



November 22, 2011

Sheila Y. Oliver  
Speaker of the Assembly  
15-33 Halsted Street, Suite 202  
East Orange, New Jersey 07018

RE: **A2486/S1986**

Dear Speaker Oliver:

It is no secret that special interest lobbyists are often able to water down federal standards that were intended to protect American families, communities, and workers.

It is also no secret that federal standards are often weakened to fit the politics of states like Nebraska or North Carolina rather than the very different needs of a highly urbanized and industrialized state like New Jersey.

That's why our state – under Republican and Democratic governors – has for decades maintained public interest standards that are often more effective than those adopted in Washington, DC.

These standards have saved lives and improved our quality of life. They have also helped to create or preserve jobs, protect responsible employers from being undercut, and reduce costs for businesses, communities, and families by emphasizing prevention.

Now, these basic standards are under attack, both in Washington, D.C. and in Trenton.

**On behalf of the undersigned 100 community, environmental, worker, education and other organizations, we therefore urge you to oppose A2486/S1986.**

S1986, sponsored by Senator Jefferson Van Drew (D-1) and Steven B. Oroho (R-24) and A2486, sponsored by Assemblymen John Burzichelli (D-3) and Scott Rumana (R-40), would prohibit New Jersey state government from proposing or adopting "...any new rule that would exceed standards or requirements set forth by the federal government unless specifically authorized by State law."<sup>1</sup>

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<sup>1</sup> A2486 was reported March 18, 2010 from the Assembly Regulatory Oversight Committee. It has appeared on the Assembly voting list twice.

On April 7, 2011, representatives of our organizations were able to meet with Assemblyman Burzichelli. At that meeting, when asked to explain the benefits of his bill for New Jerseyans, he could not provide a single example, except that it would improve the “legislative process”.

In fact, if enacted, this legislation would roll back decades of health, worker, environmental, educational, and other protections and harm our overall quality of life - without improving New Jersey’s business climate or creating jobs.

**We urge you to oppose these bills for the following reasons:**

**1) They will harm workers, families, and communities.** It would block state agencies from issuing new standards stronger than federal standards unless the majority of the Assembly and Senate had debated and approved every word. This means that decisions about our fundamental safeguards would be heavily influenced by political infighting, gridlock, and lobbyists, instead of facts and evidence.

New Jersey has long been a leader among the states in adopting safeguards through both its legislative *and* rule-making processes. **These safeguards protect police, fire fighters, nurses and other health care workers, construction workers, chemical workers, our children in public and charter schools, the air we breathe, and the water we drink. The Appendix to this letter offers examples of these protections.** The leadership for such safeguards has come not only from our legislature, but also from state agencies staffed with scientists, attorneys, and other experts capable of developing appropriately detailed requirements based on legislative intent.

In the May 16, 2011 *New Jersey Register*, there are two examples of how New Jersey safeguards are more protective than federal standards. The Department of Community Affairs adopted a “Playground Safety” code that will be stronger than federal standards by ensuring that recreational facilities accommodate wheelchairs. In addition, the Department of Health and Senior Services proposed to prevent consumers from getting sick by requiring storage of shellfish at a temperature colder than federal rules specified.

Also, please note that these bills do *not* contain actual language that would exempt regulations “necessary to protect public health, safety, or welfare.” Any assertion that the bill creates such a broad exception is incorrect.

**2) They would undo longstanding, existing safeguards.** While a Regulatory Oversight Committee amendment suggests that the bill would not apply to “the readoption of any rule in effect on the date the bill is enacted into law...” the bill, in fact, potentially could well void **existing** safeguards. Under New Jersey’s *Administrative Procedures Act*, rules sunset every seven years and must be readopted. Rule readoptions often include new provisions. Even a minor change upon readoption could mean that a rule is deemed “new,” subject to this law, and potentially void. When we discussed this issue with Assemblyman Burzichelli on April 7, 2011, he agreed with this interpretation. At best, the language of the bill is unclear, thus inviting litigation over the interpretation of every readopted rule with any change. This will cause chaos and increased costs for taxpayers across state government.

**3) They have unintended consequences.** Some perceive that A2486/S1986’s would only weaken environmental standards. However, a far wider range of state safeguards exceed federal standards and could be affected if this bill were enacted. These rules address, for example:

- Disease control among livestock and poultry
- Lead poisoning of children and building occupants
- Essential resources for our schools and special education
- Conflicts of interest in the operation of medical laboratories
- Assistance to low-income seniors for paying gas and electric bills
- Protecting confidentiality of records for people with developmental disabilities
- Traumatic brain injuries
- Safe acupuncture services
- Accounting rules to improve transparency
- Assurance that electrical and plumbing work is performed by qualified individuals
- Access to pet medical records
- Consumer protection during auto purchasing and leasing
- Broadening availability of net metering to promote renewable energy and efficiency
- Quality standards for seeds and agriculture
- Evacuation procedures after a nuclear plant accident

The Assembly Regulatory Oversight Committee did not consider the unintended impact of A2486 on such a wide array of vital protections.

**4) They are more harmful than Executive Order #2.** This Executive Order by Governor Christie states that state agencies shall, when promulgating proposed rules, not exceed the requirements of federal law except when required by state statute “...or in such circumstances where exceeding the requirements of federal law or regulation is necessary in order to achieve a New Jersey specific public policy goal...” [Our emphasis].

An example of standards that implement New Jersey’s public policy goals is our *Toxic Catastrophe Prevention Act* rules that are more effective than federal law. The Department of Environmental Protection issued these rules because New Jersey has the greatest population density of any state, with chemical plants, oil refineries, water treatment works and other facilities using highly toxic substances bordering many neighborhoods.

The executive branch of state government must consider legislative intent when issuing rules. In doing so, state agencies must retain the ability to develop safeguards to fulfill New Jersey specific policy goals, as cited in Executive Order #2. A2486/S1986 provides no such exception.

**5) They make it harder to create and maintain jobs.** A major benefit of New Jersey’s existing standards is that they protect businesses that respect workers, consumers, and the environment from being undercut. With A2486/S1986, competition would become a race to the bottom, based not on creativity and efficiency, but on cutting corners at the public’s expense.

In the midst of a recession, this bill also could prove harmful to job creation. For example, the Christie Administration plans to help create “green jobs” in our state, such as through wind turbine manufacturing. This could require conditions for providing state incentives that are more effective than federal standards. Under these bills, such manufacturing projects could be delayed or blocked altogether.

The current economic crisis and loss of jobs was caused, not by environmental regulation or other standards, but by the failure of the federal government to maintain effective oversight over Wall

Street. Our elected officials should be supporting positive strategies for job retention and growth, not dismantling important standards or potentially blocking state programs to create employment.

In summary, this draconian and fundamentally flawed bill would destroy decades of public protections, block adoption of future safeguards, and harm job creation. We urge you again to oppose A2486/S1986 and to meet with us about this legislation. Please help save our safeguards.

Sincerely,

/s/

**John Pajak, President**  
**New Jersey Work Environment Council <sup>2</sup>**

**David Foster, Executive Director**  
**BlueGreen Alliance <sup>3</sup>**

**Bill Holland, Executive Director**  
**New Jersey Working Families Alliance**

**Marcia Marley, President**  
**Blue Wave NJ**

#### **LABOR AND RELATED ORGANIZATIONS**

**William J. Lavin, President**  
**NJ State Firefighter's Mutual Benevolent Association**

**Dominick Marino, President**  
**Professional Firefighters Association of NJ, International Association of Fire  
Fighters**

**Ed Brannigan, President**  
**New Jersey Fraternal Order of Police**

**Robert McDevitt, President**  
**UNITE HERE Local 54**

**Daniel A. Kresier, President**

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<sup>2</sup> The New Jersey Work Environment Council is an alliance of 70 labor, community, and environmental organizations working for safe, secure jobs and a healthy, sustainable environment. More information at [www.njwec.org](http://www.njwec.org).

<sup>3</sup> The Blue Green Alliance is a national partnership of the Sierra Club, United Steelworkers (USW), Communications Workers of America (CWA), Natural Resources Defense Council (NRDC), Service Employees International Union (SEIU), National Wildlife Federation (NWF), Laborers' International Union of North America (LIUNA), Union of Concerned Scientists (UCS), United Auto Workers (UAW), Utility Workers Union of America (UWUA), American Federation of Teachers (AFT), Amalgamated Transit Union (ATU), United Food and Commercial Workers (UFCW), Sheet Metal Workers' International Association, and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry (UA).

**Teamsters Local 35**

**Doc Doherty, President  
Teamsters Local 877**

**Fred Potter, President  
Teamsters Local 469**

**Kevin O'Connor, Secretary-Treasurer  
Teamsters Local 102**

**John J. Gerow, President  
Teamsters Local 97**

**Kevin Hussey, Vice Chairman and NJ Legislative Director  
Brotherhood of Maintenance of Way Employees Division  
Teamsters**

**John Shinn, NJ Subdistrict Director  
United Steelworkers (USW) District 4**

**Ken Goley, President  
USW Local 4-149**

**Steven M. Smeregilia, President  
USW Local 4-943**

**John Luminoso, President  
USW Local 4-397**

**Joe Gibson, President  
USW Local 4-417**

**Barbara Keshishian, President  
New Jersey Education Association**

**Sherryl Gordon, Executive Director  
AFSCME Council 1**

**Frank Cyphers, President  
International Chemical Workers Union Council, United Food & Commercial  
Workers Union**

**Richard J. Whalen, International Vice President  
United Food and Commercial Workers Region 1  
Sue Michelli, Legislative and Political Director**

**United Food and Commercial Workers Local 1360**

**Lizette Delgado-Polanco, Executive Director  
Service Employees International Union, NJ State Council**

**Kevin Brown, NJ District Leader  
SEIU 32 BJ**

**Susan M. Cleary, President  
District 1199J, National Union of Hospital and Health Care Employees, American  
Federation of State, County and Municipal Employees (AFSCME)**

**Joyce Sagi, Vice President for Higher Education  
American Federation of Teachers (AFT) – New Jersey**

**Lucye Millerand, President  
Union of Rutgers Administrators, AFT Local 1766**

**Bill Sullivan, Vice President for External Affairs  
AFT Local 1904  
Montclair State University**

**Tim Haresign, President,  
Stockton Federation of Teachers - AFT Local 2275**

**Ann Twomey, President  
Health Professionals and Allied Employees (AFT)**

**Franceline Ehret, President  
International Federation of Professional and Technical Employees Local 194**

**Timothy Rudolph, President  
International Federation of Professional and Technical Employees Local 195**

**Hetty Rostenstein, Area Director  
Communications Workers of America (CWA) District 1**

**Adam Liebttag, President  
CWA Local 1036**

**Ken McNamara, President  
CWA Local 1037**

**David Weiner, President  
CWA Local 1081**

**Richard A. Dann, President**

**CWA Local 1085**

**Linda Mason, Coordinator  
American Federation of Government Employees, District 2**

**Daniel J. O'Connell, N.J. State Legislative Director  
United Transportation Union**

**Ron McCullough, President  
United Electrical Workers Local 155**

**Rich Spieler, President  
Burlington County Central Labor Council, AFL-CIO**

**Marien Casillas Pabellon, Executive Director  
New Labor**

**Carol E. Gay, President  
NJ Industrial Union Council**

**Barbara Rahke, Director  
Philadelphia Area Project on Occupational Safety & Health (covering southern NJ)**

**Bill Wolfe, Director  
NJ Public Employees for Environmental Responsibility**

**Martin M. Schwartz, Executive Director  
The Jewish Labor Committee**

**ENVIRONMENTAL, HEALTH, EDUCATION, PUBLIC INTEREST, AND OTHER ORGANIZATIONS**

**Amy Goldsmith, Executive Director  
New Jersey Environmental Federation**

**Sandy Batty, Executive Director  
Association of New Jersey Environmental Commissions**

**Phyllis Salowe-Kaye, Executive Director  
New Jersey Citizen Action**

**Dena Mottola Jaborska, Executive Director  
Environment New Jersey**

**Jennifer Kim, Advocate  
New Jersey Public Interest Research Group**

**Eric Stiles, Chief Operating Officer  
New Jersey Audubon Society**

**Jeff Tittel, Director  
Sierra Club – New Jersey Chapter**

**Michael Pisauro, Legislative Affairs Director  
New Jersey Environmental Lobby**

**Henry Rose, Statewide Coordinator  
New Jersey Environmental Justice Alliance**

**Tim Dillingham, Executive Director  
American Littoral Society**

**Cindy Zipf, Executive Director  
Clean Ocean Action**

**Rev. Fletcher Harper, Executive Director  
GreenFaith**

**Rick Hind, Legislative Director  
Greenpeace**

**David Tykulsker, Chair  
Clean Water Action**

**Katherine Kennedy, Counsel  
Air and Energy Program, Natural Resources Defense Council**

**Kelly Francis, President  
Camden Co. Branch, National Association for the Advancement of Colored People**

**Joseph Della Fave, Executive Director  
Ironbound Community Corporation**

**Avery Grant, Executive Director  
Concerned Citizens Coalition of Long Branch**

**Rev. Ronald Tuff, Executive Director  
Paterson Task Force for Community Action**

**Robert Spiegel, Executive Director  
Edison Wetlands Association**

**Cindy Ehrenclou, Executive Director  
Upper Raritan Watershed Association**

**William S. Kibler, Executive Director  
South Branch Watershed Association**

**Tracy Carluccio, Deputy Director  
Delaware Riverkeeper Network**

**Cheryl Reardon, Project Manager  
South Jersey Bayshore Coalition**

**Deborah Mans, Executive Director and Baykeeper  
NY/NJ Baykeeper**

**Captain Bill Sheehan, Executive Director and Riverkeeper  
Hackensack Riverkeeper**

**Julia Somers, Executive Director  
New Jersey Highlands Coalition**

**Joellen Lundy, President  
NJ Friends of Clearwater**

**Jaclyn Rhoads, Director for Conservation Policy  
Pinelands Preservation Alliance**

**Jim Waltman, Executive Director  
Stony Brook-Millstone Watershed Association**

**Ed Lippincott, Executive Director  
Shark River Cleanup Coalition**

**Beth Styler Barry, Executive Director  
Musconetcong Watershed Association**

**Andrea M Bonette, Treasurer  
Sourland Planning Council**

**Sally Rubin, Executive Director  
Great Swamp Watershed Association**

**Fred Akers, Administrator  
Great Egg Harbor Watershed Association**

**Marion M. Kyde Ph.D., President  
Delaware River Greenway Partnership**

**Alison Mitchell, Policy Director  
New Jersey Conservation Foundation**

**John Weber, Northeast Regional Manager  
Surfrider Foundation**

**Ruth Deale Lowenkron, Senior Attorney  
Education Law Center**

**Denise Lanchantin Dwyer, Esq.  
NJ Special Education Practitioners**

**Diana MTK Autin, Executive Co-Director  
Statewide Parent Advocacy Network**

**Claire Barnett, Executive Director  
Healthy Schools Network**

**Jim Walsh, Eastern Region Director  
Food and Water Watch**

**Peter Montague, Director  
Environmental Research Foundation**

**Dr. Joe Parrish, Director  
New Jersey Environmental Watch, Elizabeth, NJ**

**Myles O'Malley, Director  
Childhood Lead Poisoning Emergency Response, Inc.**

**Dr. MaryAnn Sorensen Allacci, Director  
Projects for Environmental Health, Knowledge, & Action, Inc.**

**Arnold Cohen, Policy Coordinator  
Housing and Community Development Network of New Jersey**

**Matthew B. Shapiro, President  
New Jersey Tenants Organization**

**Ed Purcell, Chair of Community Outreach  
National Lawyers Guild, Rutgers-Camden Chapter**

**Joanne O'Neill, NJ State Coordinator  
Progressive Democrats of America**

**Mary Ellen Marino, President  
New Jersey Progressive Democratic Caucus**

P.S. Please respond to Rick Engler, Director, New Jersey Work Environment Council,  
142 West State Street, Third Floor, Trenton, New Jersey 08608. Your reply will be shared with  
signing organizations.

C: Assembly Democratic Caucus  
A2486 Sponsors

A2486 November 2011 Oliver Letter

## Appendix

Many federal standards are heavily influenced by special interest lobbyists and are ineffective in protecting New Jersey communities, families, and workers. Our state, with the greatest population density in the nation and a high concentration of hazardous industries, has found it necessary to enact more effective standards to protect public health and safety and for other compelling policy reasons. The following are some safeguards that could be affected by A2486 and/or S1986:

### **PROTECTING POLICE OFFICERS AND FIREFIGHTERS**

**Lead and Noise Exposure:** NJ limits exposure to lead dust and noise in police firing ranges more effectively than federal standards.

**Fire Brigades:** NJ requires more effective respiratory protection and rope/harness systems than federal standards.

### **PROTECTING NURSES, OTHER HEALTH CARE WORKERS AND PATIENTS**

**Preventing Back and Other Ergonomic Injuries:** NJ has rules to protect hospital and nursing home employees and their patients from these crippling, costly, and preventable injuries. The federal Occupational Safety and Health Administration (OSHA) has not yet taken action, although it may do so in the future.

**Preventing Violence Against Health Care Employees:** NJ has rules to protect hospital and nursing home employees and their patients from violence. OSHA has not acted on this, although it may in the future.

### **PROTECTING WORKERS FROM HAZARDOUS SUBSTANCES**

**Safer Chemical Plants and Oil Refineries:** NJ's Toxic Catastrophe Prevention rules require facilities to review whether they can adopt safer and more secure chemicals and processing methods and to explain in writing if they do not correct facility maintenance deficiencies that could lead to disaster. Neither EPA nor the US Department of Homeland Security has taken action to establish these essential protections.

**Safer Construction Sites:** NJ enforces standards to prohibit the dry cutting and grinding of masonry, which causes the lethal lung disease called silicosis. OSHA has a weaker standard.

**Disclosing Information About Toxic Hazards:** NJ's "Right to Know" rules require chemical containers to be labeled with the chemical name of their contents, not with just obscure code or trade names. OSHA's Hazard Communication rule has inadequate labeling requirements.

## **PROTECTING OUR HEALTH AND ENVIRONMENT**

**Safe Drinking Water:** New Jersey regulates 15 toxic chemicals for which we have more effective standards than EPA. In some cases, NJ also has a standard (MTBE, for example) when EPA has not taken action.

**Pesticides:** NJ has rules regulating pesticide applications in schools; EPA has not enacted these protections.

**Preventing Pollution:** NJ requires industrial facilities to evaluate whether they can reduce their air and water pollution emissions; EPA does not require these evaluations.

**Hazardous Waste:** NJ requires hazardous waste transporters to be licensed; EPA has not enacted this basic protection.

## **ADDRESSING TERRORISM**

**Chemical Plant Security:** NJ's Best Practice Standards and training requirements for chemical plant workers are more effective than weak federal standards.

## **PROTECTING OUR CHILDREN**

**Indoor Air Quality:** NJ requires public schools and other public facilities to maintain healthy indoor air quality through ventilation maintenance and measures to prevent mold. The "Kiddie Kollege" law requires day care centers and schools to assess potential toxic hazards to children before licensing. Federal agencies have not acted to adopt these protections.

**Special Education Rules:** NJ has standards that both protect students with disabilities and save school districts money on special education programs.

**Playground Access:** NJ requires public playgrounds to accommodate wheelchairs. Federal agencies do not require this fundamental access.

## **PROTECTING FOOD SAFETY**

**Shellfish Quality:** NJ has a proposed rule to require refrigeration temperatures for edible shellfish to be safer than the weaker federal standard.