

# The Why and What of TSCA Reform

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Finding the ways that work

## *What I'll cover*

- Drivers for TSCA reform
- What's wrong with TSCA? (HPV, ChAMP)
- What does TSCA reform look like?
  - 2008 Kid-Safe Chemicals Act
  - *Safer Chemicals, Healthy Families* coalition platform

## *Drivers for TSCA Reform*

- Major reform of others' policies: REACH, CEPA
- State legislation and policy changes
  - Shift from bans to policies: CA, ME, WA
- GAO put chemicals on its 2009 “high-risk” list
- 1 of 5 top priorities of new EPA Administrator
- Congressional action: Oversight hearings, CPSC phthalate ban, BPA ban bill, Kid-Safe Chemicals Act
- Market demand, esp. from downstream users
- ACC: “TSCA is in dire need of modernization”
- EPA: Principles for TSCA reform issued in Sept.

*TSCA - EPA faces key structural constraints in:*

- Developing information about chemicals
  - High hurdle to require chemical testing
  - Burden of proof to show potential risk AND that insufficient data exist
- Acting on information it does manage to get
  - Virtually no criteria to identify chemicals warranting action; case-by-case
  - No mandate to assess existing chemicals
  - Near-impossible hurdle to regulate

## *EPA resorts to voluntary programs*

HPV Challenge began in 1998

- 4+ years after deadline, ~60% complete
- ~300 unsponsored orphans
- Data quality problems
  - GPA: from B+ in 2001 to C- in 2006
  - Data gaps in 35% of “final” datasets assessed by EPA
- ~600 newly emerged HPVs

## *Enter ChAMP*

- Chemical Assessment and Management Program, late 2007
- US commitment: By 2012, assess and initiate needed action on chemicals produced  $\geq 25,000$  lbs/yr in US (~6,750)
- EPA, industry have said ChAMP obviates need for major TSCA reform
- Our view: “rush to risk” prematurely exonerating 100s of HPV chemicals

## *ChAMP's limits are TSCA's limits*

- Unable to get reliable use/exposure data
- High bar to require testing to fill gaps
- Insurmountable bar to regulate chemicals
- So instead EPA:
  - relies on poor data
  - pleads with companies to provide more data and not claim it CBI
  - proposes more voluntary programs

## *ChAMP superseded*

- The Chemical Assessment and Management Program (ChAMP) has been superseded by the comprehensive approach to enhancing the Agency's current chemicals management program announced by Administrator Lisa Jackson on September 29, 2009.

-EPA Website

## *Instead of ChAMP*

EPA will:

- develop action plans for highest-concern chemicals
- return focus to developing *hazard* characterizations of HPV chemicals
- clearly identify and address data gaps/quality concerns
- revamp its chemical production and use information reporting system

## *What does TSCA reform look like?*

- My January 2009 ELR paper: “Ten Essential Elements in TSCA Reform”
- 2008 Kid-Safe Chemicals Act
- *Safer Chemicals, Healthy Families* coalition platform

## *The Kid-Safe Chemicals Act (S. 3040, H.R. 6100)*

- Requires basic data for industrial chemicals
- Prioritization based on hazard, exposure
- Industry has burden to demonstrate safety
- Safety standard: “Reasonable certainty of no harm” (FQPA)
- EPA must determine if industry meets std.

## *The Kid-Safe Chemicals Act (S. 3040, H.R. 6100)*

- Expands national biomonitoring by CDC
- Hazardous chemicals found in cord blood presumed to fail safety standard
- Requires consideration of newest science re: timing of exposure, low-dose effects
- Expands Right to Know via public database
- Tightens conditions for CBI claims
- Seeks to promote Green Chemistry



## TSCA Reform Platform

- **Immediately Initiate Action on the Worst Chemicals:**
  - Persistent, bioaccumulative toxicants (PBTs) to which people could be exposed should be phased out of commerce.
  - Exposure to other toxic chemicals, such as formaldehyde, should be reduced to the maximum extent feasible.
- **Require Basic Information for All Chemicals:**
  - Manufacturers must provide data on health hazards, uses and exposure for their chemicals.
- **Protect the Most Vulnerable:**
  - Chemicals should be assessed against a health standard that explicitly requires protection of the most vulnerable subpopulations.



## TSCA Reform Platform

- **Use the Best Science and Methods:**
  - NAS recommendations for reforming risk assessment at EPA should be adopted.
  - Regulators should expand development and use of biomonitoring.
- **Hold Industry Responsible for Demonstrating Chemical Safety:**
  - Chemical manufacturers should be responsible for demonstrating the safety of their products.
- **Ensure Environmental Justice:**
  - The disproportionate burden of toxic chemical exposure placed on people of color, low-income people and indigenous communities must be reduced.



## TSCA Reform Platform

- **Enhance Government Coordination:**
  - EPA should ensure other agencies, such as FDA, act to control chemical exposures under their jurisdiction.
  - States must be free to enact tougher chemical policies, and state/federal cooperation should be enhanced.
- **Promote Safer Alternatives:**
  - Research into green chemistry must be supported.
  - Policy should favor use of safer chemicals.
- **Ensure the Right to Know:**
  - The public, workers, and the marketplace should have full access to information about both chemical hazards and government safety decisions.

## *What's Next*

- Bill introduction – December/January?
  - US Senate: Primary sponsors Lautenberg and Boxer, chairs of the relevant Senate subcommittee and committee, respectively
  - US House: Primary sponsors Rush and Waxman, chairs of the relevant House subcommittee and committee, respectively
- Informational Hearings

## *What's Next*

- Coming year:
  - Stakeholder negotiations?
  - Legislative hearings?
  - Subcommittee, committee votes?
  - Adoption in this Congress seems possible, but
    - Midterm elections in 2010
    - Climate, health care legislation
    - State of the economy
- If not, start anew in the 112<sup>th</sup> Congress

## *EDF materials for more information*

HPV Challenge: High Hopes, Low Marks

[www.edf.org/hpvreportcard](http://www.edf.org/hpvreportcard)

ChAMP Just Doesn't Have the REACH

[www.edf.org/page.cfm?tagID=41](http://www.edf.org/page.cfm?tagID=41)

TSCA, REACH & CEPA: Not That Innocent

[www.edf.org/chempolicyreport](http://www.edf.org/chempolicyreport)

TSCA Reform: ELR Paper, Congressional Testimony

[www.edf.org/page.cfm?tagID=12814](http://www.edf.org/page.cfm?tagID=12814)

EDF Chemicals & Nanomaterials Blog

[www.edf.org/chemandnano](http://www.edf.org/chemandnano)