

TSCA Reform

Business Strategies in Times of Political Gridlock

Change Is the Only Constant

Most would agree that legislative reform of the U.S. Toxic Substances Control Act (TSCA) is long overdue. Few agree on what to change and how best to proceed. If you throw in the 2012 presidential election, you have gridlock. Commerce marches on, however, and with the Environmental Protection Agency reinventing TSCA implementation in innovative and effective ways, Reach setting the new global tone, and California creating a new template for sustainable consumer products, TSCA reform is at risk of becoming a distracting afterthought. Stakeholders must develop new strategies to survive and flourish in these fast-changing times.



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Prospects For TSCA Legislation

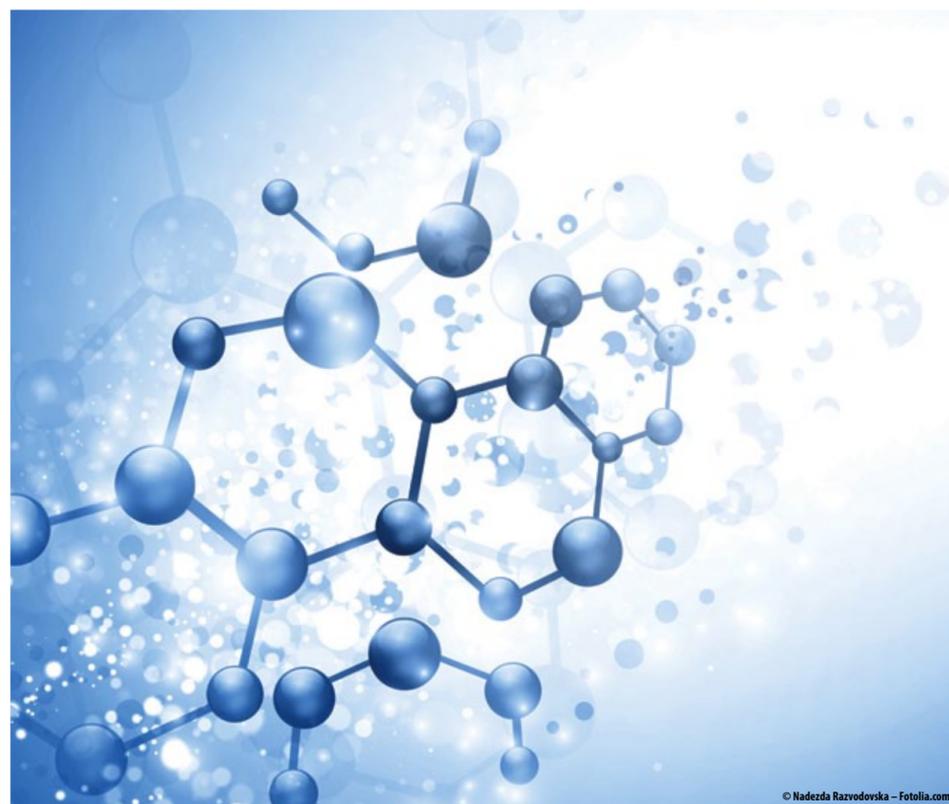
The prospects for TSCA legislation this year are dim. Congress is especially polarized on chemical management issues, which to Republicans (and even some Democrats) is code for job- and innovation-killing legislation. The Safe Chemicals Act of 2011, the primary vehicle in the first session of the 112th Congress, was introduced on April 14 by Sen. Frank Lautenberg of New Jersey, chair of the Environment and Public Works Subcommittee on Superfund, Toxics and Environmental Health. The bill generally requires chemical companies to demonstrate the safety of industrial chemicals and EPA to evaluate safety based on the best available science.

In response to strong pushback from the chemical community, Lautenberg amended the bill to improve its chances of passage. Broad chemical testing requirements were scaled back and risk-based prioritization categories were identified to enable EPA to focus limited resources on the highest-risk chemicals.

House hearings took place throughout the year, along with some stakeholder discussions. Lautenberg's subcommittee had a hearing on the legislation Nov. 17. Some Democrats, especially Sen. Ben Cardin of Maryland, were critical of the American Chemistry Council (ACC) and the lack of a concrete alternative supported by the chemical industry. Lautenberg said he intended to bring his legislation up for a committee vote "in the near future." That was the last word in 2011. As of this writing, no hearings have been scheduled, and the buzz on TSCA reform is gone.

Enhanced Chemical Management: EPA Gets Tough

Perhaps sensing TSCA reform is not imminent, the Obama administration has moved aggressively to prove enhanced chemical management is an environmental priority. Early in her tenure, EPA Administrator Lisa



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Jackson rolled out innovative and aggressive Chemical Action Plans to address risks EPA believes are posed by high priority chemicals of concern. Other initiatives are noteworthy. For example:

- EPA submitted several rulemakings to the Office of Management and Budget in 2011, including a proposed Significant New Use Rule (SNUR) that would add nine chemicals (dyes) to the benzidine-based chemical substances (dyes) SNUR at 40 C.F.R. Section 721.1660; create a SNUR for di-n-pentyl phthalate (DnPP); and create a SNUR for alkanes, C12-13, chloro. EPA also submitted a proposed SNUR concerning hexabromocyclododecane (HBCD) used in textiles.
- In February, OMB completed its review of the proposed HBCD SNUR, as well as a combined TSCA Section 4 test rule and SNUR on certain polybrominated diphenyl ethers (PBDE) submitted to OMB on Dec. 17, 2010. The PBDEs action is particularly interesting in the way it will attempt to combine SNUR requirements with a test rule, thus forcing industry to choose to abide by the SNUR or confront potentially significant testing costs if a chemical such as decabrominated diphenyl ether (decaBDE) is to remain in the market. What emerges from EPA as a proposed rule remains to be seen.
- EPA issued final revisions to its Inventory Update Reporting (IUR) Modifications Rule, now known as the Chemical Data Reporting (CDR) Rule, last year. The CDR Rule expands EPA's ability to collect and publish information on the manufacturing, processing, and use of commercial chemical substances and mixtures listed on the TSCA Chemical Substance Inventory. This includes current information on chemical substance production volumes, manufacturing sites and how the chemical substances are used.
- EPA on Feb. 7 announced that Dover Chemical has agreed to

pay a \$1.4 million civil penalty for TSCA violations, settling alleged violations of TSCA premanufacture notice (PMN) obligations for the production of various short-chain chlorinated paraffins (SC-CPs) (an action plan chemical).

- The president's proposed fiscal year 2013 budget would increase funds available to EPA specifically to address chemical risks.

EPA has turned up the heat and is virtually reinventing TSCA in innovative and aggressive ways to achieve enhanced chemical management. These initiatives, which are by no means exhaustive, illustrate EPA's commitment to enhanced chemical management. The commitment is real, and industry is feeling the pressure.

Role of the States and Reach

Two other components of chemical management are critically important to add to the mix: State chemical activism and Reach. Increasingly frustrated with the slow pace of federal chemical reform, state legislatures are enacting chemical-specific or product-specific measures in record numbers. Over the last several years, a growing number of states have enacted chemical- or product-specific bans or limitations on chemicals in products. This trend is not abating. According to Safer States, a coalition of state-based organizations "championing solutions to protect public health," 28 states will consider toxic chemicals legislation in 2012.

Not surprisingly, California is leading the nation and is developing its own Green Chemistry Initiative (GCI). The state intends to roll out this year its implementation of the GCI through the Safer Consumer Products Regulations, requiring that "chemicals of concern" in "consumer products of concern" are identified, and alternatives to toxic chemicals in such products are found and used. This game-changing initiative is expected to have a profound effect on the manufacture and marketing of consumer products well beyond U.S. borders.

Finally, Reach is continuing to cause seismic shifts in chemical management policies and business practices globally. The Reach Authorization List under Annex XIV now boasts 14 chemicals and continues to expand. Listing under Annex XIV has global implications and none of them good for producers and users of listed chemicals.

Reach-like measures continue to propagate around the globe with no signs of abating.

Business Strategies

Commercial stakeholders must effectively navigate these changes to regulatory paradigms to survive. At the least:

Know the chemicals your business is most reliant upon, and assess their regulatory vulnerability. If they are on or likely to be placed on the Authorization List, find alternatives now.

Proactively develop measures to limit exposure and make the case for key chemicals or products that pose risks but are not easily replaced.

Make the science case for chemicals that are critically important to your business if their risk profiles are not well developed or are data-poor.

Stay abreast of chemical regulatory developments in key jurisdictions, even if you have no commercial dealings outside the United States (if a U.S. entity), or in California (if a non-U.S. entity). Reach and GCI are game-changers, and both will set the tone globally.

Support TSCA reform to ensure consumer confidence in domestic chemical management is restored, and new chemical technologies that offer enhanced sustainability are rewarded and nurtured.

Engage with all stakeholders that will influence the outcome of the chemical management debate: nongovernmental organizations, state and federal agencies, unions, employees, customers, retailers and others. Diverse perspectives contribute to a rich discussion of the issues and may lead to better solutions.

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David Hurder
SOCMA

The Latest From SOCMA

David Hurder Elected Board of Governors Chairman

The Society of Chemical Manufacturers and Affiliates (SOCMA) recently announced that David Hurder was elected as chairman of its board of governors. Hurder, vice president of the privately held specialty chemical company McGean, said the stagnant economy, coupled with the paralysis in Washington, has made chemical companies realize they need their trade association more than ever before. "Companies are turning to us to help them find new business and send the message to Washington that Congress needs to create a regulatory climate in which businesses can grow and flourish," he added. Hurder succeeds Dr. Larry Brotherton, president and CEO of Ortec, who completed a two-year term as board chairman. SOCMA members also elected the following slate of officers to the Board of Governors for one-year terms:

- Vice chairman – David DeCuir, Albemarle
- Vice chairman and treasurer – Steel Hutchinson, GFS Chemicals
- Secretary – Andy Harris, Syrgis
- Immediate past chair – Dr. Larry Brotherton, Ortec

Additionally, the following SOCMA members were elected to serve three-year terms:

- Brian Denison – Emerald Performance Materials
- Craig Huffman – Ashland
- Eric Neuffer – Cambrex
- Gene Williams – Optima Chemical Group

CFATS Implementation Improvement

As a key U.S. congressional panel examined the implementation of the nation's chemical security rules, SOCMA expressed its support for stronger federal oversight of the regulatory program while warning against overreaction in pursuit of improvements. The association said it believes more congressional oversight of the Chemical Facility Anti-Terrorism Standards (CFATS) will ensure that federal resources steered toward securing facilities against terrorism are used effectively. The Department of Homeland Security, which administers the program, recently identified several challenges in implementing the program.

Despite these hurdles, CFATS has produced positive results, such as driving facilities to reduce hazards. For example, more than 2,000 facilities since 2007 have changed processes or inventories such that they are no longer considered high-risk under CFATS. SOCMA said regulatory certainty over the program provided through long-term reauthorization by Congress will help protect against repeat problems in program implementation. Reliance on temporary extensions and one-year appropriations riders is not a responsible substitute for oversight, which is why the association said it strongly supports the 112th Congress' efforts to date to ensure such regulatory certainty.

Concerns About Chemical Manufacturing Area Sources Rule Remain

SOCMA recently said it acknowledged improvements to proposed changes to the chemical manufacturing area sources rule, but said serious concerns remain over the U.S. Environmental Protection Agency's (EPA) failure to completely exempt "synthetic minors" from a key Title V provision in the rule. The new proposal addresses several of SOCMA's concerns, such as fixing the "family of materials" concept in a way that gives chemical companies certainty regarding the reach of the rule. On others, however – especially the Title V provision – SOCMA said it is concerned about EPA's logic and the rule's cost impact. This rule has been a top environmental priority for SOCMA members over the last few years, leading SOCMA to file a petition for reconsideration of the final rule with EPA in February 2010.

EPA originally proposed to exempt all chemical manufacturing area sources from the requirement to obtain a costly Title V permit, but reversed course in the final rule. The requirement that synthetic minors get a Title V permit – which is currently stayed – would limit the speed and flexibility with which those units can respond to market opportunities.

This is a major issue for SOCMA members, whose batch and specialty businesses have diverse and rapidly changing product mixes. The agency also did not address the urgent need for an extension of the October 2012 compliance deadline, which SOCMA said it has repeatedly raised with EPA.

Given the uncertainty about what the end result of the reconsideration process would look like – including confusion about how the concept of "family of materials" would affect the scope of the rule – SOCMA said its members have been hesitant to begin investing significant sums of money to comply with a rule that is still a work in progress in many significant respects.

New Online Chemical Services Directory and Networking Tool

SOCMA recently launched its online chemical services directory and networking tool, modernizing the way chemical companies market their products and find new business. SOCMA's Marketplace and Chemical Services Directory allows users to search a vast network of chemical companies based on more than 400 different types of reactions and chemistries. Users can further narrow their search by choosing from more than 200 various capabilities and services, as well as equipment and markets served. Users can even verify a company's certification in SOCMA's ChemStewards program, as well as other performance improvement programs such as ISO and OSHAS 18001. Plans are currently under way to create a version of the directory for mobile device users.

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SOCMA is a U.S.-based trade association dedicated solely to the batch, custom and specialty chemical industry. Since 1921, SOCMA has represented a diverse membership of small, medium and large chemical companies and has now a global membership of more than 200 companies.

