KNOW LAW

by

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ABSTRACT

Until the very late 1960s and early 1970s, there existed a dearth in academic thought about the importance of implementing public policies and programs. Very little had been written addressing the "how and why" of policy execution. The reasons for success or failure of legislative mandates attracted little attention in the academic and governmental communities. The bureaucratic system of U.S. government was viewed like some sort of mysterious "black box"; once a decision had been made, it was only a matter of waiting for the finished product -- a law, a program, or a policy -- to be delivered in a form closely resembling the original design.

After the initiation of the "Great Society" programs of the Johnson Administration, much thought turned to addressing policy implementation as a distinct and legitimate administrative and academic endeavor. One might speculate that the emergence of implementation as a discipline in its own right may have been causally linked to the difficulties encountered in accomplishing the sweeping objectives of the social programs of the 1960s.

The first section of this thesis will explore the execution of public policy from the "how and why" perspective. In it, the author will explore thought on the somewhat broad and amorphous concept of "policy implementation". Topics to be examined include:

- What are the obstacles which arise to the smooth implementation of government policies and programs?
- What are the human factors which affect the outcome of policies and programs?
- What are the organizational (structural) factors which result in a policy's or program's success or failure?
Armed with newfound knowledge and understanding, the author, in Section Two, will then proceed to address Massachusetts General Laws Chapter 111F, the "right to know" law. This exploration will involve analysis of the law's implementation process: the major administrative actors, their duties, and, most importantly, the obstacles that they face in the execution of their duties.

In Section Three, the author will attempt to combine the theoretical aspects of Section One with the reality of the case examined in Section Two. This will be accomplished by choosing one of the models presented -- Van Meter and Van Horn's Model of the Policy Implementation Process -- and applying the facts of the right to know law. This exploration will bring to light questions concerning the utility of interpreting real-world situations from a theoretical perspective.

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TABLE OF CONTENTS

Title Page.................................................................1
Abstract.............................................................................2
Acknowledgements..........................................................4
Table of Contents...........................................................5
List of Figures.................................................................7

SECTION ONE -- POLICY IMPLEMENTATION

Introduction........................................................................9
The Classical Theory of Administration.............................11
Challenges to the Classical Model.......................................16
Current Thought on Implementation....................................19
  Pressman and Wildavsky.................................................19
  Van Meter and Van Horn..................................................20
  Smith's Model of the Policy Process.................................27
  Rein and Rabinovitz.......................................................41
  Nakamura and Smallwood..............................................43
Conclusion..........................................................................51
Notes..................................................................................52

SECTION TWO -- THE MASSACHUSETTS RIGHT TO KNOW LAW

Introduction.......................................................................57
The Right to Know Law: An Overview...............................58
Principal Actors in the Law's Implementation.....................60
The Role of the Department of Public Health......................64
The Role of the Department of Labor and Industries.............85
The Role of the Department of Environmental Quality Engineering.............................................101
Municipalities and the Right to Know Law.................................................120
Tying It All Together
   Issues Arising for Actors......................................................130
   Interactions Between Actors...............................................132
Conclusion.........................................................................................136
Notes.................................................................................................139

SECTION THREE -- COMBINING THEORY AND REALITY

Introduction.............................................................................................142
Applying Van Meter and Van Horn's Model to the
   Right to Know Law..............................................................................143
Conclusion.................................................................................................152
Notes.................................................................................................154

Appendix A:  Glossary..............................................................................156
Sources.................................................................................................159
LIST OF FIGURES

Figure 1.  The Classical Model of Administration..................14
Figure 2. Van Meter and Van Horn's
            Model of the Policy Implementation Process.....21
Figure 3.  Zollschan's Institutionalization Model..............29
Figure 4.  Smith's Model of the Change Process...............30
Figure 5.  Smith's Model of the Policy Process...............32
Figure 6.  Nakamura and Smallwood:
           Environments Influencing Implementation........44
Figure 7.  The Right to Know Law:
           Interactions Between Parties..................135

Table 1.  Policy Implementation Tension Matrix..................37
SECTION ONE -- POLICY IMPLEMENTATION
INTRODUCTION

In the late-Nineteenth and early-Twentieth Centuries, the academic community viewed the formulation and execution of governmental policies as a unidirectional process in which decisions were made by those in the highest positions of authority. The decisions and instructions of these upper-most figures were dutifully carried out by those with increasingly minor powers of decision-making and discretion. The top-down model of the classical bureaucracy was viewed as the most efficient and therefore, by rational deduction, most morally desirous method of executing the administrative functions of government. Until the latter years of this century, this "classical model of public administration" was unquestioningly embraced by intellectuals and practitioners alike.

As this century draws to its conclusion, however, it can be safely said that the rather naive, simplistic assumptions of the classical model have been viewed with increasing skepticism. No longer do political scientists hold dear the premise that "once a policy has been 'made' by a government, the policy will be implemented and the desired results of the policy will be near those expected by the policymakers." Experience with numerous governmental policies, programs, and even military actions has produced evidence quite to the contrary.

The question then arises: why do some policies succeed while others fail or, at best, reach a point in their progression beyond which further advancement seems impossible? At what point
between policy formation and completion is there a convergence of factors which results in eventual success, failure, or abeyance? What are the characteristics of this, as termed by Hargrove, "Missing Link"?

In this section, the author will examine one part of the policy process: implementation. This section will begin with an examination of the early "classical" perspective of policy implementation and will then present more recent, contrasting views of the process.

These more recent views examine various facets of the implementation process, rejecting - to varying degrees - the very tenets of the classical model of administration. Each represents a step in an evolutionary progression.

The author will use this section to establish an intellectual base or "lens" through which to view the real-world case presented in Section Two.
Three basic concepts helped shape the early "classical" model of public administration. These concepts, formed during the first few decades of the Twentieth Century, tended to view administration through the somewhat optimistic and enthusiastic eyes of the Machine Age.

Max Weber, in his writings on the "ideal" bureaucracy, conceptualized the structural components of administrative organizations in terms of a centralized, hierarchical pyramid. These organizational pyramids were viewed by Weber as highly rationalized structures controlled at the top by a small group of decision-makers whose policies were dutifully executed by "subordinate administrators whose obedience to commands should be prompt, automatic and unquestioning." Weber's "ideal" bureaucracy was an inflexible, highly ordered and specialized organizational entity, a "firmly ordered system of super- and subordination in which there is a supervision of the lower offices by the higher ones."

To Weber's structural framework can be added the second major concept. Woodrow Wilson, in his paper "The Study of Administration", voiced the central thesis that politics and administration are two separate and distinct activities. Wilson stated that "the broad plans of government action are not administrative; the detailed execution of such plans is administrative." Weber's highly ordered mechanical organization can now be viewed as a detached, neutral, professionalized and nonpolitical entity carrying out its tasks on the basis of
objective principles of scientific rationality.

The third major concept, put forth by industrial engineer Frederick W. Taylor, provided the rationale for these "objective principles". Taylor's 1911 book, The Principles of Scientific Management, stressed efficiency as the basic criterion against which to evaluate administrative performance.

These three major concepts -- Weber's organizational hierarchy, Wilson's separation of politics and administration, and Taylor's "efficiency" rationale -- were integrated by public administrators during the 1920s and 1930s into a comprehensive set of rational precepts to guide the administrative process. Following the 1937 publication of Luther Gulick and Lyndall Urwick's Papers on the Science of Administration, the "classical" theory of public administration gained widespread acceptance.

This new "science of administration" was based on an unyielding, machinelike hierarchical structure in which subordinate administrators were allowed very little, if any, discretionary authority or political latitude. Because of this top-down command structure, the classical model of policy administration minimized the significance of implementation in the policy process. The assumption was that once a policy decision had been made, the policy would be executed, keeping as closely as possible within established guidelines. Francis E. Rourke points out that "in the traditional theory of public administration in the United States, it was assumed that the administrator's discretion extended only to decisions on means, while the ends or goals of administrative action were fixed by
statute or by the directions of a responsible political official."

In their 1980 book, *The Politics of Policy Implementation*, Robert T. Nakamura and Frank Smallwood point out that the early classical model of administration was characterized by two central sets of assumptions. The first set dealt with the decision-making process involved in the formulation of policies, while the second addressed the execution of these policies. Nakamura and Smallwood cite Charles E. Lindblom in describing the steps involved in the classical, rational-comprehensive approach to decision-making:

**Classical Decision-Making**

1. Faced with a given problem
2. A rational man first clarifies his goals, values or objectives, and then ranks or otherwise organizes them in his mind;
3. He then lists all the important possible ways of achieving his goals
4. And investigates all the important consequences that would follow from each of the alternative policies,
5. At which point he is in a position to compare consequences of each policy with goals
6. And so choose the policy with consequences most closely matching his goals.

Nakamura and Smallwood extend Lindblom's conceptual framework to introduce policy execution into the classical model:

**Classical Implementation**

7. An agent to carry out the policy is chosen by the policy maker according to technical criteria (i.e., the perceived ability of the agent to employ the appropriate means to accomplish the policy goals).
8. The policy is communicated to the agent as a series of specific instructions.
9. The agent implements (carries out) the specific instructions according to the policy guidelines specified in the communication from the policy maker.
The classical model of public administration (figure 1.) represents a smoothly functioning, mechanistic ideal. The bureaucracy performs like a swift and efficient automaton, prepared to faithfully execute the commands and desires of the topmost decision-maker. Each member of the bureaucratic machinery is a specialized part of the whole -- a "cog" that exerts only enough power to influence the actions of the next "cog" in line. Each member of the organization attains and keeps position in the hierarchy based on his or her expertise and continued competent execution of specifically delineated tasks.

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**STAGE** | **ACTION** | **ACTORS**
--- | --- | ---

instructions/authority conveyed to agent

Policy Implementation | Agent implements policy according to specifically delineated instructions | Policy executors/lower-echelon administrators

Policy Completion | Problem/need alleviated | Target group/affected groups and individuals

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Figure 1. The Classical Model of Administration

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The classical model of public administration rests on a number of preconceptions regarding both policy formation and policy execution. Nakamura and Smallwood enumerate several major ones:

1. Policy making and policy implementation are bounded, separated and sequential.

2. These boundaries exist between policy makers and policy implementer because
   a) there is a clear division of labor between policy makers, who set goals, and policy implementer, who carry out these goals;
   b) policy makers are capable of stating policies definitively because they can agree on a priority among different goals;
   c) policy implementers possess the technical capability, the obedience, and the will to carry out the policies specified by the policy makers.

3. Since both policy makers and implementer accept the boundaries between their tasks, the process of implementation unfold in a chronological, sequential fashion in which policy making precedes policy implementation.

4. The decisions that are involved in the implementation of policies are nonpolitical and technical in nature. It is the responsibility of the implementer to carry out policies in a neutral, "objective", "rational", and "scientific" fashion. (emphasis theirs)
CHALLENGES TO THE CLASSICAL MODEL

Before long, it became apparent that the assumptions forming the foundation of the classical model were overly simplistic. At least three major developments led to a reexamination of the model.

The first challenge arose as a result of several studies of the decision-making process. These studies indicated that the process was a far more complex and subtle endeavor than indicated in the classical model. Charles E. Lindblom's 1959 article "The Science of Muddling Through" suggested that many policies are made during an incremental process of successive comparisons rather than by means of rational comprehensive choices. Other authors' works indicated that the information costs involved in decision-making can be so high as to necessitate the formation of decisions in conditions of extreme uncertainty. These studies suggested that decision-making is far too complicated to involve the types of clear-cut priority choices and specificities characterized in the classical model.

Second, additional studies indicated that the implementation of policy was also much more important than previously considered. Paul Appleby's 1949 Policy and Administration challenged the concept of politics as two distinct and separate activities. Appleby argues that it is inaccurate to cleanly divide the activities because administrators become involved in the process of making policy when they apply policy "at successively less abstract levels." Other studies revealed that the process of administration is affected by an intricate
variety of psychological norms and bureaucratic pressures that tend to take on their own distinct political lives.

The third and most recent challenge to the classical model of public administration originated in the workaday world of action rather than that of theory. This third influence appeared in the mid-1960s in the form of the Great Society legislation of Congress and President Lyndon B. Johnson. Johnson used his skill as a legislative tactician to influence Congress' passing of a series of diffuse policies aimed at alleviating such major social problems as poverty, unemployment, urban decay, juvenile delinquency, and racial and sexual discrimination.

It soon became apparent, however, that it was much easier to "legitimize" social policy by initiating ambiguous legislation that was not overly restrictive on those charged with implementing legislative mandate. Policies were tempered by lawmakers in order to garner as much political support as possible. In the process, however, laws which were originally intended to take strong stances on pressing social issues were increasingly compromised by the granting of too much discretionary power in the hands of bureaucrats. By the end of the 1960s, some political scientists were calling for a return to a more rationalized and structured approach to policy formation and administration.

Theodore Lowi, in his book *The End of Liberalism*, expresses concern that the democratic norms of accountability and responsibility were being undermined by the allocation of too much discretionary authority to administrative personnel. Lowi
puts forth the thesis that as the federal government progressed through the Twentieth Century, regulatory activity shifted from the specific and concrete to encompass increasingly general and abstract concerns and behaviors. The result was an increase in the delegation of powers to policy administrators. Lowi asserts that, with the growing scope of legislation "the ability of Congress to guide and control the administrator is far more limited..., for definition by abstraction and categorization involves philosophic and philological as well as technological and empirical and just plain unpredictable dimensions." 

Lowi further argues that ambiguity of laws and the resulting growth of delegation of authority to administrators stems not from technical complexity but from increased abstraction:

It is from abstraction that uncontrolled discretion flows. Abstraction is reversible, with the increase of knowledge, but only if the leadership desires to reverse it. (emphasis his)

Lowi and other authors decried the state of policy decision-making and implementation during the Johnson Administration and beyond. They seemed to possess an almost nostalgic regard for the "old ways" of public administration. Yet, as attractive as a return to the classical model may have appeared, "once Pandora's box had been opened it was not easy to close it. The previously simplistic process of implementation would never look the same again." The next step for observers was to attempt to come to terms with, clarify, and explain the newly-discovered world of "policy implementation".
Pressman and Wildavsky, *Implementation*

It was not until after the 1973 publication of Jeffrey Pressman and Aaron Wildavsky's book, *Implementation: How Great Expectations in Washington Are Dashed in Oakland*, that the problems encountered in the execution of governmental mandate began to receive widespread attention.

Pressman and Wildavsky present a case study coupled with warnings and recommendations, rather than a theoretical model of the implementation process. Their efforts centered on a detailed analysis of the root causes of the Economic Development Agency's failures in its attempts to provide jobs for the hard-core unemployed in Oakland, California. After a careful exposition of factors contributing to the experiment's shortfalls, Pressman and Wildavsky assume a prescriptive tone, presenting a series of observations and warnings:

1. Implementation should not be divorced from policy ... (and) must not be conceived as a process that takes place after, and independent of, the design of policy.

2. Designers of policy (must) consider direct means for achieving their ends.

3. Consider carefully the theory that underlies your actions.

4. Continuity of leadership is important to successful implementation.

5. "Simplicity in policies is much to be desired ... Simplicity can be ignored only at the peril of breakdown."

Although Pressman and Wildavsky did not attempt to construct an explicit theoretical model of the policy implementation
process, it can be inferred from their observations which elements might be included in such a model. Though they embraced the concept of policy implementation as a unidirectional process in which decision makers initially formulate policy to be executed by the intermediary implementers, their analysis broke from the classical model. Unlike the classical model, Pressman and Wildavsky eschew the notion that there should exist a dichotomy between politics and administration, stressing that policy formation and its successful implementation are inextricably linked. Their call for a better integration, rather than a separation, of policy design and implementation represents an evolutionary step beyond the classical model.

Van Meter and Van Horn, "The Policy Implementation Process"

Donald S. Van Meter and Carl E. Van Horn, in their 1975 article "The Policy Implementation Process: A Conceptual Framework", utilize a model of the policy delivery system which "identifies relationships among the diverse concerns of policy analysts, directs attention to the determinants (and consequences) of public policy, and gives emphasis to the often imperfect correspondence between policies adopted and services actually delivered."

Their model contains six primary variables "which shape the linkage between policy and performance":

1. policy standards and objectives;
2. policy resources;
3. interorganizational communication and enforcement activities;
4. characteristics of the implementing agencies;
5. economic, social, and political conditions;
6. disposition of implementers.

Figure 2. Van Meter and Van Horn's Model of the Policy Implementation Process.[26]

These six variables are linked, each exerting some amount of influence, either directly or through another, on the final outcome of the policy's implementation. It is interesting to note that the Van Meter and Van Horn model only has one instance where there is a true give-and-take exchange of influence between variables -- in the case of "interorganizational communication and enforcement activities" and "characteristics of the implementing agencies".
**Policy Standards and Objectives**

Policy standards and objectives are viewed as giving more concrete form to the generalities of the legislative document. They provide specific means for assessing program performance.

In some cases, difficulty is encountered in identifying and measuring performance. Van Meter and Van Horn attribute this difficulty to a policy's breadth or the "complex and far-reaching nature of its goals." The stated standards and objectives may also be ambiguous and contradictory. This may be intentional on the part of the policy-makers in order to ensure positive responses from actors at varying levels of the bureaucratic organizations responsible for implementing the policy.

**Policy Resources**

Policy resources may include funds or other incentives wielded by the policy-makers and used to encourage or facilitate implementation of policies and programs. By the granting, withholding, or withdrawal of funding and other resources, policy-makers as well as upper-echelon administrators attempt to exercise control over actions of subordinate personnel.

**Interorganizational Communication and Enforcement Activities**

Van Meter and Van Horn stress the importance of clear and concise communication between actors in the policy implementation process:

Standards and objectives cannot be carried out unless they are stated with sufficient clarity so that
implementers can know what is expected of them...In transmitting messages downward in an organization or from one organization to another, communicators inevitably distort them -- both intentionally and unintentionally. Furthermore, if different sources of communication provide inconsistent interpretations of standards and objectives or if the same source provides conflicting interpretations over time, implementers will find it even more difficult to carry out the intentions of policy.

For implementation of policies and programs to proceed successfully, it is often required that higher authorities (policy-makers and upper-level administrators) have at their disposal institutional mechanisms and procedures to increase the likelihood that intraorganizational implementers (subordinates) perform in keeping with a policy's standards and objectives.

Superiors have a wide range of such enforcement mechanisms. They include the standard personnel powers of recruitment and selection, assignment and relocation, advancement and promotion, and, ultimately, dismissal. Additionally, higher authorities are often able to use their control over budgetary allocations and inflate or reduce monies to subordinate bureaus and field offices in response to satisfactory or unsatisfactory performance. Though unable to command obedience, superiors are thus able to influence the behavior of lower-level implementers.

Two types of enforcement or follow-up activities are most important in the context of interorganizational (or intergovernmental) relations. First, higher-level officials can often do much to facilitate implementation by availing subordinated of technical advice and assistance. Lower-level implementers may receive aid in interpreting regulations, guidelines for structuring responses to policy initiatives, and
assistance obtaining physical and technical resources necessary to carry out a policy.

The Characteristics of the Implementing Agencies

Numerous factors in this component of Van Meter and Van Horn's model include:

a) the size and level of competence of an agency's staff;
b) the degree of hierarchical control of subunit decisions and processes within the implementing agencies;
c) an agency's political resources (e.g., support among legislators and executives);
d) the vitality of an organization;
e) the degree of "open" communications (i.e., networks of communication, and a relatively high degree of freedom in communications with persons outside the organization) within an organization;
f) the agency's formal and informal linkages with the "policy-making" or "policy-enforcing" body.

These factors influence interactions both within and between participants in the implementation process and, consequently, influence the ability of organizations to execute policy.

Economic, Social, and Political Conditions

Though these factors are among the least-studied by students of public policy, Van Meter and Van Horn propose the following questions regarding the economic, social, and political environments affecting the jurisdiction or the organization within which implementation takes place:

a) Are the economic resources available within the implementing jurisdiction (or organization) sufficient to
support successful implementation?

b) To what extent (and how) will prevailing economic and social conditions be affected by the implementation of the policy in question?

c) What is the nature of public opinion; how salient is the related policy issue?

d) Do elites favor or oppose implementation of the policy?

e) What is the partisan character of the implementation jurisdiction (or organization); is there partisan opposition or support of the policy?

f) To what extent are private interest groups mobilized in support or opposition to the policy?

The Disposition of Implementers

There are three elements of the implementers' response which may affect their ability and willingness to execute the policy: their cognition (comprehension, understanding, perception) of the policy, the direction of their responses toward the policy (acceptance, neutrality, rejection), and the level of intensity of those responses.

Implementers' cognition of the general intent, as well as the specific standards and objectives of the policy, is important. Van Meter and Van Horn emphasize the tendency of implementers to "screen out a clear message when the decision seems to contradict deeply cherished beliefs." In such instances of "cognitive dissonance", implementers "may attempt to bring the displeasing message into balance with his perception of what the decision ought to have been."

It is also important to note the direction of implementers' dispositions toward a policy's standards and objectives.
Implementers may reject the goals contained in policies and fail in the faithful execution of their duties. A policy's goals may be rejected for a number of reasons: they may be in conflict with implementers' own systems of personal values, sense of extraorganizational loyalties, sense of self-interest, or existing and preferred relationships. Van Meter and Van Horn state that "human groups find it difficult to carry out effectively acts for which they have no underlying beliefs.

The intensity of implementers' responses to a policy may have an effect on performance. Intense negative feelings may lead to outright and open defiance of the policy's objectives. In less intense circumstances, implementers negative to a policy may assume a more common pattern of surreptitious diversion and evasion. By the same token, implementers' possessing strong positive feelings for a policy may assume more power than necessary in their enthusiastic attempt to see the policy successfully executed. In such instances, the assumption of extra-jurisdictional powers may result in negative reactions from other parties affected by the policy.

Like Pressman and Wildavsky, Van Meter and Van Horn view policy implementation as a unidirectional process of accomplishing the directives set forth in prior policy decisions. They state: "it is vital that the study of implementation be conducted longitudinally; relationships identified at one point in time must not be extended causally to other time periods."

Though this view of policy implementation as a linear process is later disputed by other authors, Van Meter and Van
Horn's analysis is useful in its pushing beyond the classical perspective by noting and examining some of the personal and psychological complexities that influence the actions of those participating in policy implementation. These actors are now seen as being more than cogs in the machine of bureaucracy. They have become "flesh-and-blood participants who can play a crucial role in shaping the policy process."

Smith, "The Policy Implementation Process"

In his 1973 article "The Policy Implementation Process", Thomas B. Smith constructs a model of policy implementation in which "policy is seen as a tension generating force in society." These tensions are formed between and within components of the policy implementation process, and the resulting responses or "transaction patterns" may or may not match the expectations of outcome of the policy formulato. Occasionally, these transaction patterns become "crystallized" into institutions. Both the transaction patterns and the institutions may generate tensions which, by feedback to implementers and policy-makers, may influence further action on the implementation of the policy.

Change and Government Policy

Smith contends that in order to develop and fully comprehend a model of implementation it is essential to view the policy process from the point of view of social and political change: By the implementation of governmental policies, old patterns of interaction and institutions are abolished or modified and new patterns of action and institutions
are created. Governmental policies may be designed to result in sweeping changes in life styles, or they may be incremental in nature and deviate little from past policies. But each policy is an attempt by a government to induce changes in patterns of interaction between or with in institutions, groups, and/or individuals.

These changes that Smith describes are brought about as a result of varying degrees of tension or strain between and within interacting components of society and politics. These tensions are viewed as being inherent and essential characteristics of any societal system:

We find built-in differences, gaps of ignorance, misperceptions or differential perspectives, internal changes in a component, reactive adjustments and defenses, and the requirement of system survival generating tensions.

In "Working Papers on the Theory of Institutionalization", George K. Zollschan refers to societal tensions as "exigencies" -- "a discrepancy (for a person) between a consciously or unconsciously desired or expected state of affairs and an actual situation." Three main types of discrepancies may, alone or in combination, make up an exigency:

1. a discrepancy between a legitimate pattern or arrangement and an actual situation;
2. a discrepancy between a prediction (or explanation or expectation) and an observation;
3. a discrepancy between a desired objective and what is actually achieved.

Smith cites Zollchan's model of responses to the existence of exigencies:
Tensions in Society $\rightarrow$ Articulation $\rightarrow$ Action $\rightarrow$ Institutions

Figure 3. Zollschan's Institutionalization Model.

In Zollschan's model:

1) **Tensions** trigger a series of "phase processes", beginning with

2) **Articulation** - in which the existence of exigency is recognized and goals are postulated for its removal, prevention or amelioration. After tensions have been recognized and articulated, they may be referred to as "needs" which then become the focus of

3) **Action** - which is defined as "locomotion toward postulated or unconscious goals." The natures of the tensions and of the social and political system in which tension and articulation occur determines whether action will or will not take place. If action is forthcoming, the final phase in Zollschan's model is

4) **Institutionalization** - the change in old, stable, "crystallized patterns of interaction and/or the substitution of newly crystallized patterns for old patterns."

Smith modifies Zollschan's model in order to address policy implementation. The resulting new "model of the change process" accepts the premise that tensions are the catalysts for political/social activities. Smith examines and restructures the
articulation and action phases of Zollschan's model, however, in favor of a more general phase and phrase which he calls '
transactions':

![Diagram of Smith's Model of the Change Process]

Another feature that Smith adds to the Zollschan model is the **feedback phase**. This feature reflects the possibility that newly altered or created institutions or patterns of behavior may prove to be catalysts for new series of tensions and actions. In Smith's model of the change process

1) **Tensions** in society trigger a multifaceted phase of

2) **Transactions** in which tensions may be articulated and may manifest themselves in new behavioral patterns and relationships. Some of these new patterns and relationships may "crystallize" in the form of

3) **Institutions**, replacing or altering older patterns and relationships. New tensions may be created in reaction to these new institutions (or to any uncrystallized transaction patterns) which may be disruptive or supportive to the new or modified patterns of relationships. This possibility is addressed in the
4) **Feedback Phase** in which new tensions begin the journey through the change process once again.

Smith's model of the change process is an advancement from Zollschan's model in that it takes into account the dynamic nature of patterns and relationships which characterize societal and political interactions. Tensions necessitate changes which result in new or exacerbated tensions which cause still more changes, ad infinitum.

**The Policy Implementation Process**

Governments act in a deliberate manner to establish new transaction patterns or institutions or to change established patterns within existing institutions. Governments formulate policy to serve as tensions generating forces in society. When policies are implemented, tensions and conflicts are experienced by those responsible for executing the changed as well as those affected by the policies. These tensions may cause transaction patterns and, in some instances, the establishment of institutions required for the attainment of policy goals.

Smith identifies four relevant components which are necessary to the policy implementation process: the idealized policy, the target group, the implementing organization, and any environmental factors. These components comprise the core of the policy implementation process:

As policy is implemented, interaction within and between the components of the policy implementation system result in discrepancies and tensions. The tensions result in transaction patterns -- non-permanent patterns related to the aims and goals of the policy. The transaction patterns may or may not result in institutionalization. Feedback in the form of relieved tensions or increased tension is introduced back into the tension generation matrix from...
transaction patterns and institutions.

Smith's model of the change process is thus modified to introduce government action as well as the major components of the policy implementation process in the roles of catalysts for tension generation:

![Diagram of Smith's Model of the Policy Process]

Figure 5. Smith's Model of the Policy Process.

Following is a closer examination of the components which comprise Smith's model of the policy process:

The Idealized Policy

The "idealized policy" can be defined as the objective of the policymakers' efforts. It is the idealized patterns of interaction that policymakers are attempting to induce. Four relevant variable types comprise the idealized policy:
1) The Formal Policy -- the articulated statement, program, or law that the government proposes to implement -- the form that the policy ultimately takes.

2) The Type of Policy -- three categories are used to describe characteristics of policy:

   a) complexity -- policies may range from simple to labyrinthine;

   b) organization -- policies are classified as organizational or non-organizational. Organizational policies require the modification or the establishment of formal institutional structures. Non-organizational policies call for the establishment of patterns of interactions outside the formal organizational context.

   c) policy form -- policies may be distributive, redistributive, regulatory, or emotive-symbolic in nature.

3) The Policy Program -- the program of the policy has three aspects:

   a) level of support -- the intensity of the government's commitment to the implementation of the policy.

   b) policy origin -- the policy may have been formulated as an official reaction to widespread social needs and/or demands, or it may have been created in governmental quarters with little outside demand or support.
c) **policy scope** -- the policy may be broad in nature and universal in scope, or it may be focused upon a small geographic or social area.

4) **The Policy Images** -- the images that the policy evokes in affected parties and society at large.

**The Target Group**

The target group is defined as those persons or organizations most directly affected by the policy. They are required during the course of the policy's implementation to undergo some type of change in order to meet the demands of the policy. Several factors are relevant in analysing the target group:

1) The degree of the target group's **organization or institutionalization**.

2) The target group's **leadership** may be aligned in favor of or against the policy; or it may be indifferent. The nature of the target group's leadership is relevant.

3) The target group's prior **experience** with governmental policies is important. Past experiences and responses may affect whether the reception to a policy is compliant, rebellious, or indifferent.

**The Implementing Organization**

The implementing organization is typically a unit of the governmental bureaucracy. Three key variables are relevant in considering the implementing organization:
1) **Structure and personnel** -- The stability of the unit's organizational structure and the qualifications of the personnel responsible for the policy's execution are important in analyzing the implementation process. The greater the structure's stability and the higher the level of its personnel's competence, the greater the organization's capacity to implement policy.

2) **The administrative leadership of the organization** -- Like the leadership of the target group, the style and nature of the implementing organization's leadership is an important factor in the ultimate success or failure of a policy's execution.

3) **The organization's implementing program and capacity** -- The organization's "implementing program" refers to the level of intensity and care that the organization takes in implementing policy. The organization's capacity refers to its general ability to fulfill the requirements of its assigned tasks.

**Environmental Factors**

Environmental factors are those internal and external variables which can influence or be influenced by policy and the policy implementation process. Differing policies may be affected by differing cultural, social, political, and economic factors. Smith states that "environmental factors can be thought of as a sort of constraining corridor through which the implementation of policy must be forced."
Tensions

In Smith's model of the policy process, tensions are deliberately generated by governments so that, through their resolution, the outcome will be the attainment of policy objectives. There are however other, less hoped-for, tensions which arise during the policy process. These unintended tensions may occur both between and within the four components relevant to policy implementation (idealized policy, target group, implementing organization, and environmental factors). An example of an intra-component tensions would be the discrepancy in an implementing organization when an administrative unit is instructed to carry out an assignment for which the unit has insufficient personnel and economic resources. An inter-component tension may occur between environmental factors and idealized policy components when widespread public reaction to a policy is hostile (the negative societal and political reaction to urban renewal comes to mind).

Smith further describes tensions as occurring on three levels: individual, group and structural. The previously described intra-component and inter-component tensions are respectively examples of structural and group tensions. An example of tension at the level of the individual would be an official's inordinate use of discretion in enforcing regulations.

Smith composes a matrix to describe another aspect of tensions. Within this "tension matrix" ten types of tensions can occur at the three previously described levels:
Table 1. Policy Implementation Tension Matrix

<table>
<thead>
<tr>
<th></th>
<th>Ideal</th>
<th>Actual</th>
<th>Perceived</th>
<th>Expected</th>
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</thead>
<tbody>
<tr>
<td>Ideal</td>
<td>7</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Actual</td>
<td>8</td>
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<tr>
<td>Perceived</td>
<td>9</td>
<td></td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Expected</td>
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</table>

Following are explanations and examples of the tension types in the matrix:

Type 1 -- A discrepancy occurring between an ideal state and actual situation. Example: In an ideal situation, an administrative unit would have sufficient resources to effectively perform its duties. The actual situation may be that the unit is severely constrained by budgetary shortfalls.

Type 2 -- A discrepancy may occur between an ideal state and a perceived situation. Example: In an income redistribution program, the ideal would be that only those truly in need would attempt to secure assistance. The perceived situation may be that persons served by the program tend to become overly comfortable with the government's largesse and will not actively seek any other means to improve their situations.

Type 3 -- A discrepancy may occur between an ideal situation and an expected situation. Example: In an ideal situation, a program may have the aim of providing its target group with skills training. An administrative official may hold the expectation that only a small
number of qualifying individuals will apply for the program.

Type 4 -- A discrepancy may occur between actual and perceived situations. Example: A member of a target group's leadership may perceive that government officials are assuming a lackadaisical attitude toward the implementation of a policy. The actual situation may be that officials are trying as best they can to execute the policy.

Type 5 -- A discrepancy may occur between actual and expected situations. Example: An official from a central office may expect that "street level" workers will strictly follow established rules and procedures in implementing a policy. The actuality may be that lower-echelon administrators exercise a great deal of discretion in their roles.

Type 6 -- A discrepancy may occur between an expected situation and a perceived situation. Example: An official may be sent out by a central office to help a lower level governmental unit in preparing to implement a new policy directive. The official may expect the personnel of the lower unit to be appreciative of and receptive to his suggestions. The lower level personnel however may perceive the official's presence as needless meddling and expression of the central authority's lack of confidence in their competence.
In addition to tensions occurring between the four previously articulated categories, discrepancies of the same category can occur among individuals, groups, and organizational structures. Tensions 7, 8, 9, and 10 in the matrix are these types of discrepancies.

The following would be an example of an intra-category tension within the "perceived" category: A youth employment program is created by legislators who feel that the members of the target group are basically good-hearted individuals who only need to be provided opportunities for self-help. The administrators charged with implementing the program however may perceive the client group as little more than undisciplined toughs who are being "bought off" with the program in order to keep city streets relatively safe.

To summarize, there are ten types of tension-inducing discrepancies which can take place on three levels of occurrence between or within each of the four policy implementation contextual components.

Transaction Patterns

Transaction patterns are the uncrystallized patterns of interaction which form in response to tensions, stresses, and strains between and within the component parts of the policy implementation context. At this stage, the patterns have not yet taken on the relative permanence of institutions. Some transaction patterns never take the form of institutions, rather they may lead directly into the feedback component.
Institutions

Because of the dynamic nature of the policy process, it is difficult to determine at what point interaction patterns crystallize into institutions. Smith describes measures to serve as guidelines in determining degrees of institutionalization of interaction patterns:

1) The institution's ability to survive in its environment

2) The extent to which the institution is viewed by surrounding societal components to have value (both autonomy and influence)

3) Whether the relationship patterns become normative for other societal components

Smith stresses that though governments can establish administrative organizations for the purposes of policy implementation, the mere fact of establishment does not a priori lead to the organization's institutionalization. He states that "a test of an established organization's institutionality is whether demands for the activity would be sufficient to force its continuance."

The time factor must be taken into account when one considers the degree of an interaction pattern's institutionalization. Patterns for some types of policies may take longer to crystallize (complex, non-incremental policies) than for others (simple, incremental policies). The temporal characteristics of policy implementation help on in understanding that the policy process is continuous and may or may not have an easily identifiable endpoint.
Feedback

The feedback phase of Smith's model addresses the fact that transaction patterns or institutions can serve as tension-generating entities. These new tensions may relate back to the implementation matrix for resolution, or they may be unresolved during the implementation process. If the tensions are disruptive enough (they may alternatively be supportive to the system), the only means of resolution may be through the reformulation of policy. The feedback phase underscores the importance of viewing the policy process as an ongoing activity that may never have a definite end.

Like Van Meter and Van Horn, Smith has constructed a model of the policy process which takes into account psychological and attitudinal characteristics of actors in the policy process. His mod is not as sophisticated in some aspects as Van Meter and Van Horn's -- he does not, for example, explore the intensity of attitudes held by implemeters and how these attitudes might affect the final policy outcome. He does, however, incorporate into his model a mechanism whereby policy may be reformulated as a result of difficulties in execution -- the feedback loop. This is in direct contrast to Van Meter and Van Horn's conception of policy implementation as a linear, progressiv process.

Rein and Rabinovitz, Implementation: A Theoretical Perspective

In their 1977 working paper, Martin Rein and Francine Rabinovitz envisioned policy implementation as a process of continuing give-and-take between participating actors:
We posit a different view about implementation, one which emphasizes the interrelationship between the process and the product rather than the roles of the different actors who dominate in a competitive field. Policy and administration, by their nature, are continuously comingled. In this setting, purpose is redefined at each stage of the process toward ultimate implementation.

Rein and Rabinovitz define implementation as "1) a declaration of government preferences, 2) mediated by a number of actors who 3) create a circular process characterized by reciprocal power relations and negotiations." Actors in the implementation process are influenced to varying degrees by "three potentially conflicting imperatives: the legal imperative to do what is legally required; the rational-bureaucratic imperative to do what is rationally defensible; and the consensual imperative to do what can attract agreement among contending influential parties who have a stake in the outcome."

These three potentially conflicting imperatives need a mechanism for the resolution of tensions; Rein and Rabinovitz respond by introducing "the principle of circularity":

The process is not a graceful one-dimensional transition from legislation, to guidelines, and then to auditing and evaluations. It is, instead, circular or looping...No one participant in the process ever really is willing to stop intervening in other parts of the process just because his stage had passed.

Rein and Rabinovitz' "principle of circularity" may be viewed as the final break from the earlier hierarchical, unidirectional classical model of policy implementation. They place a high priority on consensual and bureaucratic initiatives as two of the three basic "imperatives" that influence the outcome of policy. The course of policy is no longer viewed as being set in the initial, formulative, stages. Those actors
responsible for the execution of policy are now viewed as exerting, through their beliefs, actions, and reactions, considerable influence on the outcome of policy. It is now necessary to view implementers as key actors in the policy process.

Nakamura and Smallwood, *The Politics of Policy Implementation*

In their 1985 book, Robert Nakamura and Frank Smallwood describe the policy process as occurring in "environments." They use the environment term to minimize what they call "the misleading tendency to characterize implementation solely as a unidirectional phenomenon, the kind of top-down model that characterized the earlier, classical models." Nakamura and Smallwood describe environments as being constantly in flux, "but they are not mutually exclusive since the same actors may participate in different roles in the different environments."

Nakamura and Smallwood describe the environments as being in a state of flux, illustrating the dynamic nature of the policy process. They further point out that, in the environments, a wide variety of actors may populate a particular environment. The three environments that are described as constituting the policy process are Policy Formation, Policy Implementation, and Policy Evaluation.
Policy Formation

Environment I, Policy Formation, contains the decision-making process -- the initial setting of goals, naming of actors responsible for attaining those goals, putting forth the instructions as to how those goals are to be reached, and any determination mechanisms for measuring if the goals have been met.

The policy formation environment is generally the political arena. It contains the "legitimate" policy-makers -- legislators, elected officials. Policy in this environment may result from internal political (among the characters) pressures, or they may be in response to outside pressures -- the media, social unrest, interest groups, etc. Technically, once the decisions have been
made by the actor in the policy formation environment, the role of its characters ends, and the next environment, Policy Implementation, takes over. However, because of two-way linkages between the environments, responses to policy implementation and Policy Evaluation, the third environment, may take place in the policy formation environment. This reflects, once again, the dynamic nature of the policy process.

Policy Implementation

The second environment, Policy Implementation, contains the bulk, the nuts and bolts activity of the policy process. It is in the policy implementation environment that the public at large comes into direct contact with the policy process. It is the actors in this environment that the public can readily identify and react to.

In the policy implementation environment are the administrators and "street-level bureaucrats" who are charged with the responsibility of making the decisions of those in the policy formation environment come to reality.

Once again, the actions of those in the policy implementation environment may be affected by either internal situations, those among bureaucrats, or by the presence of external pressures from other environments in the policy process, or by forces exogenous to the system. Actors in the policy implementation environment may also be greatly influenced by their own perceptions and the degree of discretion that they are allowed by the policy decision makers in implementing programs.
Activity in the policy implementation environment technically ends when the formal goals set by the policy decision makers have either been met or abandoned. Policymakers may determine that the activities of the policy implementors should be terminated due to success, failure, disinterest, or hostile reception by the affected groups. Whatever the reason, the decision to terminate the activities of the implementors is made in Environment I, policy formation.

Policy Evaluation

The third environment, Policy Evaluation, is the "most amorphous and abstract of the three." Those involved in Environment III may also be active in the policy formation and policy implementation environments. They may also be individuals or groups who have been until this point totally divorced from any of the policy activities.

Nakamura and Smallwood state that the "the process of evaluation usually has two objectives, to determine the success or failure of policies and/or to determine policy alternatives. Hence, new policies may originate in this environment that are ultimately legitimized by the policy-makers in Environment I." Policy evaluation serves the function of a feedback mechanism for possible recalibration and resetting of goals by those in the policy formation environment. It also serves those involved in implementation as a means of determining effectiveness in attaining prescribed goals of the decision makers and the possible reformulation of strategies for reaching those goals.
Communications Linkages Between Environments

The three environments are tied together by linkages of two-way communication and compliance mechanisms. Edwards and Sharkansky stress the importance of communication: "The first requirement for effective implementation is that those responsible for carrying out a decision must know what they are supposed to do. Orders to implement a policy must be delivered to the appropriate personnel, and they must be consistent, clear, and accurate in specifying the aims of the decision makers." Edwards and Sharkansky further go on to state that communicating a decision and the specifics of that decision "is not always as straight-forward a process as it may seem. Ignorance of decisions and orders may result from the absence of a communications system to accomplice the physical transmission of orders or from the blockage of information somewhere in the system."

Communications Pitfalls

Nakamura and Smallwood describe the following three potential pitfalls which can occur in communications linkages:

1. garbled messages from the senders;
2. misinterpretations by the receivers;
3. system failure in terms of transmission breakdowns, overload, "noise", and inadequate follow-through or compliance mechanisms.

47
Nakamura and Smallwood describe the first pitfall, garbled messages, as resulting from limitations of verbal and written communications. They speak of potential ambiguity of language coupled with other constraints that may dilute the content of a message. Some of these constraints may include limited time spent on communication, the use or avoidance of "forbidden" language based on etiquette, or the use of diffuse ideological codewords of "buzzwords" (i.e., "general welfare", "public interest"). Messages may also be deliberately vague, communications may be deliberately garbled as a result of compromises that have been required in order to gain support for the policy in the formation stage: "policy-makers may reach consensus on very general goals, but they are unable to agree on the specifics on how those goals are to be achieved." 69

The second potential pitfall, misinterpretation of the communication by the receiver, may or may not be unintentional. If the messages sent by policy makers were indeed garbled, this may lead to confusion on the part of implementers. Or, the implementer may "misinterpret" otherwise clear messages and commands because of the desire to promote their own interests. Communications may be deliberately misread by implementors because of perceived threats to the bureaucratic norms or personal prerogatives of the implementers.

The third type of communications pitfall described by Nakamura and Smallwood is that of an overall communications breakdown resulting from "the absence of effective machinery to transmit messages from one environment to another." 70 As a result of this situation, some messages may be sent to the wrong
actors, or they may not be transmitted at all. Communications breakdown may also result if there is an information overload -- if so much information is being transmitted that the truly important messages and commands are lost in the communication "noise". Another overall system failure may result from the absence of follow-up or compliance mechanisms that can be used to ensure that messages have been accurately received and that implementers are attempting to take the appropriate actions dictated by those messages.

This last variety of overall system failure brings to light the question of how policy decision makers ensure that their instructions will be followed. How does one determine the use of sanctions and incentives to ensure that policy directives will be followed as originally intended? Nakamura and Smallwood point out that many case studies of Great Society programs indicate the breakdown of compliance linkages as one of the "thorniest problems of policy implementation."

Policy Origination and Termination

Nakamura and Smallwood point out that though it is easy to view policy as originating in the formation environment -- the actions of "legitimate" actors -- many of the activities in Environment I are in reality responses to pressures external to the policy system. So, quite often, the role of the actors in the policy making environment is in reality that of policy "legitimizers", making societal or other pressures official via legal mandate. While it is possible for a policy to originate in
any of the three environments or external to the process altogether, the actors in the policy formation environment are generally seen as the major source of policy initiatives.

The question of where a policy exits the system, when a policy terminates, is even more difficult to answer. It is assumed that once the goals of a policy have been met, the machinery for attaining those goals will be dismantled and efforts redirected to other endeavors. However, policies and programs have a tendency to take on their own bureaucratic lives as the implementers of the policy perceive it to be in their best interests never to reach the goals set by the decision makers. By failing to reach set objectives, the implementers attempt to perpetuate the existence of their bureaucratic organizations.

Nakamura and Smallwood have completed the task initiated by Rein and Rabinovitz. In describing the environments in the policy process, they have presented a model in which all of the actors involved participate possibly numerous times during the progression from policy formation to completion.
CONCLUSION

In this section, the author has examined policy implementation from a theoretical perspective. The classical model of administration was presented, followed by more recent contrasting views and models. From these models of the policy implementation process, the author has chosen Van Metter and Van Horn's for later use in Section Three.
NOTES


3. Ibid., pp. 7-8.


6. Ibid.


11. Ibid., pg. 10.

12. Ibid.

13. Ibid.

14. Ibid., pg. 11.

15. Paul Appleby quoted in Nakamura and Smallwood, ibid.

16. Nakamura and Smallwood, ibid., pg. 11.

17. Ibid.


19. Ibid., pg. 100.

20. Ibid., pg. 124.


25. Ibid., pg. 462.

26. Ibid., pg. 463.

27. Ibid., pg. 464.

28. Ibid., pg. 466.

29. Ibid.

30. Ibid., pg. 471.

31. Ibid., pg. 472.

32. Ibid., pg. 473.

33. Ibid.

34. Ibid.

35. Ibid.

36. Ibid.

37. Ibid., pg. 474.


40. Ibid., pg. 200.

41. Ibid., pg. 201.

42. Ibid.

43. Ibid.

44. Ibid.

45. Ibid.
46. Ibid.
47. Ibid., pg. 208.
49. Ibid.
50. Ibid., pg 203.
51. Ibid.
52. Ibid., pg. 205.
53. Ibid.
54. Ibid., pg. 206.
55. Ibid., pg. 208.
56. Ibid.
58. Ibid., pg. 8.
59. Ibid.
60. Ibid., pp. 25-26.
61. Nakamura and Smallwood, op. cit., pg. 27.
62. Ibid., pg. 22.
63. Ibid.
64. Ibid., pg. 23.
65. Ibid.
67. Ibid.
69. Ibid.
70. Ibid., pg. 25.
71. Ibid.
SECTION TWO -- THE MASSACHUSETTS RIGHT TO KNOW LAW
INTRODUCTION

In this section, the author will address the implementation process of the Massachusetts right to know law. He will examine the roles of the various actors responsible for the execution of the law, paying particular attention to those factors which may prove to be obstacles to successful implementation.
THE RIGHT TO KNOW LAW: AN OVERVIEW

What is the right to know law? Massachusetts General Laws Chapter 111F became effective on September 26, 1984. The new "right to know law" serves to vest certain rights in employees and community residents to learn about the presence in the workplace and the nature and effects of toxic or hazardous substances to which they may be exposed by reasons of the actions or operations of any of the state's more than 128,000 employers. This law does not serve to ban or restrict the use of substances, rather it mandates that exposed individuals be permitted to learn about the substances' natures. Simply put, the law might be considered legally enforcible enlightenment.

Who is the law meant to serve? Any individual in the employ of either a private company or a public (governmental) entity on or after the effective date of the law "who is, has been or may be exposed under normal conditions or foreseeable emergencies"[ ] to any substances on the Massachusetts Substances List is covered by the law. "Employee" includes any workers who no longer are in the service of the employer in question but terminated their employment after September 26, 1984.

The law also covers any individual living in a municipality in the Commonwealth of Massachusetts on or after April 1, 1985. The rights of community residents under the law differ from those of employees covered by the legislation. Certain issues which arise from these differences shall be discussed further in regarding the Department of Environmental Quality Engineering and its role in the law.

58
Lastly, the law affords certain rights of information access to physicians treating employees or community residents. These are physicians or emergency medical personnel in medical emergencies who are administering health services to employees or community residents.

Any company or governmental agency -- any non-domestic employer in the Commonwealth of Massachusetts (excepting the federal government) -- has certain obligations under the right to know law. The law contains provisions for certain exemptions for research laboratories and for a manufacturer's trade secrets which shall be discussed further in the section regarding the Department of Public Health.

Central to the right to know law is a document known as a Material Safety Data Sheet (MSDS). This document contains information on a chemical or mixture including chemical concentrations, the effects that the substance may have on humans, procedure for proper handling, and instructions in case of emergencies. Every employer who has qualifying substances in his or her workplace must submit MSDSs to the state.
PRINCIPAL ACTORS IN THE LAW'S IMPLEMENTATION

The right to know law is executed on the state level by three principal agencies: The Department of Public Health, the Department of Labor and Industries, and the Department of Environmental Quality Engineering. Each of these agencies is responsible for a section of the law even though there is a large degree of overlap in, if not duties themselves, then in responsibilities in defining the parameters of the law and those to whom it applies.

Department of Public Health

The Department of Public Health's (DPH) role is primarily one of determining what substances are covered by the law -- what substances must be disclosed in the MSDSs. In its duties under the law, DPH composes and amends what is known as the Massachusetts Substance List (MSL), which is a compendium of approximately 1600 chemicals and chemical mixtures considered to be toxic or hazardous to humans. DPH has the authority to periodically amend the MSL, adding or removing names of substances. MSL substances are listed alphabetically or numerically, according to numbers assigned to them by the Chemical Abstracts Service (CAS).

DPH is also charged with the responsibility of determining which employers are exempt from the provisions of the law. Exempt employers may include research laboratories, and, in special instances, the DPH determines whether or not a substance covered by the law should have "trade secret" status.
In its role for determining research laboratory exemptions, the Department of Public Health has established stringent guidelines which must be met by a facility or employer applying for an exemption from certain sections of the law. The Department grants or denies exempt status based upon criteria spelled out in these guidelines. There is an appeal process in the guidelines for an employer who is unsatisfied with the finding of the Department, but of course, appealing a decision does not guarantee the granting of an exemption.

The Department is also responsible for physician's right to know. When a physician treating an individual suspects that an illness might be caused by chemical substances used by an employer, the physician may file a petition requesting information on substances to which the patient may have been exposed. DPH is responsible for obtaining and administering the physicians' confidentiality form. This form, which is signed by the treating physician, is binding on the physician in that the doctor is not allowed to disclose any information received from MSDSs.

Department of Labor and Industries

The Department of Labor and Industries (DLI) is responsible for the employee portion of the right to know law. DLI is responsible for enforcing the rights of employees and protecting employees in the event that they as individuals have problems with employers. DLI is responsible for assuring that employers are in compliance with the information-disclosure portions of the
law, that employers have available MSDSs for all MSL substances in the workplace, and requires that employers label containers of those substances which fall within certain weight and/or volume guidelines. DLI is authorized to penalize employers who do not meet with the requirements of the right to know law.

DLI is also responsible for protecting an employee from actions by an employer which would be construed as harassment should the employee exercise his or her rights under the law. DLI is authorized to inspect an employer's workplace to ascertain that the employer is in compliance with the law.

The Department of Environmental Quality Engineering

The Department of Environmental Quality Engineering (DEQE) is responsible for a great deal of the paperwork involved in the right to know law. DEQE is charged with the responsibility of maintaining a file of MSDSs obtained from employers for a period of forty years. The agency is also charged with oversight of the community right to know section of the law. It has the responsibility of receiving and releasing MSDS information to community members through the citizen petition process.

Municipalities

Municipalities are required to address the right to know law on two fronts. One, they must serve the role of employers and meet the pertinent requirements of the law in substance disclosure. Two, they must serve as the first line of enforcement for the law.
In their role as enforcers of the law, municipalities are charged with choosing an individual — usually the fire chief or a member of the board of health — whose duties are to receive citizen petitions for the citizens' right to know process, review those petitions for completeness, and forward those petitions to DEQE, with a recommendation for release or non-disclosure of MSDS information. DEQE then examines the petition for completeness and makes a decision as to whether or not to release an MSDS to the citizen.
THE ROLE OF THE DEPARTMENT OF PUBLIC HEALTH (DPH)

DPH has several functions under the right to know law. Perhaps the most important of these functions is the promulgation and regulation of the Massachusetts Substance List (MSL), a compilation of the more than 1600 toxic and hazardous substances covered in the law. These substances include carcinogens (cancer-inducing), mutagens (causing mutations in genetic material), teratogens (resulting in birth defects) and neurotoxins (damaging to the nervous system). The list has most recently been updated in 1986. DPH conducts formal public hearings whenever the MSL is updated. In these hearings the agency hears testimony both for and against the proposed amendments to the list.

Also among DPH's mandated responsibilities are the handling of exemptions from the requirements of the law. It handles trade secret exemptions as well as exemptions for research laboratories.

Agency Staffing

Nancy Curtin, industrial hygienist for the Department of Public Health, is the individual primarily responsible for overseeing the exemptions for research laboratories and trade secrets. At present there are three people involved in DPH's section of the right to know law -- the coordinator, the industrial hygienist, and a toxicologist. DPH is presently involved in adding another toxicologist and another industrial hygienist to assist the present personnel.
Agency Funding

It was approximately seven months after right to know became a law that program staff was hired. Part of the reason for the lag can be directly attributed to funding problems. There was no money appropriated for DPH's section of implementation when the law was enacted, so other DPH personnel were "wearing many hats" in an effort to start the implementation program while working on their other duties in the agency. Right to know is now a standard budget item for DPH and has recently received a doubling of its budget. Curtin says, "We are encouraged by the fact that they have given us the go-ahead on two new positions." The staff presently consists of four persons, including clerks. These four are responsible for DPH's statewide portion of the right to know law. With the two new positions, staff size will be increased by fifty percent to six.

The law went into effect September 1984 and Curtin was hired in May of 1985. Until her hiring, applications for exemptions were being accepted, but no inspections were being conducted or determinations made. After Curtin's hiring and that of a toxicologist, the agency spent several months formulating procedures for implementing its portion of the right to know law. Beginning in late August of 1985, the first few months of these inspections were used to "fine tune" the inspection process, to determine what did and what didn't work. By now DPH has pretty much fallen into a routine for the inspections. It has developed checklists for inspections purposes, and Curtin feels that things seem to be going pretty well.
Curtin states that implementation has been slow to get off the ground "because we haven't had a lot of guidance from the law or the regs, and its kind of had to be developed -- it's had to go through our legal department several times. We'd kind of just gotten our feet wet in the fall. I'm feeling much more confident about going in and out of people's places or business. There were rights of entry questions (as well as questions regarding what the law allowed us to do)." Curtin feels that with the hiring of the new industrial hygienist, the schedule can be "beefed up".

Physician Access to Confidential Information

DPH also plays a role in assisting physician access to confidential or trade secret information. DPH has drafted a confidentiality agreement which manufacturers may use in disclosing information to a physician who is treating either an employee or a community resident covered by the law. To date, the department has received one request from a physician for assistance in obtaining MSDS information from a manufacturer. As Curtin points out, the one request does not necessarily mean that the law is not working as intended. It may be that physicians are directly contacting and receiving MSDS information from manufacturers and employers without the assistance of DPH. DPH may be asked to assist the physician if the manufacturer does not have a confidentiality agreement of its own or if the physician is having difficulty in gathering information due to reluctance from the manufacturer.
Under normal circumstances, a physician would go through either DLI or DEQE to obtain MSDS information. If the physician is treating an employee, he or she would go through DLI. If the physician were treating a community resident, DEQE would be the avenue. DPH facilitates confidentiality. It provides the formal agreement between the two parties -- the physician and the employer or manufacturer -- to keep the released information secret. DPH does not play an active role in the actual securing of MSDS information.

Research Laboratory Exemptions

DPH currently has 180 applications for research laboratory exemption. In some instances, a single application may be submitted for an entire company which has numerous research facilities. The present 180 applications represent 321 laboratories. There are applications which seek exemption for an entire facility (Draper Laboratory, for example, which has numerous individual laboratories might submit only one application for exemption). Curtin notes that it is very difficult to determine the number of employees working in an exempt facility.

There are two major advantages for an employer seeking exemption from the requirements of the right to know law. The first is that many research laboratories already have established policies and programs for information disclosure and employee training in health and safety. The presence of many highly-skilled individuals working in research laboratories may negate the requirement for state-regulated training. Curtin points out that there are mostly doctorate-, masters-, or at least
baccalaureate-level trained personnel working in research laboratories. These employees are usually better trained than the typical manufacturing employee who would come into contact with hazardous chemical substances in an industrial workplace. In instances such as this, the research laboratory exemption saves employers the trouble of having to restructure their training program which may already meet or even surpass the state's employee right to know training regulations.

The second main reason for a laboratory to seek exemption is the potential savings in paperwork. As Curtin states, "filing of MSDSs for every substance that is used in the laboratory can be quite laborious. Usually inventories are very large." Unless a laboratory is part of a corporation's research and development facility, in which case there is generally a small number of chemicals used for very specific purposes, it will contain large numbers of small quantities of chemical substances in small quantities. Exemptions for research laboratories save employers the effort of having to bring MSDSs into the specific format required by the right to know law. It also spares the employer the trouble of recording and retaining any diligent efforts correspondence that might be used in trying to gather MSDS information from manufacturers or suppliers. Otherwise, it can be quite cumbersome for large research laboratories to send pertinent MSDSs and information to DEQE and DLI for community and employee right to know.
Rejection of Exemption Applications

There are numerous reasons for the rejection of a facility's application for exempt status. These reasons are quite clearly stated in DPH regulations. Upon receipt of an application for exemption, DPH inspects the laboratory to determine qualification for exemption. The fact that DPH only has one industrial hygienist assigned the task of inspecting all applying laboratories creates a bit of a backlog, a problem in prompt compliance of the law by employers.

On the application for research laboratory exemption, there are several questions which must be answered by the employer. These help DPH determine whether or not the facility can be exempted from the right to know requirements. Chief among these questions is whether or not a facility is actually a research laboratory. This is defined as a laboratory that is involved in research and development that does not conduct routine testing. Quality control laboratories, for example, are not considered research laboratories and therefore cannot qualify as exempted facilities. Manufacturing laboratories, small scale production, or pilot program laboratories are not exemptible under the right to know regulations. As Curtin points out, DPH must take the answers to questions asked on the application at face value. It is difficult to ascertain whether a facility is used for research and development or for quality control or other production functions until a thorough inspection is made of the facility and observations are made of employee activities and research notes.

DPH also examines the SIC codes of an applicant. If the SIC code
is 2000 to 3999, that applicant is covered by OSHA regulations governing the manufacturing segment of industry. This means that even if a laboratory is involved in production activities, it is exempt from the employee right to know; however, that lab still would be required to meet DEQE regulations regarding community right to know. OSHA has superseded all DLI regulations for activities in the manufacturing segment of industry.

A major requirement and possible cause for rejection of an application for exemption is the requirement that all activities conducted in the laboratory be under the direct supervision of technically qualified personnel. DPH considers direct supervision to be the actual physical presence and participation of qualified graduate-level or higher trained personnel. Curtin says, "If for instance, you have a laboratory where you have high school diploma (level) technicians, or B.S. technicians working without direct supervision...not somebody sitting in a corporate office somewhere, we don't consider that adequate. Somebody has to be on-site and available in the event of an emergency, a problem, concern about a safety or health-related issue." DPH defines technically qualified as meeting criteria for levels of education and experience. DPH also must have proof that employers have provided employees with adequate information of intention to seek research laboratory exemption. The law allows employees to submit information to DPH if that employee does not feel that exemption is warranted. The employer is required to post notice 21 days prior to filing an exemption application. DPH has had approximately one dozen situations where employees have made submissions to the department contesting an application for
exemption. Of these twelve research laboratories, some have had multiple submissions from employees in the same facility. In instances where an employee protests the application, DPH finds itself in a very delicate situation. It must determine whether or not the actions have been taken by a disgruntled employee who does not like his or her boss. If the protest has been made for valid reasons, DPH assures confidentiality for any employee protesting the exemption application. This can be problematical during an inspection of a facility by DPH in that the department does not want to single out any employees for questioning and comparison with employer statements. DPH randomly questions employees while it is making an observational inspection of the applicant's facilities in an effort to determine if observed actions are typical of what takes place in the laboratory or if it is a "performance" by the employer and employees in attempt to gain research laboratory exemption.

DPH does not conduct unannounced inspections of facilities. This decision was made by the department because inspectional visits involve review of numerous documents, and it is very time-consuming if employers are not expecting the inspectors. Another advantage to giving advance notice of inspection is that if an applicant facility is inadequate in some area of the requirments, it is often the case that these inadequacies are corrected by the time the DPH inspectors arrive. Curtin states, "Our motive is obviously to get places to be operating in a healthy and safe manner, and if two or three weeks advance notice before our inspection is enough to get people moving, we feel that's good."
Probably the greatest reason that DPH would reject an exemption application is that a laboratory is not being conducted in a healthy and safe manner. DPH rejects exemption if it believes that the health and safety of employees working in the laboratory is being threatened. DPH inspections of facilities are primarily to determine the level of health and safety in the laboratory. These inspections do not involve the taking of samples. DPH anticipates conducting ventilation tests in the future when the agency gets the proper equipment. A large number of people are surprised by DPH's approach to facilities inspection. It is generally assumed that DPH will concentrate its efforts on inspecting and observing chemical handling in the laboratory because that is, after all, what the right to know law is primarily concerning itself with. DPH however, has a very broad mandate and has decided that it might be worthwhile to examine all activities and aspects of research laboratories, even if it does not directly involve the right to know law. Curtin says, "Maybe we can get people moving and developing programs in other areas."

Facilities Inspections

During an inspection, DPH notes deficiencies and makes their correction a requirement for research laboratory exemption. The agency may make recommendations on other health related issues that need to be addressed or that the agency feels warrants some consideration. While these recommendations are not required to be met for exemption purposes, DPH has found that they are usually followed by employers. Curtin states that employers will often go
beyond what is required of them. DPH also offers assistance, as much as possible, to employers seeking exemption. Though the agency does not have the staff to provide on-site consultation, it does attempt to assist employers by distributing information on safety equipment or related subjects.

Citation of Inadequate Facilities

The Department of Public Health enjoys a great deal of discretion in the issuance of citations to any company that it feels is deficient in laboratory equipment or practices. Though this does not tie directly in with the right to know law's implementation, DPH's powers of citation can be used a great deal as leverage in bringing laboratories into compliance with regulations. DPH generally does not issue citations -- "unless its something that we feel to be an eminent threat to health, we wouldn't push an issue like that." In making suggestions and recommendations to employers DPH does not necessarily limit itself to research laboratories. It makes information and recommendations available to all segments of industry as well as private citizens.

DPH has inspected approximately 60 laboratories, and is in the process of beginning to issue determinations on those facilities. Final determinations were being held until issues had been cleared up regarding OSHA and the new federal hazard communication standards. Now that DPH has clarified where it stands in relation to the federal government's efforts, processing of recommendations should take place at a fairly good rate.
Determinations for Granting or Denying Exemption

DPH has not had any legal challenges to any decisions that it has made. In determining exemption for a laboratory the agency conducts an adjudicatory hearing so that any rejections may be appealed. Curtin states that so far she has recommended denial in only one case. There have been no denials of applications due to insufficient information provided by the employer or manufacturer, failure by employers to provide information requested, or due to laboratories being operated in unhealthy and unsafe manners. DPH allows time for abatement for deficiencies. An initial period of 30 days. If an extension of time is required, employers can ask for an additional sixty days, "so I think we're giving people the benefit of the doubt and the opportunity to clean their act up, so to speak." 7

The department has developed these timetable guidelines as policy -- they are not part of the regulations. Therefore, they are not really legally enforceable if employers are displaying good efforts. As Curtin states, the department handles applications on a case by case basis, but the existence of guidelines serves to give employers and added incentive for prompt compliance with regulations. As Curtin states, "I found that the industry people that we're working with like them to tell them they have to do this by this date. They don't like open-ended statements like 'as soon as possible'...They like some guidance. It gives them goals to work towards." 8
Trade Secret Exemptions

DPH maintains information all the substances to which it grants trade secret exemption. It does not, however, hold information of a confidential nature unless the manufacturer wishes it to. Curtin points out that DPH would rather not be in possession of that information due to the possibility of liability if the information were to get out and be used by a manufacturer's competitors.

DPH has currently received 73 applications for trade secret exemption -- that is 73 companies and 650 substances. DPH was mandated the responsibility of determining whether substances are indeed trade secrets and as such should be protected with an exemption from certain right to know requirements. A problem arises from the fact that DPH does not require that a manufacturer disclose trade secret information. In other words, if a manufacturer decides that the "recipe" of his product is a trade secret, all of the chemical ingredients of the product are protected. That manufacturer is not required by the law to disclose any information on any substances used in its product, even to DPH. Curtin states, "That presents a problem of course in terms of our mandated responsibility."

On the application for trade secret exemption, DPH has included a question on whether or not a product can be readily reverse engineered -- whether a product can be taken into an analytic laboratory and its components determined in terms of ingredients and formulation. Curtin points out that the language of that question also presents a problem in that "readily" is a
rather vague term. As she states, "To a competitor, when you're talking multi-million dollars in market, maybe 'readily' means spending half a million dollars on laboratory facilities and analysis. Trying to define what analytical testing would be considered readily available ... is very difficult to determine. Another thing is, do we accept someone's word that it is or is not readily reversed engineered? The only way to really know is to have an analytical chemist review the ingredients in the material and its formulation and determine whether or not we could do that in the laboratory...or actually have them give us a sample."

The result of DPH's inability to require manufacturers who apply for trade secret exemption to disclose information on substances in question is that there is nobody in the state government -- DPH, DEQE, or DLI -- who knows what the chemical components of those trade secret substances are. In other words, the right to know law cannot touch any substance that a manufacturer attempts to obtain a trade secret exemption for. If a manufacturer manages to convince DPH that a substance needs to be a protected secret, that manufacturer can be untouched by most of the requirements of the right to know law. As Curtin says, "Unless that manufacturer voluntarily discloses it to you (the information, it remains a mystery) ..., we can't require it, and DEQE would never know; they would never submit an MSDS to DEQE because what's submitted to DEQE can be accessed through the community petitioning process." Most of the other questions on the trade secret application deal with the value to the manufacturer of that trade secret. Questions address what share of the market the manufacturer controls, and on what amount of
time, money and effort the manufacturer has expended on that substance. These are nontechnical or nonquantitative questions, and as a result, industrial hygienists or toxicologists cannot evaluate them properly. Legal standards exist in tort law on what is a valid trade secret, and the federal OSHA regulations have a definition of trade secret which the Massachusetts DPH uses.

The definition of a trade secret is in the legal realm and DPH has no real control over what is or what is not a valid trade secret for a manufacturer. While DPH legal counsel is attempting to determine proper procedure for handling trade secrets, the department is sitting on the information that it has received from manufacturers. During this interim period, a product for which an application for trade secret exemption has been submitted, is treated as exempt. Until DPH either formally accepts or rejects an application for trade secret exemption, the manufacturer is not required to comply with the other sections of the right to know law. "And we have 650 materials that have trade secret status in this state until the department has the mechanism for dealing with them."

Problems With the Trade Secret Exemption Process

Because she has spent the bulk of her time examining and inspecting research laboratories, Curtin has only recently been able to address trade secret exemption applications. In doing so, she says that she has discovered several items in the applications or in the process that need to be rectified. One problem stems from confusion over items sent in to the state from manufacturers.
and employers. Many of these items were mistakenly treated as applications for trade secret status by the staff of DPH when these items were in fact submissions which should have been routed to DEQE. Some packets of MSDSs which were sent from employers to be submitted for compliance with the right to know law were received by DPH, and because of the non-existence of a review process, staff inadvertently assumed that they were materials for which trade secret exemptions were being requested. As a result of this recordkeeping error, the actual number of materials that should be examined for trade secret exemption determination is less than the present 650.

Another problem that DPH has encountered is that some employers apply for trade secret exemption for materials that they do not manufacture. These employers buy the materials from another company and may repackage them or use them as an ingredient in another product. Or they may use them for a purpose different than that for which the product was originally developed. The latest opinion from the DPH legal office is that an employer does not necessarily have to manufacture a product to obtain trade secret status. The employer is only required to be the preparer of a Material Safety Data Sheet. Curtin states, "If Dow Chemical, for instance, sent you an MSDS for one of their products and you wish to use it or market it as your own...you can call it something else, take responsibility for the MSDS. You take Dow's name off of it. You are then liable for the information provided on the MSDS, and you can withhold certain information from the MSDS as trade secret." Curtin uses the "Bazooka Bubblegum" example in which an employer is legally able
to repackage Bazooka bubblegum and market it as an adhesive. In doing such, the employer would be legally able to obtain trade secret status for the product. The employer is then able to withhold the true identity of this adhesive and be protected in doing so from losing his or her share of the market to competitors (the most obvious would be, of course, Bazooka Bubblegum). Though the possibility exists for such potential abuse of trade secret status for products, Curtin says that DPH has not received an overly large number of applications. There have been only isolated instances where people have applied for trade secret status for repackaged and renamed products.

Interagency Communications Problems

Curtin states that one of the problems that DPH has encountered has been a lack of communication between agencies. This will hopefully be rectified as DPH gathers information and places it in computer files. Nancy Curtin is currently working alone in her efforts for DPH implementation of right to know, and is too busy to attend most of the policy meetings with representatives from DEQE and DLI. Normally, DPH has more dealings with DEQE, but, at this time with the federal preemption of manufacturing segments of industry, DPH is spending an approximately equal amount of time with DLI in assigning SIC codes to industries, etc.

Curtin states that early in the program's implementation stage all three agencies were involved in advising manufacturers on how to complete MSDSs. This led to difficulties in that each
agency had its own main focus and concern -- DLI was health and safety in the workplace, DPH was more interested in how trade secret MSDSs were prepared and whether or not products were registered in the state; and DEQE was more interested in looking at all of that information and checking for compliance when MSDSs were submitted.

Curtin states that currently communications have been improved and that the problems are not as extensive as during the early implementation stages of the law. Curtin states that early in the implementation stages, the three agencies were apparently not quite aware that they had overlapping responsibilities. She states, "I think everybody was trying to get their programs going and, even in terms of computerization, obviously DEQE has an almost insurmountable task ahead of them in terms of getting the plethora of information that they have on to some computer terminal somewhere. On the other hand, we are also computerizing for all the trade secret materials that we have, and I personally didn't think about what DEQE was doing and they in turn did not think about what I was doing and all of a sudden we are finding out that our code numbers are not interchangeable in our files and things like that, so that information on MSDSs that people are preparing for us cannot be inputed into their files properly."

She further makes the assessment that things have improved significantly in the past sixth months. The computerization of information is not totally complete, but DPH will be able to hook-up into the DEQE system at some point in the near future. Curtin states that DPH is presently in the "computer neophyte" stage in that there is not a large amount of experience in the agency with
the use of computers outside of word-processing functions and that personnel must go through a training and familiarization process for the use of computers. She states that in some ways it is good that the DEQE system is not operational as of yet in that the level of proficiency for DPH staff has not reached the point that they could put the computer system to its best use.

Curtin does not feel that there are any conflicts between the agencies over who should be responsible for the different tasks, but that there is some amount of confusion in that when an employer, employee or citizen calls in and requests information or submits information regarding the right to know law, it is not always clear, both to the agencies as well as the outside party, which is the correct agency to be contacting. Curtin says, "I think oftentimes when people call in to a given agency, maybe the person responding to them doesn't really get what the issue is. We get a lot of calls referred to us that, because they hinge around a trade secret substance, the person referring them to us thinks, 'Oh well, they just go to DPH if its trade secret,' when in fact it may concern a trade secret substance but has nothing to do with the application process or how you fill out the MSDS."

Quite often, people call in with questions who are very confused, especially in light of the federal laws that have been put into effect. The OHSA regulations and their preemption of DLI in certain areas have led to much confusion from employers, manufactures who are attempting to come into compliance with right to know regulations. The agencies are aware of this potential confusion and actively attempt to "nip that in the bud."
Representatives from the three agencies have monthly meetings during which they apprise each other of situations in each agency and how they might affect other agencies, discuss mutual problems, and address any other items that may arise.

Evaluations of Efforts

In response to queries regarding any evaluation mechanisms, Curtin states that internally DPH does have general milestones that they attempt to reach, i.e., a goal of so many laboratory inspections, trade secret exemptions, or research laboratory exemptions in a given time frame. She states that she does not know whether any of the other agencies have a similar means of determining progress of program implementation.

Curtin states that their goal of having inspected 50 laboratories by June 1, 1986 has already been met. Those fifty laboratories represent 11 companies. She states that she would like to increase the frequency of inspections so that there will be ten lab inspections per month. This is her personal goal. At this point, DPH has been unable to increase the number of inspections because Curtin is working alone and it is she who is responsible for examining all applying laboratories in the Commonwealth of Massachusetts. With the hiring of additional personnel, Curtin hopes that the burden will be lifted from her somewhat and that the frequency of laboratory inspections can increase.

Curtin states that it is difficult to evaluate the success or failure of right to know from DPH's point of view. She states that it may be easier to address compliance in terms of success or
failure if there is a change in an employer's rates of injuries, which may be directly attributable to the proper information and training requirements of the law. "Let's put it this way, any measurable evidence that's out there would be evidence that we have failed. I don't think that we would see anything regarding our success, because basically what the process we're going through is to tell somebody, Your operation meets with the intent of this law, so we're not going to require that you go through all the motions prescribed by Chapter 111F."

Compliance Enforcement

DPH does not serve a regulatory role in right to know compliance. It does not impose penalties for errors or violations, but DPH does have the authority to grant or deny exemption status manufacturers or to their products or to research laboratories as a means of persuading employers to come into line with the right to know regulations. DPH also refers violations of the law to DLI for follow-up.

Nancy Curtin's Assessment of Right to Know

Overall, Curtin feels that the right to know law is progressing fairly well in its implementation. She says that though she is not completely aware of activities in DLI and DEQE, her general impression is that the question which were asked early on in the implementation program have been answered and that the phone calls from employers confused over facets of the law are dying down. With regards to the rights and benefits afforded
employees and community residents under the law, Curtin states that "I am very pleased that the system is set up. I am not sure that it is being utilized. It is another one of those things that is very difficult to assess."

In referring to community right to know and the petition process, Curtin states that the number of petitions thus far presented to DEQE is much less than originally anticipated or hoped for, but that this may be explainable in that community residents are obtaining information directly from employers without the state's assistance.
THE ROLE OF THE DEPARTMENT OF LABOR AND INDUSTRIES (DLI)

According to Joseph Belloli, DLI Right to Know Coordinator, the agency's role in the enforcement of the law is solely between the employer and the employee. DLI's activities cover three major areas: information disclosure, employee training and protection of employee's rights under the law.

DLI Staffing

DLI presently has a staff of 25 persons working exclusively on the right to know law. In the department there are three divisions working on the law: the Division of Industrial Safety, the Division of Occupational Hygiene, and the Legal Office. In Industrial Safety, in addition to the coordinator, there are eight inspectors and clerical personnel. In Occupational Hygiene, there are five assistant occupational hygienists, an engineer, and clerical staff. In the Legal Department, there are two attorneys, a paralegal and clerical staff. In addition to these personnel specifically concentrating on the right to know law, Belloli has at his disposal another forty to fifty field inspectors who are working on other DLI activities.

Early Budget Problems

After the law was put into effect and the agencies were assigned implementation duties, there was still no budget specifically allocated for the execution of the law. Belloli says that the law went into effect in September of 1984, but no monies were forthcoming until a month later. He describes this as an
unusual situation in that, though the law had been signed in 1983, it was "on the books" for a year before any appropriations were made for its execution. The result was that DLI had to promulgate rules and regulations relating to the law, to set up their organizational structure for the enforcement and implementation of the law without any specifically designated funding. Up until the time that the agency received specific appropriations, operational funds were diverted from other DLI programs. As Belloli says, they were "robbing Peter to pay Paul."

Belloli had two others in his staff in the early stages of the right to know law, and together these three were responsible for writing the regulations for the DLI section of the right-to-know law. They were doing this while assigned to other programs and functions in the agency.

Information Disclosure

The requirements for labeling of substance containers and MSDS gathering and retention are the information disclosure part of the law -- the employee has the right to know with what substances he or she is working. Containers must be labeled; employees must be allowed access to material safety data sheets (MSDSs). An employee receives information from an MSDS by submitting a written request to the employer, at which point the employer has four working days to comply with the request. If after four days, the employee is still not provided with the information requested, then the employee has the right to refuse to work with the substance in question and be protected by the law.
from any punitive, retaliatory, or discriminatory actions from the employer.

Because of concerns over liability, many manufacturers and suppliers are very careful about any information that they include on MSDSs. They would, for example, state lower exposure threshold limits than OSHA would have formulated for substances. They tend to be extra cautious in the information that they would disclose.

Though most MSDSs are federal Occupational Health and Safety Administration (OHSA) Form 20s, it is not required that they be that particular piece of paperwork. They do have to contain the same information that would be included in a form 20, but the state law goes further than the form 20 in that MSDSs must include Chemical Abstracts Service (CAS) numbers for listed substances. Also required by the state law but not by the federal law is any information of acute chronic health effects brought on by substances as well as the preparer's signature and the date of the MSDS's preparation. DLI considers the OSHA form 20 as prima facie evidence to right to know compliance once the document has the required additional information.

The employer is required to exercise "diligent efforts" in obtaining MSDS information from the manufacturers or suppliers of chemical substances in the workplace. "Diligent effort" is defined in the regulations as being a prompt inquiry to the manufacturer or supplier for the information requested. If a manufacturer or supplier refuses to cooperate with a request and/or does not provide the information to the employer, the employer may then file copies of communications with the
Department of Labor and Industries as a sign of "good faith compliance". This "good faith" absolves the employer of fault liability in the event of further employee complaints or petitions because the employer has actively sought to obtain the information.

If the employer exercises diligent effort and is still unable to obtain MSDSs from the manufacturer or supplier, he or she then contacts DLI who then either supplies the employer with the information in question or assists the employer in obtaining the information for the employer. If diligent efforts have been made by the employer, then the employee, even though still not in possession of the information requested, loses the DLI protections for refusal to work, provided the employer shows proof of those efforts to the employee.

Under the regulations for labeling, any substance in a container over one gallon or five pounds is required to be labeled with the chemical name of the substance. If the substance is flammable or combustible, that is, listed in the National Fire Protection Association (NFPA) code, and is more than five gallons in volume, then it is required to have an NFPA label on the container as well. So, if it is more than one gallon then the chemical name is required; if the container is more than five gallons the container must have the chemical name and, if applicable, the NFPA code.
Employee Training

DLI is responsible for regulating employee training in the right to know. Employee training is to be a yearly event, and involves three sections. The first section is an explanation to the employee of his or her rights under the law. The second part of the training is an explanation of the material safety data sheet (MSDS) -- what it is, what it means. The third part of training includes review of MSDSs -- either specific documents for employees who routinely come in contact with certain chemicals or generic documents for employees who may come in contact with a wide variety of substances.

The employee training portion of the law may be conducted by outside third parties or consultants. These consultants must be registered with DLI. One of the problems that DLI encountered early on with using consultants for training was the lack of a record-keeping system for determining what employers were trained in accordance with the law's regulations. The result is that there is no means of evaluating levels of compliance.

Federal Action and Right to Know

An issue that has arisen after the establishment of the Massachusetts right to know law has been the introduction of new federal regulations by OSHA which affect the manufacturing segments of industry and the right to know requirements for these segments. The OHSA information disclosure regulations supercede the state regulations, but they are in some instances considerably less stringent that the Massachusetts right to know law.
The introduction of the OSHA regulations, however, does not let the manufacturing segments of industry completely "off the hook". Manufacturers are still required to comply with requirements of the state law regarding community right to know. The introduction of OSHA regulations does not completely alleviate the burden on the manufacturer.

As Belloli states, the Massachusetts regulations were introduced as the result of the failure of OSHA to provide strong guidance in regards to information disclosure. Belloli explains that OSHA had at one time in fact established a hazard communication standard during the Carter Administration which was subsequently pulled back by the Reagan Administration for approximately three or four years of study. During this time that the federal regulations were not in effect, many smaller jurisdictions (states, regions, and cities) formulated their own hazard communication standards. The present OSHA regulations came about as a result of concern that federal regulatory powers would be subverted by this growing number of state and regional regulations. According to Belloli, OSHA was afraid that their powers would "get away from them". 20

The federal law requires certain information that is not required in the Massachusetts right to know law. An example would be the requirement that the employer conduct hazard assessments of certain by-products from processes in the workplace, by-products that would result from soldering, welding, casting, and similar activities.

OSHA also has different criteria for the establishment of its hazardous substances list. Whereas the Massachusetts
Substances List is a compilation of ten nationally-recognized industry lists OSHA has promulgated two lists, the Z-list and the cancer list. In determining placement on the Z-list, OSHA uses certain criteria based on physical properties of substances, chiefly flash-point and boiling-point information. The result is that many substances which may normally not be considered hazardous under the Massachusetts law may, due to falling within certain parameters set by OSHA, be considered hazardous by the federal government. Many substances exist in very small quantities in research facilities and may not be included on the MSL. If a substance is not included on the MSL, regardless of its properties and actual toxicity, the state regulatory agencies do not consider it to be hazardous.

At 600 to 800 substances, the OSHA lists are presently less inclusive than the MSL's 1600-plus entries. However, the federal list is open-ended and the criteria for inclusion allow for expansion to what may eventually be thousands of chemical substances.

As of November 1985, OSHA's hazard information disclosure law has superseded the state law in the manufacturing segment of industry (Standard Industrialization Classification codes 2000 to 3999). As a result, DLI is powerless to enforce their portion of the right to know law on that section of industry. So, any company that has an SIC code of 2000 to 3999 is responsible for meeting the federal standards for their employees. They are still required to meet the state laws in regards to community right to know. DLI does not receive complaints from employees in
the manufacturing segments of industry, rather it would refer any to OSHA. All other segments of industry -- agriculture, retail and wholesale, public service, construction, transportation, health care, etc. -- are still answerable to DLI for employee right to know.

Belloli states that though there is a move to expand the federal regulations to include these other segments of industry, any expansion would take a year or more and that there are other problems involved in expanding OSHA to cover these other segments. Belloli states that the natures of some of these segments of industry present problems for right to know law compliance. An example would be the construction industry's transient nature. Employees who are constantly moving from worksite to worksite or employer to employer are especially difficult to train as demanded by the law.

Public-Sector Employers and Funding

DLI is also responsible for ascertaining that all public sector employers comply with right to know regulations. These include municipal, county and state agencies. One problem in implementing the right to know law for municipalities is that, because of constraints imposed by Proposition 2 1/2, any new mandates from the state must be paid for by the state. Any costs incurred by municipal governments in complying with the law must be reimbursed from the state.

The right to know law is the first major legislation to fall under the reimbursement requirements of Proposition 2 1/2, and as such has attendant problems. One of these problems was that
while the law required employers to start compliance with the regulations by September 26, 1984, no funding was available from the state to municipalities for reimbursement until February 25, 1985. This created quite a credibility problem for the state among the municipal governments.

One problem that arose with the reimbursement procedures to the municipalities was that when funds were finally forthcoming from the state, they were electronically transferred to individual town or city accounts, and communications were apparently not specific or clear enough to the receivers. Many municipalities found themselves with sudden windfalls in their coffers but were not totally aware of the restrictions attached to these funds. Another problem that arises out of the state reimbursement requirement is that, as Belloli states, "this is an open-ended program. We really don't know what the expenses are going to be until an inventory is done of the workplace to see what chemicals are out there." Belloli further adds that some communities have accepted the money and subsequently done nothing with it. Some others have refused to accept the money because of uncertainty as to the requirements of the law and reluctance to get involved with the law. Some other communities, however, have accepted the funds from the state and implemented their own compliance programs and are requesting additional funds. These communities are decidedly in the minority.
Noncompliance by Cities and Towns

Though the law has been in effect for over a year, the majority of Massachusetts cities and towns are not in compliance with its requirements. Belloli states that as a result of surveys done by personnel in his staff, DLI is planning to cite cities and towns for noncompliance. DLI is able to impose civil and criminal penalties against employers for wrongful or willful noncompliance with the regulations. In the case of municipalities or other governmental agencies, it is unclear at this point how the penalization process will be executed. Because of the organizational structure of many municipal governments, there may be several "employers" who are responsible for the implementation of right to know regulations. These could include school committees, parks departments, public works departments, housing authorities, fire departments, boards of selectmen, mayors, town managers or administrators, etc. Belloli speculates that, in order to simplify the process of imposing penalties, the possibility exists of citing selectmen (councilors) and/or mayors. This would be in deference to issuing multiple citations to cover the different departments in a city or town. The penalty for wrongful violation of the right to know regulations is $250 a day, and if no response is made after the initial citation, the violation becomes willful, with $500 a day penalties. The penalties for second willful offenses are $1000 a day. Belloli adds that fines to municipal governments for noncompliance do not qualify as reimbursible expenses.
DLI and Community Right to know

Though DLI is primarily concerned with employer/employee relationship in the enforcement of the right to know law, it is still peripherally involved in community right to know. All employers who use, manufacture, mix, or store MSL substances must file MSDSs with the Department of Environmental Quality Engineering. If the employer is unable to get an MSDS from a manufacturer or supplier for the purpose of filing with DEQE, the employer must go through DLI. DLI is able under the law to cite a manufacturer or supplier for failure to provide an MSDS to the employer.

For out-of-state manufacturers or suppliers, DLI is able to refer requests or complaints to regional OSHA offices for rectification. OSHA requires that substances leaving manufacturers or suppliers be labeled and have MSDSs provided. This is an OSHA regulation, so DLI is able to use the resources of the federal government in pressuring out-of-state manufacturers or suppliers to provide the requested information.

Inspection of Workplaces

One aspect of the right to know law which differs from other DLI activities is that, in order for the agency to inspect premises for compliance with the law, the commissioner must have an official "cause to believe" that a facility may be in noncompliance. This is unlike other DLI activities in which periodic inspections of facilities are the norm. This "cause to believe" could be the result of an employee complaint or a report
from another agency such as a fire marshal, DEQ or Civil Defense. Once this "cause to believe" has been officially recognized by DLI, it is able to begin action on the report or complaint.

The Division of Industrial Safety receives reports at a rate of approximately 1,000 a day for any accident in the workplace ranging from slips and falls to foreign bodies in the eyes to amputations. In response to these reports, inspectors are sent out to investigate the more serious accidents. During these inspections, quick "right to know surveys" are conducted if chemicals are involved in the accident or are present at the worksite. If the inspector feels that further action should be taken, a report is then made back to the agency. In other words, DLI is able to generate its own "cause to believe" if necessary.

If DLI has "cause to believe" that an employer is in noncompliance, it sends, via certified correspondence to the employer, details of the complaint. The employer then has twenty days to refute the charges. If after twenty days there has been no response from the employer, or as soon as the employer responds, and on-site visit by DLI is scheduled in order to either confirm or refute the initial report. If the employer is found to be in noncompliance, an office hearing is scheduled by DLI in which attorneys for DLI act as representatives of the commissioner. In office hearings, the employer and DLI inspectors who have examined the workplace in question testify as to the facts of the case, and a decision is made by the commissioner for the granting of an extension for abatement, the imposition of penalties, or the issuance to the employer of a cease and desist.
order. Belloli states that the number of instances where this adjudicatory process has been necessary, "you could count them on your hands and toes."

One thing that is interesting to note is that, even though there have been to this point in time relatively few instances of violation and subsequent action by DLI, Belloli predicts that that activity will increase in the near future once the agency concentrates its efforts on public sector employers. Since OHSA regulations have superceded DLI's role in enforcement for manufacturing employers, Belloli further predicts that efforts will step up as well in enforcement for other segments of industry such as agriculture, health-care, transportation, etc. It is difficult at present to estimate how much activity DLI will be involved in for future compliance enforcement. The department's resources are limited, and, as Belloli points out, present efforts have only addressed "the tip of the iceberg."

Trouble Spots With the Regulations

There are some aspects of the law that Belloli views as troublesome and that he would like to see changed. Among these are the confidentiality clause, which Belloli sees as causing undue fear among employees seeking information. The confidentiality clause is the source of much concern. There are serious questions about whether this clause unduly restricts the constitutional right of free speech. Belloli states "I don't know, I think that will someday have to be decided in the courts." Industry apparently pushed for the clause in an effort to protect itself from harassment. The confidentiality clause has
not yet been brought up in any DLI proceedings, and the agency tries to stay clear of the issue. Belloli states that much of the information that one would receive from material safety data sheets (MSDS) is available anyway in a number of technical journals and other publications. He says that the only items lacking in these journals and other publications that an employer's MSDS from the manufacturer or supplier would have would be the name of the manufacturer and any special conditions or information that individual manufacturers put on the MSDS.

Another problem area involves the labeling requirements. Belloli states that the labels required by the Massachusetts right to know law, the NFPA labels, emphasize information that is most relevant to firefighters. There are other nationally recognized labeling standards which are acceptable by OSHA. Some of these other standards include information of properties or aspects of substances other than their flammability or combustibility. Belloli states that some hygienists and engineers working in DLI have expressed concern over the limitations of the NFPA labels.

Another aspect of the law that Belloli sees as troublesome is the designated employee clause for municipal or public sector employers. This clause prohibits an employee from refusing to work after the four-day request period is up if that employee has previously been designated as "essential service personnel". The apparent reason for this clause was to protect the town or city's interests in the event of disputes with fire, police, or public works personnel, particularly during emergency situations. However, as Belloli states, "I've never seen a four-day fire."
So, one could view the essential service personnel clause as being practically moot. As a result of this perception of the clause as being superfluous, some agencies such as the Massachusetts Bay Transportation Authority have not designated employees as essential. Additionally, very few communities have designated essential service employees.

The law's designation of police stations as exempt from the requirements of the law is also a problem. Belloli speculates that the intent of the law's creators was probably to exempt ammunition storage rooms which are already regulated by other state and federal agencies. However, the written regulations just say "police stations" without any specific areas of the facilities designated. The result of this apparent oversight is especially troublesome when one considers that there exist in many municipalities of the state combination police and fire stations, and even combination police, fire and town halls. It is unclear if in such instances, the law grants exemption to the entire physical structure regardless of what other town departments are housed within it?

Another aspect of the law which is not quite clear is the MSDS retention clause. Under the regulations, an employer must keep MSDS information on premises for a period of thirty years after the use of substances has been halted. What is not quite clear is the question of if an employer must update MSDSs during that thirty year period, and, if so, does the thirty-year clock start again with the update? Also troublesome is the question of what happens when an employer goes out of business. Are MSDS records to be retained of solely by the state? Does that state
then take possession of all of the now-defunct employer's other records?

Communication Among Agencies

Belloli's assessment of communications between DLI and DEQE and the Department of Public Health are "excellent", especially now that DEQE is establishing a data-base into which DLI will have access. He apparently does not feel that any tensions exist in working with the other agencies. Overall, Belloli is optimistic about DLI'S the set-up with DEQE and DPH.
DEQE's role in right to know law compliance enforcement is twofold. According to D. Bradford Stewart, Right to Know Coordinator for DEQE's Northeast Region, its first duty is the collection of material safety data sheets (MSDSs) from all employers in the state who have MSL substances in their workplaces, with certain exceptions (domestic employers, for example) and maintain a file of these MSDSs. The second function of the agency is to receive and respond to citizen petitions for right to know information.

DEQE's Staffing for Right to Know Compliance

In addition to being in charge of right to know compliance enforcement in the Northeast region, Stewart is also managing the computer system in the division. His right to know staff consists of two clerical staffers who are charged with the responsibility of examining all MSDSs that come into the office for completeness and compliance. Stewart says, "It's drudgery, and I don't envy them their jobs." Stewart also has a senior clerk in his staff and a vacant position for a junior clerk. Stewart's staff is the largest of the four regional DEQE right to know offices. The other regions typically have three staff members -- the director, a clerical worker, and a mid-level worker. All told, DEQE presently has thirteen workers dedicated to the enforcement of its section of the right to know law.
Early Funding Problems

A problem that arose soon after passage of the law was that no funding existed for its implementation. A number of employers started efforts to meet the law's requirements and began sending MSDSs to DEQE. This created a bit of a problem as there were no staff people available to handle incoming paperwork. MSDSs piled up in DEQE offices.

Stewart transferred from another section of DEQE and assumed the task of coordinator for the northeast region in October of 1984, approximately one month after the law went into effect. Funding was not forthcoming until approximately six months later. Stewart relays that in the earliest stages of the program, much of the filing was done in milk crates and cardboard boxes. Stewart further states that the job he presently holds is considered a section chief's job, and that he and one other regional coordinator are working in that capacity, their pay is three salary grades lower than they should be. Funding is still a problem for DEQE's part of the law. As Stewart states, "You have to fight for everything." Stewart says that the legislature is still reluctant to fund the implementation program of the law: "It was the governor's priority; they gave us the law, but they didn't give us any money to run with it."

Citizen right to know is problematic in that the expenditure reimbursement issue is not fully understood by all municipal officials. There are also many municipalities that are refusing to implement their portion of the law. Certain activities of municipalities in the capacity of right to know law implementor as
well as employer are reimbursable. The state Executive Office of Administration and Finance (A&F) oversees reimbursement activities.

Formulation of procedures

Stewart and his three regional director counterparts meet weekly with the division director, Alicia Egan, for the purpose of discussing and formulating policies. Once policies have been initially formulated, they are put forth before a steering committee comprised of parties originally involved in the negotiations for the enactment of the law. The members of the steering committee include, for instance, persons from the American Lung Association, from Associated Industries of Massachusetts (AIM), from the AFL-CIO, MassPIRG, and individual companies. This committee has no real power over decisions being made; its role is primarily advisory.

In referring to the nature of the law's formulation, Stewart states that there were so many people from extremely opposite positions involved, that the compromise which was supposed to strike a medium and satisfy all persons failed to meet that task. Many of the results from the negotiations, such as the confidentiality clause, are still quite troublesome. Stewart speculates that the regulations were not as well thought-out as they should have been, and that that will present problems because amending an existing statute is not an easy task.
Administrative Problems

Stewart further considers the law to be administratively to be quite burdensome, a "paperwork nightmare". Because there are so many chemicals on the Massachusetts Substances List (MSL), 1600-plus, there is a tendency for employers to obtain and forward to DEQE MSDSs on every substance used in the workplace, whether it is included on the MSL or not. The employer turns over the information so that the agency can do its own sorting out of information, basically saying, "I've washed my hands of it; now it's your problem."

There is a sort of mixed blessing in the fact that all employers have not yet come into compliance with the right to know law in that the paperwork has not yet quite reached the gargantuan proportions that it has the potential of reaching. Stewart states that, "if everybody that is supposed to have submitted had submitted...this whole building would be my office. It would look like a library." He further goes on to speculate that probably nobody really stopped and thought about exactly what the magnitude of paperwork and information that would be demanded by the law. In addition to gathering MSDSs from all employers in the state, DEQE is required to keep those documents or copies thereof for a period of forty years.

As DEQE computerizes its data base, only those substances on the MSL will be accepted by the computer. Any substances which are not on the MSL will automatically be rejected. That brings up the question of what happens if substances are later added to the MSL, substances for which employers have already sent MSDSs.
DEQE has rejected these earlier MSDSs, and the question then is whether or not DEQE saves the rejected MSDSs in anticipation of possible later inclusion on the MSL, or does the agency ask employers for those new MSDSs, a move that will probably present some problems with obtaining cooperation from employers who have already sent the information.

The Northeast is the smallest geographically of DEQE's four regions, stretching roughly from Quincy to the New Hampshire border to the Northborough/Acton area. It is, however, the most densely populated region in terms of both residents and companies. The office for the Southeast region contains a total of four four-drawer file cabinets for employer submittals. The Northeast region has ninety-five filing drawers full of MSDSs. Stewart states that the large volume of submittals that comes to his office prevents him from being able to fully process each submittal to his satisfaction. In the case of the Southeast office, the regional director is able to process and examine each submission that comes in, categorize them, contact the employer by telephone and report to the employer which submissions are satisfactory or in what way they are deficient. Generally, it is much easier for the directors of the other regions to maintain better lines of communication between the enforcement agency and the target groups, the employers.

Duplication of Efforts

Another administrative problem stems from the fact that the vast majority of the MSDS information in DEQE files is duplicate information. There are 1600 MSL substances. What would have been
much more reasonable and efficient than receiving so many duplicate MSDSs from employers (each of which have to be individually screened for compliance) would have been, if in passing the legislation, the state had purchased or otherwise generated 1600 "perfect" MSDSs. These state lists could have been numbered. That way, an employer could refer to the state list and MSDS bank and submit a form stating that, for example, substances 31, 74, 526, 1059, and 1384 are present in a particular workplace. This approach to filing the information would have resulted in a significant decrease in efforts, a significant cut in the duplication of efforts that the present law demands.

Structural Difficulties With the Law

Stewart sees some structural difficulties in the regulations. Among those, the data base in DEQE will only list substances by their Chemical Abstract Service (CAS) numbers and not alphabetically by their chemical names. However, it is hoped that once the bugs have been worked out of the computerization project, substances will be indexed by their chemical names. It is additionally hoped that it will be possible to index MSDS information by employer or municipality.

Another problem is that the law has no requirements for disclosing what amounts of substances are in the workplace. This can be problematic in an situation such as a fire when emergency personnel would not know whether a pint or many thousands of gallons of a substance are present in a facility. The law also has no requirements for disclosure of the locations in the
workplace of MSL substances. This poses potential problems for firefighters, civil defense personnel, and police officers in the event of an emergency situation. So, MSDS information, while good for situations where an employee or community resident has been exposed to a substance, does not help emergency response personnel to the extent that it could. Granted, this was probably not among the original intents of the law. However, one might speculate that it should have been since the state is going through the effort of gathering information on hazardous substances, it might as well direct its efforts to gathering information that would be helpful in situations that have a greater chance of occurring and greater potential consequences than those that the law addresses. Stewart states that he is not in full understanding as to why the law, which is so specific in some situations, is not as clear in others.

There have been occasions in the past in Massachusetts where, if information had been available on the existence of chemical substances, their amounts, and their location in the workplace, emergency personnel would have been much better able to assess the situation and take action. The Lynn fire of 1981 which destroyed a large section of that city's downtown industrial area is a good example. Stewart states that it would have been a "perfect situation" for utilizing a proper emergency response plan. Firefighters would have been able to determine what buildings in the path of the fire contained chemical substances and would have been able to take necessary steps to either remove substances from the fire's path or to concentrate protection efforts on those buildings. In order for such a plan to be effective, information
on the what substances were in the buildings, the locations of the substances in the buildings, and the amounts of those substances would have to have been available. Stewart states that though the law may have been a perfect vehicle for such situations, "as it stands, to me anyway,...it's useless for anything of that nature."

The Question of Public/Non-public Information

Another issue which arises and has yet to be satisfactorily addressed is the question of what exactly is considered public information. It is unclear at this point whether a petition is considered public information or whether even the disclosure of a company's compliance or noncompliance with the law is public information. DEQE is unsure at this point whether it is even allowed to release the names of employers who may have submitted information to the agency. Stewart states that though he has received several inquiries asking what companies have complied with the law, he has been unable to disclose which employers have complied with the law.

Community Right to Know

According to Brad Stewart, his office has received two dozen citizen petitions for information.

The petition process itself has numerous "sticking points". One of these points arises with a municipality's initial efforts to comply with the law.

Each municipality is required under the law to appoint an
official to serve in the role of municipal coordinator. This municipal coordinator may be either a fire chief or a member of the board of health. Stewart points out that limiting the choices for municipal coordinator to these two categories is especially problematic for small communities. In many of the state's smaller communities, fire departments are composed of citizen volunteers and boards of health are staffed by volunteers and/or part-time employees. One possible reason for specifically stating that the municipal coordinator can only be a fire chief or board of health official may be that these officials are empowered by other laws and regulations to enter workplaces and conduct inspections, and that, as a result, they would have virtually unlimited access to employer facilities.

In many instances, fire chiefs are reluctant to assume the role of municipal coordinator because of commitments to other duties and responsibilities (dealing with unions, hiring and firing of personnel, etc.), and they have limited additional time available. On the other hand, many fire chiefs have used the powers given by the right to know regulations to collect information on substances in all workplaces in the community. This is not a requirement under the law, but it is allowed. Fire chiefs do not need any special petitions or procedures to secure this information.

The Problem of Proximity

The citizen right to know portion of the law allows community residents to obtain information on toxic or hazardous substances used in workplaces in their communities. The restriction that a
citizen is only allowed to gather information from workplaces in that citizen's community presents a potential problem for any residents who may live near facilities which are located in neighboring municipalities. If, for instance, a house is located fifty feet on the Cambridge side of the Cambridge-Somerville boundary and an industrial worksite is located fifty feet on the Somerville side of the boundary, residents on the Cambridge side are not allowed under the law to obtain information on any chemical substances used in the facility on the Somerville side. Proximity to a workplace has no bearing on the rights afforded by the law.

"Perpetuity" of Residency

Another question that has apparently not been specifically dealt with in the law is that of what happens to a citizen's rights after moving from a municipal jurisdiction. In the case of any employee's right to know, any individual working for a company on or after September 26, 1984 is considered an employee of that company, for purposes of the right to know law, for life. Even if an individual has left the employ of a company after September 26, 1984, he or she is still afforded rights of MSDS access with that employer. In the case of citizen right to know, access to MSDS information is allowed for persons who were residents of a town on or after April 1, 1985. It has not been specifically spelled out if, like employees, citizens retain their rights under the law if they leave a municipal jurisdiction. Stewart states that, to the best of his knowledge, any petitions received from an individual
not living in the municipality in question, regardless of whether they were a resident of that municipality on or after April 1, 1985, is no longer considered a municipal resident.

The Petition Process

Once a community resident's eligibility has been determined, that individual or group of individuals presents to the municipal coordinator a petition requesting MSDS information from a specific employer. The municipal coordinator reviews the petition for completeness, to see if it meets certain mandated requirements, and then forwards that petition with a recommendation for release or non-release of MSDS information on to DEQE. At this point, the role of the municipal coordinator has ended.

The regional office of DEQE to which the petition has been forwarded reviews the petition, makes note of the municipal coordinator's recommendation, and decides whether or not to accept the recommendation. DEQE must determine which MSDSs are pertinent, which substances in question are truly those of concern to the citizen, and releases on those MSDSs which apply to the substances in question. If DEQE allows the release of MSDS information, a letter is sent granting the petitioner permission to come to the regional office of DEQE to pick up a copy of the pertinent MSDS.

The Confidentiality Clause

DEQE is also charged with the task of warning the citizen petitioner of the confidential nature of the information being released, stating in a letter that unauthorized disclosure of the
information is punishable with fines of up to five thousand dollars or imprisonment of up to one year, or both. This confidentiality requirement is, as in the case of employee right to know, quite a burden on the smooth implementation of the law. It serves to intimidate persons who might otherwise desire information on chemical substances used by employer's in their community. Stewart terms the law as it stands now as the "right to know nothing" because, though a community resident is allowed information on chemical substances, there is nothing that the individual can do with that information.

There are serious questions as to the constitutionality of the confidentiality clause, and Stewart states that one group which has recently received MSDS information has threatened to defy the clause and release the information. So, there should be forthcoming some legal ruling on this clause.

Rejection of Petitions

DEQE is also empowered to reject petitions for information that it has determined are "frivolous or harassing". Harassment may include repeated complaints and/or petitions from the same individual or group against a company for a process or product that has not changed, that has been rectified, or does not exist. Also viewed as harassing behavior would be repeated requests for MSDSs where information on the substance in question has not changed.

As Stewart states, frivolous can be, "I know a company a block away, and my dog plays there, and I worry about his getting
sick." This an unsubstantiated fear by the petitioner. If however the dog were actually to exhibit health effects which may be linked to the company in question, DEQE would treat the petitioner's complaints very seriously.

A community resident requesting information on processes or substances in a workplace submits a petition to a municipal coordinator who then reviews it for completeness and forwards it to DEQE. DEQE then notifies the employer via certified mail, and the employer has four working days to contact DEQE with any objections to the release of the information. If DEQE decides not to release the MSDS information to the petitioner, the citizen then has the right to appeal that decision to the commissioner of the agency. The commissioner has the discretionary authority to decide whether the information will then be released to the petitioner or not. The commissioner invariably refers to the regional official in questioning why a particular decision had been made.

If after four working days the employer has not voiced objections to release of the information DEQE then notifies the petitioner that the he or she has the right to come to the regional office and obtain copies of the pertinent MSDSs once a release/notification form has been signed.

There seems to be a fairly widespread perception among citizens who petition for MSDS information that the law is to help citizens shut down offending employers or worksites in their neighborhoods or municipalities by proving the presence of toxic or hazardous substances. This is a misconception -- the law does not address issues beyond the release of information to citizens
or employees. The law does not empower individuals to apply pressure upon employers to cease operations or move.

If a petitioner can prove that there exists any associated health effects possibly caused by substances used in an employer's workplace, he or she can show the MSDS to a treating physician. Otherwise the citizen is forbidden to disclose any information on the MSDS to an unauthorized person. In the case of groups demanding information, all members of the group who have signed the nondisclosure form are allowed access to the MSDS.

Medical Emergencies

Treating physicians are permitted access to MSDSs as well. If an emergency situation exists, the physician may bypass the petition process and receive MSDS information either physically or over the telephone.

There have been no provisions to make the right to know MSDS information accessible 24 hours a day. If a medical emergency were to arise after normal working hours, it is unclear what the procedure would be for physicians seeking information. DEQE does have an emergency telephone number, a 24-hour chemical spills hotline and emergency response teams. These teams might possibly be utilized in the future to notify pertinent DEQE personnel in the event of a medical emergency. But, as it stands now, there have been no provisions made to allow for emergency access to MSDS information during non-business hours. Stewart does not consider that the law has fully "gotten up to running speed" as of yet. This is despite the fact that the law went into effect for employees in 1984 and for community residents in early 1985.
Right to Know Enforcement: DEQE and Municipalities

DEQE is beginning enforcement on cities and towns who are not in compliance with the law's requirements, "and they're really kicking and screaming." Some of the most often heard complaints from municipalities are lack of personnel, ignorance of the law's requirements, and lack of funds. The last argument is countered the fact that all cities and towns in the state have received an initial appropriation from the state's Executive Office of Administration and Finance (A&F) which was specifically targeted for right to know activities.

Stewart states that though correspondence in regards to right to know has been to this point sent to chief elected officials of many municipalities (boards of selectmen), it would perhaps be more efficient and prudent to address communications to the executive officers (town administrators, mayors, city managers) who are in charge of the day to day operations of cities and towns. This may create a bit of confusion in instances where correspondence is suddenly targetted for a different officer of the town or city. Stewart states that he has the perception that many officials who receive communications in regards to the right to know law react, "oh, just another form letter from the state", and proceed to disregard the message. Stewart states that, of the 95 cities and towns in his jurisdiction, he has recently sent 60 letters in regard to noncompliance of the regulations, and that of those sixty letters, twenty-seven municipalities have responded by either total or partial compliance.
DEQE is presently in the process of preparing to enforce the law against cities and towns that have blatantly refused to come into compliance. Stewart states that, like DLI, DEQE will treat any municipalities "like any other employer" in regard to the imposition of penalties for noncompliance. DEQE is presently waiting for a town to blatantly defy the regulations. The idea is to make an example of that errant town and thereby prompt other municipalities to come into compliance: "Then we're going to whack somebody...it's amazing, when you whack one person, then everybody is going to say 'uh-oh', and then they're going to do it." Stewart further states that it is difficult to in good faith enforce the law against the private sector when the majority of state's municipal employers are not in compliance.

Compliance on the State Level

Another problem exists in that no one seems to know for sure the total number of state government workplaces. Apparently there exists no list of all worksites that are state-owned or controlled. This presents another potential credibility problem when the state is not sure whether it is in compliance with the regulations.

Employee Right to Know

Stewart states that he views the law as being most useful at present in the DLI segment. He further states that the federal OSHA regulations which have pre-empted the Massachusetts law in the manufacturing segments of industry are pretty weak. Even though DEQE can demand information from employers in the
manufacturing segments of industry, the only real powers that DEQE have over that segment is the receipt of MSDSs for community right to know. So, there is really no state agency which controls the training and labeling requirements for the manufacturing segments of industry, and "the federal law is damn close to voluntary."

Obstacles to Implementation

There are still problems with program funding. The legislature has been reluctant to adequately fund the right to know implementation activities of any of the three agencies involved. Stewart states that DLI probably did the best in funding, that DPH got virtually no monies, and that DEQE, for the amount of work required from the department, got barely adequate funding.

There has also not been the anticipated level of public response to the law. Instead of hundreds of petitions, Stewart's office has received 24. In the other three regions, the number of petitions range from none to two or three. Stewart speculates that this poor public response is attributable to the lack of publicity about the law -- to the public's lack of perception of the law, and to the discouraging effect of the confidentiality clause.

The other big problem with the law with regards to the public is its apparent lack of tangible benefits. Once a member of the citizenry receives information on any substances in a workplace, there is no further action that can be taken.
Brad Stewart's Assessment of Right to Know

When asked his reaction to the general effectiveness of the law, Stewart replied that there are some provisions in the law which are sorely lacking or faulty. Among those provisions are the confidentiality clause, as well as the lack of any kind of requirement for information relating to amounts of MSL substances and locations in the workplace of those substances, information which would be of assistance in emergency situations. He further states that because of the interagency problems in communications and information transmittal that he does not envision a sound computer data base for another two or three years.

The law does function very well from the perspective of the employee, but Stewart states that the law has a much greater potential. It could be used "for an excellent start on a disaster plan." Stewart states that many cities and towns in the state are establishing emergency disaster preparedness plans and that civil defense personnel have attempted to obtain information from DEQE. Because of the uncertainty of what is specifically public information, he has not released any information to interested civil defense authorities. Stewart observes that the Environmental Protection Agency is actively engaged in establishing emergency preparedness disaster plans. EPA has released a list of 400-plus acutely toxic substances and is in the process of helping communities establish local disaster response plans. Unfortunately, because of the status of information, DEQE has been unable to help EPA in its efforts. As Stewart says in response to inquiries from civil defense officials: "Number one,
I can't tell you what the information is... Number two, I can't tell you how much of it there is. And number three, the computer isn't up anyway." The department has been having problems in trying to establish a data base.

So, overall, the law, for its intended purposes is very much lacking when one considers citizen right to know. For the employee right to know, it is a bit better. But it has its greatest potential in areas that it was not originally meant to address. It has the potential for being great help in information gathering and dissemination for emergency preparedness, even though in its present form it cannot be so used. So, any conclusions about the law would be that though it has great potential, it has great unrealized and unrealizable potential.
MUNICIPALITIES AND THE RIGHT TO KNOW LAW

Town and city governments are doubly affected by the right to know law. They serve as the first level of bureaucracy in the citizen right to know section of the law, and they play the role of employer -- the party being regulated -- in employee right to know. Municipalities are placed in the situation of being both the governing and the governed. This presents the potential for unusual tensions in that neither of these roles which municipalities must perform were enthusiastically assumed. The right to know law was more or less thrust upon municipal governments by the Commonwealth. They must serve in the bureaucracy role by virtue of being drafted to these duties, and they must comply with the regulations of the right to know law by virtue of legislative fiat.

Under the right to know law, municipalities attempting to come into compliance with both focii of the legislation encounter many problems, in executing their duties. These potential "sticking points", these problem areas include the reluctance of municipal officials to assume the responsibilities demanded by the law, the lack of clear guidance and communications from the state, the lack of expertise and training in the requirements of the new law, and the question of the economic cost of meeting the demands of the law.

The author has for the past six months served as an administrative intern in the town of North Reading, Massachusetts. During his internship, he has been exposed to many issues affecting the implementation of the right to know law on the
municipal level. The issues and questions brought up in the following section are presented from the perspective of a municipal employee involved in the oversight and supervision of a town's compliance with the requirements of the right to know law.

The Question of a Municipality's Incentive for Compliance

One of the first items which must be considered in a municipality's activities for compliance with the right to know law, both as an employer and as an enforcement mechanism, is that of incentive. What does a town have to gain from the efforts associated with executing its duties under the legislation? At this point, it appears that there are more disincentives for the town.

In its role as the first level of bureaucracy which community residents contact in the citizen right to know section of the law, the town must assume a heretofore unfamiliar administrative role. The chief executive official of the town (in the case of North Reading, the Town Administrator) must appoint the municipal coordinator -- the official responsible for serving a liaison between community residents, the employer in question, and the state Department of Environmental Quality Engineering.

The municipal coordinator is restricted by legislative mandate to being either the town fire chief or a member of the town board of health. This is an unduly restricted pool of potential municipal coordinators. In the case of the town of North Reading, the fire chief is reluctant to assume the role of municipal coordinator owing to other duties which he must serve in
his capacity as the head of the fire department. He views the responsibilities of the law as being an unwanted burden. He has other, more important things to be doing with his time. Regardless of whether or not he truly does not possess the time to serve in the role of municipal coordinator, he has expressed his reluctance at the assumption of these duties. Quite simply, he does not want the job. He will grudgingly at best perform his duties as mandated by the Commonwealth.

It is very nearly impossible for the town of North Reading to appoint a member of the board of health to the role of municipal coordinator because the board is comprised of volunteer officers. Members of the board are appointed by the Town Administrator and serve one-year terms. The length of the terms for board members presents a potential problem in that if a member of the board were to be appointed as municipal coordinator, there would be the question of continuity if that member were to resign or fail to be reappointed. The town has a health agent who serves an indefinite term. However, his is a part-time job, and, as things stand at present, he barely has enough time to perform his current duties. So, the town is restricted by state mandate to choose from one of two possible sources for municipal coordinator, neither of which is ideal. The fire chief has been given to job of municipal coordinator by virtue of default.

Training of Municipal Officials

Once a municipal coordinator has been appointed, the question arises of who is responsible for the training of that official in the requirements of the right to know law. More appropriately,
the question may be: is anybody responsible for the training of that official?

Early on in the life of the right to know law, the state's Executive Office of Communities and Development was brought into the right to know picture in order to assist towns in their meeting of the law's regulations. EOCD was responsible for training town and city officials in their duties both as employers affected by the law and also as part of the bureaucracy responsible for the enforcement of the law.

EOCD was actively involved with the right to know law for approximately six months -- the length of time needed for the training component -- and then quickly distanced itself from further involvement with the law. The legislation did not require EOCD's involvement with right to know. The agency was another reluctant participant in the implementation process. But none of the three "parent" agencies -- DLI, DEQE or DPH -- seemed to be willing at that time to take on the task of preparing communities for meeting the law's requirements. There was an initial flurry of activity to train municipal officials in the requirements of the right to know law. However, it is unclear at this point what state agency, if any, is responsible for further training of municipal officials or for the training of any new officials. This question is very important for the town of North Reading in that on July 8, 1986 the town's present fire chief will resign. The official term of his permanent replacement will not be effective until January 1, 1987. In the meantime the acting fire chief will officially be charged with the role of the town's
municipal coordinator. Who will train them?

The second question arises from the issue of who will train the town official responsible for ascertaining that the employee right to know segment of the law is met. This official, again appointed by the Town Administrator, is not necessarily the municipal coordinator. The official could be the town's superintendent of buildings, a member of the department of public works, the director of the DPW, or even a student intern. Speaking from experience of one who has been, again by default, charged with the task of overseeing the town's right to know compliance, the author is familiar with problems caused by the lack of any specific training or communication from the state. The information that the author has managed to assimilate has been, for the most part, gleaned from a disorganized stack of papers containing various correspondence, an EOCD-generated compliance manual, and photocopies of assorted other materials. This is hardly the most efficient way for the higher-level governmental agencies to assist municipal officials in their performance of duties under the right to know law.

The question then arises, once again of continuity. What happens when the author ends his internship and leaves the employ of the town. Must his replacement undergo the same task of deciphering relevant information in order to know his or her duties under the law? This litany of shortcomings is not meant to serve as a condemnation of the Commonwealth's concern for municipalities' compliance with the right to know law. On the contrary, the author has had much fruitful contact with Brad Stewart, the right to know coordinator of DEQE's northeast

124
regional office. Mr. Stewart is responsible for overseeing right to know compliance in 95 cities and towns in his region, and he has many other duties as well. Doubtless, direct contact with DEQE for training and guidance will not be the most effective if too many of the region's municipalities start calling on Brad Stewart at one time.

Communication Between Municipalities and the State

The issue of communications and feedback arises when one considers municipalities and the right to know law. On this matter, the state has been, at best, lacking. Communication in the forms of flyers, forms and correspondence come in to various town offices. Some go to the Town Administrator, some go to the Department of Public Works, some to the fire department, and for the most part, communications from the Commonwealth to the town are sufficiently vague in their intent and circumlocutory in their approach so as to cause further confusion on the very issues that they were meant to clarify.

Clarity is a major problem with the right to know law. The regulations put out by three separate departments of state government are a melange of clarifications, reclarifications, definitions, phrases, terms and overlapping points. This serves to confuse, befuddle, annoy, and ultimately frustrate municipal officials -- particularly those in small towns who heretofore have only had limited contact with the intricacies of the bureaucracy of the Commonwealth of Massachusetts. Regulations put out by the law are so chock full of requirements, exemptions and exceptions
that attempts by municipalities to come into compliance with the law's requirements seem to be exercises in futility.

There do not seem to be any official feedback mechanisms from municipalities to the state. There are no clear channels of communication for town officials to report to the state any difficulties encountered with the intent or the letter of the law. The only ways for towns to communicate with the state are either by calling or otherwise contacting a state official, with no certainty of reaching the appropriate official, with questions, comments or complaints. Or the town may simply not perform its required duties. In that case, the appropriate state official will eventually contact the town itself. Once again, this is hardly the most efficient means of implementing the right to know law.

Municipalities and the Problem of Inadequate Staffing

Then there is the issue of a municipality's staffing and personnel. Many towns, smaller towns in particular, must place the right to know law low on their priority list due to lack of appropriate staffing to meet the law's compliance requirements. Coming into compliance with the right to know law as an employer requires a great deal of time and effort -- substances must be inventoried, manufacturers and suppliers must be contacted, MSDSs must be inspected and completed, containers must be labeled, employees must be trained, guidelines for the workplace must be established, and contact must be initiated and hopefully maintained between the municipality and the applicable departments of the Commonwealth. This is no small task. Many towns just do
not have the staff to meet the requirements of the right to know law and what staff they do have is too busy with other, day-to-day, duties.

The Problem of the Law's Scope

The physical scope of area that municipalities must address in meeting the employer requirements of the right to know law are seemingly as boundless as the regulations. All town departments, all town employees, are covered by the law. This includes everything from workers performing clerical functions in town hall to groundskeepers for town recreation lands to the school department cafeteria personnel to police officers to public works employees working in the town water treatment facility.

The regulations for right to know define "workplace" for towns as being all properties either wholly owned or controlled by the municipality. In order to inventory chemical substances present in the workplace, town officials must inspect all departments and their facilities and all town property for chemical substances. Workplace is defined for police officers and firefighters as being their entire jurisdictions. If, for example, a police officer is exposed to a chemical substance while performing his or her duties and that substance is on the property of a private employer, the town has the responsibility to the officer of obtaining MSDS information for the officer from the employer. As the reader can see, the potential exists for the town official responsible for employee right to know to be quite overburdened in paperwork.
Funding Problems

A big issue, and one which has received very much attention from municipalities is that of money. Under Proposition 2 1/2, the Massachusetts law limiting the size of a municipality's tax increases, the Commonwealth has been charged with the responsibility of funding any new legislative mandates. The state, through the Executive Office of Administration and Finance, reimburses municipalities for costs incurred in the implementation of the right to know law. This includes any costs incurred by the town fulfilling its role as both employer and as municipal coordinator. This sounds just fine, except that, in order for the town to be reimbursed, the money must be spent. Many towns do not have or are reluctant to spend any monies for the implementation of the right to know law. Their reluctance is for the most part well-founded in that the Commonwealth has devised a rather complex method of determining which expenditures are indeed reimbursible. A town may in good faith incur expenses which it later finds out will not be reimbursed.

As of March of 1986, the Commonwealth was still clarifying which activities by municipalities are reimbursible. Another problem is that state reimbursements are only made four times a year. A town's requests for reimbursements must be made quarterly. As one can imagine, municipal officials are reluctant to spend money, especially in these economic times, with no definite guarantee that expenses will be reimbursed.
The Problem of Perception

Finally, there is the issue of perceptions and images of the law. Towns have a tendency to view new regulations coming from the state-level with more than a small amount of suspicion. Probably one of the chief questions and perception is what does the law do for the town of North Reading? What benefits does the town receive from the law, and, for those benefits that the town does receive, are they enough to justify the costs in terms of staff time, paperwork and general aggravation. Does the law provide for the town sufficient "bang for the buck". At this point, the verdict would have to be in the negative.

The Question of Benefit

Though the law does provide some very real benefits to the town as an employer, the regulations are so encumbered by what can be perceived to be extraneous requirements and guidelines that the municipal official charged with implementing the law can look at it at arm's length and see that it requires too much effort for compliance. This is unfortunate in that, as Brad Stewart pointed out, the law has the potential for providing great benefit in the future if it is allowed to evolve unencumbered.
TYING IT ALL TOGETHER: ISSUES ARISING FOR THE ACTORS

FEDERAL -
OSHA pre-emption of DLI (state) authority in employee right to know for manufacturing segment of industry

STATE -
Funding for law's implementation slow in coming and generally perceived as inadequate
State agencies still not in compliance with employee right to know (how to in good faith prosecute private employers?)
Inadequate staffing levels
Timetable for regulation promulgation/compliance unrealistic
Ambiguous language used in regulations
Confidentiality agreement troublesome (difficulty in determining what is public and what is non-public information)

MUNICIPAL -
Participating "involuntarily"
Cost of implementation -- funds to be reimbursed by the state, but scope/procedures still not clear to all municipalities
Restricted pool from which to draw municipal coordinators
Communication between state and municipalities often disjointed and confusing

EMPLOYERS -
Cost, in money and effort, of meeting requirements
Perception of law as needless harassment by environmentalists, public interest groups, labor unions
EMPLOYEES/RESIDENTS -

Virtually no knowledge of law's existence and rights protected under the law

No clear, tangible benefit from the law (what does one do with the information?)

Confidentiality agreement discourages utilization of law
TYING IT ALL TOGETHER: INTERACTIONS BETWEEN ACTORS

OSHA -

EMPLOYERS - manufacturing only - OSHA enforces federal regulations for worker right to know

EMPLOYEES - manufacturing only - OSHA protects workers' rights

DLI - OSHA assists DLI in obtaining MSDS information from out-of-state sources

DLI -

OSHA - DLI receives assistance

DEQE - shared enforcement roles

DPH - shared enforcement roles

EMPLOYERS - DLI enforces worker right-to-know for non-manufacturing industries; helps employers in obtaining MSDSs from sources

EMPLOYEES - DLI protects workers' rights under right to know law (non-manufacturing only)

DPH -

DLI - shared enforcement roles

DEQE - shared enforcement roles

EMPLOYERS - DPH grants research laboratory and trade secret exemptions

PHYSICIANS - DPH provides confidentiality agreement between employers and treating physicians

DEQE -

DPH - shared enforcement roles

DLI - shared enforcement roles

MUNICIPAL COORDINATORS - DEQE receives citizen petitions through municipal coordinators
EMPLOYERS - DEQE receives MSDSs from all employers

COMMUNITY RESIDENTS - DEQE releases MSDS information to residents

PHYSICIANS - DEQE provides MSDS information to medical personnel in emergencies

EMPLOYERS -

OSHA - (manufacturing) employers must meet federal hazard communication standard; no DLI control

DLI - (non-manufacturing) employers must meet requirements set out by DLI for employee right to know

DEQE - employers must comply with DEQE regulations for community right to know; must send MSDSs to DEQE

DPH - DPH grants research laboratory and trade secret exemptions

MUNICIPAL COORDINATOR - inspects workplace; can receive MSDSs from employers; notifies employer of citizen petition

PHYSICIANS - employers allow the release of MSDSs to physicians after the signing of confidentiality agreement

EMPLOYEES - (non-manufacturing) employer must supply MSDS information on demand, must label containers, and must train employees; (manufacturing) employer must comply with OSHA regulations

COMMUNITY RESIDENTS - employers have option of releasing MSDS information directly to residents

MUNICIPAL COORDINATORS -

DEQE - municipal coordinator forwards citizen petitions to DEQE

EMPLOYERS - municipal coordinators have access to inspect workplaces

COMMUNITY RESIDENTS - municipal coordinator inspects citizen petitions and forwards them to DEQE
EMPLOYEES -

OSHA - manufacturing employees protected by OSHA hazard communication standard

DLI - non-manufacturing employees have rights protected by DLI

EMPLOYERS - employers must follow regulations in meeting employee requests for information; employers must train employees as to rights

PHYSICIANS - treating physicians may act as an employee's representative

COMMUNITY RESIDENTS -

DEQE - community residents receive MSDS information from DEQE

MUNICIPAL COORDINATOR - residents must submit a petition for information to municipal coordinator

EMPLOYERS - employer can release MSDS information to community residents if it so chooses

PHYSICIANS - treating physicians may act on residents' behalf

TREATING PHYSICIANS -

DPH - confidentiality agreement between physician and employer

DEQE - physicians may directly obtain MSDS information in emergency situations

EMPLOYERS - MSDS information after signing confidentiality agreement

EMPLOYEES - treating physician may act as representative for employee

COMMUNITY RESIDENT - treating physician may act as representative for community resident
Figure 7. The Right to Know Law: Interactions Between Parties
CONCLUSION

As we have seen in previous sections, implementation of a policy is neither an easy nor an automatic occurrence. There are many pitfalls along the way to successful policy execution. Sometimes these are successfully skirted or overcome, but often these obstacles to implementation have deleterious and irreversible consequences on the implementation of the policy. Occasionally, through feedback mechanisms, these obstacles are met and surpassed.

What about the Massachusetts Right to Know law? How does one evaluate the policy and its implementation program? Unfortunately, not very well.

The law as policy has several inherent flaws, and the scheme for implementation has more potential problems than anyone would dream possible in a piece of passed legislation.

The structuring of the law among three state agencies -- DLI, DPH, and DEQE -- lays the groundwork for confusion for municipal level administrators as well as those attempting to comply with the law. Confusion results from questions such as who communicates with whom regarding different questions. The regulations are so fragmented and complex that compliance with the law demands/required that many municipalities and employers in the state hire the services of professional "right-to-know law implementers"/consultants. As Ken Gieser points out in his unpublished paper, "Right to Know as Social Regulation", one of the effects of the law has been a growth in the hazardous
The regulations for the law are so very complex that it requires a tremendous amount of effort for the municipal officials who are charged by the state to participate in the enforcement of the law. It is often very difficult for municipal officials to carry out their required tasks. Also, because of many of the municipal officials involved in RTK enforcement are at best unwilling or reluctant agents of the Commonwealth in this law, their effectiveness at implementing the law will potentially be greatly compromised.

Municipal officials are provided with no real incentives to follow the regulations — no positive incentives. All that the state can do is threaten, coerce or cajole compliance out of municipal officials. This is not the original intent of the law.

The regulations of the law, while seemingly exhaustive, have the tendency to be vague on key points. As Geiser pointed out, one of these problems is in community right to know. If a citizen decides that he or she would like to find out about potentially hazardous or toxic substances in a workplace, the citizen would be required to go through two or more steps in the bureaucratic process before being told yes or no, that they may or may not receive the requested information. This was not the intent of the law's originators, according to Ken Geiser. The original intent was merely for a citizen to have the right to directly request and receive from an employer information on substances used in that employer's particular workplace. What the authors of the subsequent bill managed to do was to switch the law from, as
Geiser says, a "rights" law to an "regulatory" law. The state has taken a much more active role in the life of the law than was originally intended or desired by the bill's original sponsors.

One of the big problems of the right to know law seems to be the absence of any evaluation mechanisms, any means of determining levels of compliance as well as determining what the exact effect of the law may be.

The confidentially clause serves as an enormous disincentive for persons seeking information. Information is by its very conceptual nature meant to be shared, to be spread from person to person. Yet the Commonwealth of Massachusetts has seen fit to choose a course that is totally antithetical to the Constitutional right of free speech. This is more characteristic of the Soviet State than the "Cradle of Liberty".

The law will never be fully implemented if the Legislature does not "put its money where its mouth is". Inadequate funding may be the demise of the right to know law. If a law is going to be passed, then the lawmakers should be prepared to display some commitment.

In its present form, the right to know law is unnecessarily limited in its focus. For the potential benefits it promises, it requires too much effort. It would not be unreasonable to amend the law in order to provide for its use in the event of natural or man-made disasters.

There are some very capable and committed individuals working for the state to implement the right to know law. It is unfortunate that the nature and structure of the law does not allow them to utilize their energies and talents to the utmost.
NOTES


2. Ibid.

3. Ibid.

4. Ibid.

5. Ibid.

6. Ibid.

7. Ibid.

8. Ibid.

9. Ibid.

10. Ibid.

11. Ibid.

12. Ibid.

13. Ibid.

14. Ibid.

15. Ibid.

16. Ibid.

17. Ibid.

18. Ibid.


20. Ibid.

21. Ibid.

22. Ibid.

23. Ibid.

24. Ibid.
25. Ibid.


27. Ibid.

28. Ibid.

29. Ibid.

30. Ibid.

31. Ibid.

32. Ibid.

33. Ibid.

34. Ibid.

35. Ibid.

36. Ibid.

37. Ibid.

38. Ibid.


41. Ibid.
SECTION THREE -- COMBINING THEORY AND REALITY
In this final section, the author will apply Van Meter and Van Horn's model of policy implementation to the real-world case of the right to know law. The conflicts identified in the model will be compared with those actually encountered in the implementation of the law. This section will examine the utility of viewing actual situations from a theoretical perspective. Questions will also be raised if, by utilizing the theoretical base, an estimation can be hazarded regarding the eventual success or failure of the law's implementation program.
We shall examine the right to know law from the perspective of Van Meter and Van Horn's six variables:

1. policy standards and objectives
2. policy resources
3. interorganizational communication and enforcement activities
4. characteristics of the implementing agency
5. economic, social, and political conditions
6. the disposition of the implementers

Policy Resources

It became very apparent very early in right to know's life that its implementation would be severely affected by the reluctance of the state legislature to release funding. Nancy Curtin of DPH, Joe Belloli of DLI, and DEQE's Brad Stewart have all pointed to this early lack of resources as presenting major obstacles to the smooth execution of the law. Though the law went into effect September 26, 1984, state officials received no funds for implementation until spring 1985. The Boston Globe, in a January 22, 1985 story, reported how, despite a $1.3 million set-aside for implementation of right to know, only $533,000 had been released, all to DLI.

Later appropriations from the state legislature were made to alleviate the problem, but as DEQE Commissioner S. Russell Sylva complained to the Globe, that "may be too little too late." The same Globe article described how a Rhode Island consulting firm,
under a $68,000 contract to train municipal coordinators, had threatened to withdraw its services for lack of payment.

As late as April 1985, more than six months after the law went into effect, municipal officials were complaining about the state's failure in providing necessary money and training. In an article in the Boston Globe, Holden Town Manager William Kennedy states, "We have no money. We have no training. We have no guidelines, which are all the things the state has said they would provide. I would raise the question as to whether the statute has been implemented."

Policy Standards and Objectives

The first question to consider is "how does one evaluate the implementation of right to know in terms of meeting its goals?" This is not a simple question, and it is made all the more daunting when one realizes that there exist no real mechanisms for determining success or failure of the law. Granted, DLI and DEQE can examine their records to determine which employers have complied with the letter of the law -- who has submitted MSDSs, who has held training sessions, who has labeled containers.

But the fundamental question of whether the law's ostensible beneficiaries (employees and residents) have truly been helped by the law goes, and will continue to go, unanswered. No mechanisms exist for determining the extent of resident or employee awareness of the law or even how many employees have requested MSDS information. It would surely be folly to assume that so few requests have been made for state assistance due to a sudden surge
of philanthropy on the part of the state's 128,000-plus employes.

Interorganizational Communication and Enforcement Activities

Communication between the state and other actor in right to know presents a problem. Many employers are still not completely sure of what their duties and responsibilities are. The Boston Globe, was reporting of the need, five months after the law went into effect, for "a massive education program."

On the municipal level, many actors involved in citizen right to know are still unclear as to their duties. This uncertainty, combined with other factors such as the difficulties associated with cost reimbursement, has resulted in municipalities' falling short of meeting their obligations.

Another communication problem between the state and municipalities is the difficulty that officials have, especially in smaller towns, of determining which responsibilities are associated with the town's role as employer and which are associated with the town's role as agent of the enforcement process. Confusion exists as to which state agency is relevant for requesting assistance. Though this may seem to be an easily-solved situation -- state agencies are very willing to refer questions to one another -- municipal officials are reluctant to appear foolish by possibly contacting the wrong agency. It is easier to just ignore the problem, so no action is taken.
Enforcement presents a problem. At this point the state is generally reluctant to impose penalties on employers not in compliance with the law. This is partially because of problems associated with establishing the implementation process. The late release of funds to agencies resulted in the state's starting at a disadvantage. Agencies have been playing "catch-up" and have not yet reached the point where they can effectively pursue errant employers. Additionally, it is still unknown the level of compliance accomplished by the state as employer. It causes a bit of a credibility problem to penalize a company for failing to accomplish something of which the state has also fallen short.

**Characteristics of the Implementing Agencies**

Van Meter and Van Horn describe several factors as influencing actions between and within agencies:

a) **size and level of competence of an agency's staff:**

On the state level, staffing presents problems. Because of budgetary constraints, agencies are unable to hire an adequate number of persons to efficiently monitor compliance, process paperwork, or assist employers in compliance.

If, for instance, the fifty DLI inspectors at Joe Belloli's disposal were to monitor all employers in the state for compliance (inspect workplaces to ascertain the presence of MSL chemicals, check for properly labeled containers, and check to make sure employees are properly trained) and each managed to perform five inspections per day, it would take over two years to complete just the initial inspections. This is not taking into
account the fact that the inspectors are working on other DLI business as well. Nancy Curtin and Brad Stewart also relate the problems that DPH and DEQE face due to inadequate staff size.

On the municipal level, competence of actors presents a major problem. Training of municipal coordinators as well as officials responsible for overseeing (town as employer) compliance is inconsistent from town to town.

b) the degree of hierarchical control of subunit decisions and process within the implementing agencies:

The major problem in this area lies in the state's attempts to guide the actions of municipal officials. The state offers no positive incentives to towns and cities. All it can do is use the threat of punitive action in its efforts.

c) an agency's political resources:

Politically, right to know enjoys all manner of support. The governor has enthusiastically hailed it as the best such law in the nation. The legislature was solidly behind it during its inception. The groups that lobbied for various versions of the law grudgingly accepted it in its present form. The problems came when funds had to appropriated.

d) the vitality of an organization:

There do not appear to be any problems in this area.

e) the degree of "open" communications within an organization:

Again, there seem to be no major problems in this area.
f) the agency's formal and informal linkages with the "policy-making" or "policy-enforcing" body:

This area is pretty well covered in the discussion on interorganizational communication and enforcement activities.

Economic, Social and Political Conditions

Applying the questions from Van Meter and Van Horn:

a) Are the economic resources available within the implementing jurisdiction (or organization) sufficient to support successful implementation?

As indicated in the discussion on policy resources, the answer to this question is negative.

b) To what extent (and how) will prevailing economic and social conditions be affected by the implementation of the policy in question?

Aside from the costs incurred in compliance and enforcement, the right to know law's effect on economic conditions will be negligible.

c) What is the nature of public opinion; how salient is the related policy issue?

Though the original proponents of the law included representatives from "legitimate" public interest groups, one does not get a feeling that there is any type of widespread public support or opposition to right to know. As a matter of fact, one might conclude that, if anything, the general public is unaware of the law and the rights that it affords.
d) Do elites favor or oppose implementation of the policy?

Casting employers in the role of "elites", one would have to answer this question "neither". There remains a bit of confusion and resistance on the part of individual employers, but as a whole, industry seems to have accepted the law. Lobbyists for industry managed to influence the law's formation to no small extent (the confidentiality clause and the protracted process for release of MSDS information to community residents). The governor's staff, in its consensus-building approach to developing the law, managed to create a policy which neither totally pleased nor totally offended the parties concerned.

e) What is the partisan character on the implementation jurisdiction (or organization)?

This question is of minor relevance in the case of the right to know law.

f) To what extent are private interest groups mobilized in support or opposition to the policy?

The right to know law is the product of interest group activity. The original proponents of the law came from outside of what Nakamura and Smallwood refer to as the realm of "legitimate" policy-makers. The greatest response to the proposed policy also came from extra-governmental sources. The government played the roles of mediator and implementer more than originator.
Van Meter and Van Horn describe three elements of implementers' responses to policy: cognition, direction of response, and intensity of response.

On the state level, disposition of the implementers seems to present no problems. On the municipal level, however, things are not quite as tranquil. For varying reasons described in Section Two, a large number of municipal officials tend to harbor negative responses to their assigned tasks. These feelings manifest themselves to varying degrees, from grumbling partial compliance to outright refusal to cooperate. This is not to say that all municipalities are unhappy with the law's intent; officials would just rather not have to be party to its implementation.

After reviewing the preceding application of the right to know law to Van Meter and Van Horn's Model of the Policy Implementation Process, one cannot help but realize and appreciate the fact that making a policy function smoothly is not an easy or inevitable task. Myriad factors play roles affecting the policy's eventual outcome.

It is also at this point that the chief failing of the Van Meter and Van Horn model becomes apparent. There exist in this model no provisions for feedback -- for the amelioration of problems which arise during implementation. Unlike that of Smith or Nakamura and Smallwood, the Van Meter and Van Horn model is one-dimensional, with no mechanisms allowing for a full interplay
of action between components. By viewing implementation as such a single-minded undertaking, Van Meter and Van Horn ignore a vital temporal dimension when considering the influence which factors exert upon another. This becomes apparent when one considers the possibility that the powers that be in right to know (legislature, governor, department commissioners) may, upon reviewing the problems associated with the implementation of the law, opt to revamp fundamental characteristics of the program (such as funding procedures and amounts).
CONCLUSION

But what of the utility of applying Van Meter and Van Horn's decidedly unreal model to the actuality of the right to know law? Is this tack beneficial to one's understanding of the execution of policy mandates? The answer would have to be a heavily-qualified yes.

By studying the theory associated with the policy implementation process, one becomes more aware of the factors influencing eventual outcome. Viewing this vast chaotic mess through others' eyes results in greater sensitivity in understanding why actors in the implementation process behave as they do. Van Meter and Van Horn's model is especially notable in this regard in that it takes into account psychological aspects of implementers previously ignored in the classical model.

One must be wary, however, of too openly embracing theoretical models. The reality of implementation is much too complex and sloppy to be conveniently explained with well-chosen words and intellectual gamesmanship. Right to know is a good example.

Upon examining the factors influencing right to know's implementation, one is surprised to discover that the process has not collapsed into one large, anarchistic mess. Why have state-level implementers, neglected from above with inadequate staffing and funds and buffeted from below by critics and rebellious municipal personnel, simply not abandoned hope of effectively executing their duties? Why do they do their best to ride out the maelstrom?
Perhaps the answer to that question lies in the classical model and its concept of "blind obedience". At some point the implementer must divorce personal feelings from the task at hand and proceed. The extent of this divorcing of feeling -- how long it lasts, at what point in the implementation process it occurs, what events or actions serve as triggers -- necessarily varies from instance to instance and is doubtless much less extensive than in the pure classical model.

Implementation cannot be adequately described by just one model. One needs to be aware of numerous opinions and facts pertaining to policy execution and use them as sources for understanding. None will be perfect, but several will be useful.

Can this approach, applying theory to reality, be utilized in determining a policy's eventual success or failure? Probably not. The case of the right to know law's still operating despite the presence of all of its negative factors points this out. Models may help increase awareness of potential obstacles, but to use them to predict a program's life or death is inappropriate and dangerous.

Finally, the right to know law illustrates a very important point: implementers need to be involved in the initial formulation of policy. It is vital that those persons who must execute the instructions of decision-makers -- those who are well aware through day-to-day experience of the potentials and limitations of the administrative system -- play active roles early in the policy process. The use of these actors' knowledge and experience from the start will help avoid later conflict.
NOTES


3. Ibid.


5. Dabilis, February 19, 1985, Ibid.

6. Ibid.
GLOSSARY

Carcinogen
a substance that tends to cause cancer.

CAS - Chemical Abstracts Service
an organization under the American Chemical Society; CAS gathers information on and indexes chemicals and chemical mixtures. This information is compiled into "chemical abstracts" which are then assigned identifying "CAS numbers".

CAS Number
the identification assigned by CAS to a specific chemical or chemical mixture.

Community Resident
any resident of a municipality in which an employer manufactures, process, uses or stores toxic or hazardous substances listed on MSL.

DEQE - Department of Environmental Quality Engineering
one of three Massachusetts statewide regulatory agencies which (with DPH and DLI) is charged with authority to administer the right to know law.

Designated Representative
an employee's treating physician who had written authorization from the employee; an employee's collective bargaining agent who is certified, or is recognized by the employer (does not need written employee authorization). No other individual or organization may serve as a designated representative.

DLI - Department of Labor and Industries
one of the three Massachusetts statewide regulatory agencies which (with DEQE and DPH) is charged with authority to administer the right to know law.

DPH - Department of Public Health
one of the three Massachusetts statewide regulatory agencies which (with DEQE and DPH) is charged with authority to administer the right to know law.

Employee
any individual employed on or after September 26, 1984 who is, has been, or may be exposed under normal operating conditions or foreseeable emergencies to a MSL substance in the workplace. In the case of a deceased or legally incapacitated employee, the employee's spouse, guardian, or executor may exercise all of the employee's rights under the
right to know law. Any individual whose employment was terminated after 9/26/1984 is considered to be still an employee.

Employer
any person, firm, corporation, or other entity engaged in a business or in providing services, including the state government and any lesser political jurisdictions, that manufactures, processes, uses, or stores MSL substances. This definition does not include employment of domestic workers or casual employment at the place of residence of the employer. Independent contractors are considered the sole employer of their employee, even though the employees may be performing work at the workplace of another.

Hazard Communication Standard
federal standard administered by OSHA regulating transmittal to employees of information on substance hazard. The transmittal is to be by labeling and other forms of warning, MSDSs and employee training.

Hazardous Chemical
Defined in the OSHA Hazard Communication Standard as any chemical which is a physical or health hazard.

Label
written, printed and graphic information displayed on or affixed to the container of a MSL substance.

Manufacturer
any individual or company which produces, synthesizes, extracts or otherwise makes a toxic or hazardous substances.

Medical Emergency
a serious medical condition which poses an imminent threat to a person's health, caused, or suspected to have been caused, by exposure to a toxic or hazardous substance, and which requires immediate treatment by a physician.

MSDS - Material Safety Data Sheet
the basic information required by the right to know law; it identifies a toxic or hazardous substance and its manufacturer. The MSDS contains information relating to risks associated with the substance and procedures for eliminating or reducing those risks.

MSL - Massachusetts Substance List
a list of nearly 2000 chemical and chemical substances identifying those covered by the right to know law. DPH compiles the MSL, which is subject to periodic amendment.

Mutagen
a substance that tends to alter genetic material in a living cell; one of the kinds of toxic or hazardous substances covered by the right to know law.
Neurotoxin
a substance that damages the nervous system; one of the kinds of toxic or hazardous substances covered by the right to know law.

NFPA - National Fire Protection Association
international organization established to promote and improve fire protection. NFPA has developed a color-and-number coding system which indicates the degree of hazard of chemicals and mixtures created by short-term exposure as might be encountered under fire or other emergency situations.

OSHA -- Occupational Safety and Health Administration
federal agency, part of the U.S. Department of Labor, with safety and health regulatory and enforcement authority for most U.S. industry and business.

Teratogen
a substance that tends to cause birth defects; one of the kinds of toxic or hazardous substances covered by the right to know law.

Toxic Substance
any chemical substance or mixture of substances which is listed in the MSL and which is manufactured, processed, used or stored in the workplace.

Trade Name
the trademark name or commercial trade name for a material.

Trade Secret
any formula, pattern, device, or compilation of information which is used in an employer's or manufacturer's business, and which the employer or manufacturer uses to obtain an advantage over competitors who do not know or use it.

Work Area
a defined space, room, or other area where toxic or hazardous substances are produced, used, or stored and where employees are present during the course of their employment; May include an entire workplace.

Workplace
establishment or business at which work is performed and containing one or more work areas.
SOURCES


Andrew J. Dabilis, "Right to Know", Boston Globe, April 1, 1985.


Interviews:

Joseph Belloli, Department of Labor and Industries, Commonwealth of Massachusetts, March 28, 1986.


Nancy Curtin, Department of Public Health, Commonwealth of Massachusetts, March 28, 1986.

Kenneth Geiser, Department of Urban and Environmental Policy, Tufts University, March 25, 1986.

D. Bradford Stewart, Department of Environmental Quality Engineering, Commonwealth of Massachusetts, April 3, 1986.