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Toxic Chemical Legislation

The toxic chemical legislation from the federal government has been outpaced by the increase of new chemicals and mixtures into the marketplace. Some states, in the absence of an overhaul by the federal government, have enacted their own legislation to regulate chemical substances. This report outlines recent federal legislation and the status of state laws dealing with toxic chemicals.

Status of Federal Government Legislation

Federal chemical legislation began with the Federal Food, Drug, and Cosmetic Act (FFDCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Occupational Health and Safety Act (OSHA), all of which were signed into law more than forty years ago. The Toxic Substances Control Act is the most recent of federal control laws and with the FFDCA, FIFRA, and OSHA make up the bulk of laws governing the production, use, and disposal of chemicals found in food, drugs, and consumer products. Most of these laws focused on individual chemicals, with no guidelines for assessment of mixtures. Furthermore, other than OSHA, regulation of chemicals based on consideration of combined effects is a very recent development.¹

The 1976 Toxic Substances Control Act (TSCA) provided the EPA with “authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures.”² The TSCA promotes safer practices in the “production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon and lead-based paint.”³

¹ Emily Monosson. “Regulation of Toxic Chemicals,” *National Council for Science and the Environment*, accessed April 14, 2011. http://www.eoearth.org/article/Regulation_of_toxic_chemicals.

² “Summary of the Toxic Substances Control Act” *US Environmental Protection Agency*, accessed April 13, 2010. <http://www.epa.gov/lawsregs/laws/tsca.html>.

³ “Summary of the Toxic Substances Control Act” *US Environmental Protection Agency*.

More recent, is the Toxic Chemicals Safety Act of 2010, introduced July 22, 2010 by Congressmen Bobby Rush (D-IL) and Henry Waxman (D-CA)⁴ attempts to readdress the Toxic Substances Control Act of 1976 to strengthen consumer and environmental protections for chemical exposure. The 2010 Toxic Chemicals Safety Act proposed to update the TSCA failures to “regulate chemicals in consumer products – even those that have known links to cancer, learning disabilities, asthma, reproductive disorders, and other serious health problems.”⁵

The Toxic Chemicals Act of 2010:

- Creates a framework to verify that all chemicals the public is exposed to “will be reviewed for safety and restricted where necessary.”⁶
- Requires the chemical industry to provide data to the EPA to “improve EPA’s authority to compel testing where necessary.”⁷
- Establishes the opportunity for public information sharing to regulators, states, and chemical industry workers.
- “Creates incentives and a review process for safer alternatives to existing chemicals”⁸ and offers worker training and education programs.
- Promotes research to develop comprehensive child safety and chemical protection reform
- Advocates alternatives to animal chemical testing research.⁹

The Toxic Chemicals Act of 2010 was referred to the House Committee on Energy and Commerce and was held up in Subcommittee Hearings on July 29, 2010. To date the bill has still not reached the House floor.¹⁰

Another piece of federal legislation that could overhaul the outdated TSCA is the landmark “Safe Chemicals Act” sponsored by New Jersey Senator Frank R. Lautenberg. The act was drafted by Congress in April of 2010 and it calls for giving the “EPA more power to regulate the use of dangerous chemicals and requires manufacturers to submit information proving the safety of every chemical in production and any new chemical seeking to enter the market.”¹¹

⁴ “Momentum Builds in Congress to Overhaul U.S. Chemicals Policy.” *Safer Chemicals, Healthy Families*. accessed April 13, 2011. <http://www.saferchemicals.org/2010/07/momentum-builds-in-congress-to-overhaul-us-chemicals-policy.html>.

⁵ “Momentum Builds in Congress to Overhaul U.S. Chemicals Policy.” *Safer Chemicals, Healthy Families*

⁶ “Rush and Waxman Release Toxic Chemicals Safety Act,” *Environmental Protection*. accessed April 13, 2011. <http://eponline.com/articles/2010/07/23/rush-and-waxman-release-toxic-chemicals-safety-act.aspx>

⁷ “Rush and Waxman Release Toxic Chemicals Safety Act,” *Environmental Protection*.

⁸ “Rush and Waxman Release Toxic Chemicals Safety Act,” *Environmental Protection*.

⁹ “Rush and Waxman Release Toxic Chemicals Safety Act,” *Environmental Protection*.

¹⁰ “H.R. 5820 [111th]: Toxic Chemicals Safety Act of 2010,” *GovTrack.us: Tracking the U.S. Congress*. accessed April 13, 2011, <http://www.govtrack.us/congress/bill.xpd?bill=h111-5820>.

¹¹ Office of Frank R. Lautenberg United States Senator for New Jersey, “Lautenberg Introduces ‘Safe Chemicals Act’ to Protect Americans from Toxic Chemicals,” accessed April 14, 2011, <http://lautenberg.senate.gov/newsroom/record.cfm?id=323863>.

State Legislative Activity

Due to recent congressional inaction, states are taking power into their own hands in regard to toxic chemical regulation. In the last eight years, both the number of state chemical laws and the number of states passing toxic chemical reform has tripled.¹² Eighteen “state legislatures have already passed 71 chemical safety laws in the last 8 years...”¹³ A 2010 report by “SAFER States”¹⁴ and “Safer Chemicals, Healthier Families”¹⁵ concluded the pace of state policymaking on chemicals has more than tripled in the past 8 years. Thirty states in total have recently introduced chemical legislation. Connecticut, Illinois, Michigan, Minnesota, Massachusetts, Oregon, New York, Washington and Vermont have introduced comprehensive toxic chemical laws. South Dakota has also started to introduce legislation on the issue. Even without passing comprehensive laws other states have pushed for more toxic chemical regulation. At least 17 states will introduce policies to restrict BPA in chemical products. Eight states will ban cadmium in children’s products and 3 will introduce policies to restrict DecaBDE. Eleven states in 2011 have requested that the 112th U.S. Congress bring the Toxic Chemical Safety Act of 2010 into federal policy.¹⁶

Regulation of chemicals is increasingly being handled by the states, instead of waiting for the federal government to update their outdated legislation, in particular the TSCA. However, some states are joining together for “efficiency” and “effectiveness” in dealing with toxic chemicals. Nine states have announced the formation of the Interstate Chemicals Clearinghouse (IC2) to coordinate their chemical control efforts. IC2 includes officials from California, Connecticut, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, and Washington.¹⁷

Maine

The Kid-Safe Product Law was passed in 2008 by a margin of 129-9 in the House and 35-0 in the Senate and signed into law by Governor John Baldacci in April of 2008. The bill requires Maine to adopt a list of priority chemicals of high concern, forces manufacturers to disclose the toxic

¹² Mike Belliveau, “Healthy States,” *SAFER States*. accessed April 14, 2011.

<http://www.saferchemicals.org/PDF/reports/HealthyStates.pdf>.

¹³ Leah Sarkkinen, “Toxic Chemical Legislation Announced in 30 States,” *Safetec*, accessed April 13, 2011,

<http://www.safetec.net/blog/2011/01/toxic-chemical-legislation-announced-in-30-states-2.html>.

¹⁴ From www.saferstates.org: The State Alliance for Federal Reform (SAFER) of chemical policy, also known as SAFER States, is a coalition of states who are in the lead in championing solutions to protect public health and communities from toxic chemicals.

¹⁵ From www.saferchemicals.org: The Safer Chemicals, Healthy Families coalition represents more than 11 million parents, health professionals, advocates for people with learning and developmental disabilities, reproductive health advocates, environmentalists, and businesses from across the nation who are united by our common concern about toxic chemicals in our homes, places of work, and products we use every day.

¹⁶ Travis Michael, “Legislators in 30 States Announce Toxic Chemical Bills,” *Sustainable Business*, accessed April 13, 2011, <http://www.sustainablebusiness.com/index.cfm/go/news.display/id/21742>.

¹⁷ Cheryl Hogue, “States Ascend,” *Chemical and Engineering News*. accessed April 18, 2011, <http://pubs.acs.org/cen/government/89/8912gov2.html>.

chemicals they add to products, and authorizes the state to require safer alternatives whenever they are available. It has been used as a model for action in many other states and in Washington, DC.¹⁸

Connecticut

According to Safer States, Connecticut has passed the most comprehensive BPA bill in the nation. The state legislature also approved a cadmium ban bill that will go into effect in 2014. Over the past couple years Connecticut has been trying to push a bill titled "Child Safe Products Act", which is modeled off of Maine's "Kids Safe Products Act." If the act passes in the legislature it will "phase out chemicals of high concern from children's products." The law will also give power to state agencies to regulate dangerous chemicals rather than wait on the legislature.¹⁹

California

The California EPA is considering new regulations to tighten standards on hexavalent chromium from 0.06 parts per billion (ppb) to 0.02 ppb in drinking water. Hexavalent chromium is a cancer-causing chemical used in industry that is not separately screened or regulated from chromium, which occurs naturally in nature. The California regulation has emerged ahead of the EPA's plan to update its standard on chromium, but the EPA did not plan to change its standards on other highly toxic forms of the same chemical.²⁰

Conclusion

Major federal regulation on chemical toxins is not likely to be enacted any time soon. State legislative activity on the toxic chemicals issue has grown. Thirty states have introduced legislation and comprehensive reform.

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¹⁸ Natural Resources Council of Maine, "Maine Passes Kid Safe Products Law," accessed on April 18, 2011, <http://www.nrcm.org/bv.asp?blob=162>.

¹⁹ Safer States, "Focus on Connecticut," accessed April 14, 2011, <http://www.saferstates.com/2010/03/connecticut.html>.

²⁰ Debra Kahn, "Calif. Proposes Tighter Limit for Hexavalent Chromium," *E&E Publishing*, accessed on April 18, 2011, <http://www.eenews.net/public/Greenwire/2011/01/03/3>.

Disclaimer: This report has been compiled by undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the report does not reflect the official policy of the University of Vermont.