

# New York State Chemical Policy: New Regulation and its Impact on Business

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## Europe REACHes for New York State

- Chemical and plastics industry come under fierce attack – 10 year period
- Nationally coordinated activity
- Well funded
- Targets move depending on traction of issue: PVC to DECA to Phthalates



# The Importance to Business

- Any chemical, any plastic, any product subject to attack
- 96% of all products in commerce are touched by chemicals or plastics
- Who is in and who is out?
- The “Missouri – show me” Impact



# WHAT IS REACH

- **Registration, Evaluation and Authorization of Chemicals**

Registration (by industry), Evaluation (by a new European Chemical Agency), Authorization (most likely Restriction & Bans) of Chemicals



# WHAT IS REACH

- No data = no market
- All information on hazard and risk management should be systematically conveyed through the supply chain
- Substances of high concern should be replaced with safer alternatives



# TSCA vs. REACH

- TSCA: Toxic Substance Control Act
- Why proponents like REACH over TSCA:
- Precautionary principle & hazard assessment vs. science & risk assessment
- Proponents drive the system
- No need to prove cause and effect
- Use of children to easily frighten people, especially parents



# Principal Provisions of TSCA

- ❖ **Section 4 - testing of existing chemicals**
- ❖ **Section 5 - screening of new chemicals or new uses of existing chemicals**
- ❖ **Section 6 - risk management**
- ❖ **Section 8 – information collection and reporting**
- Section 7 – imminent hazard
- Section 9 - relationship of TSCA to other federal laws
- Section 11 – inspections
- Section 12 - chemical export
- Section 13 - chemical import
- Section 14 – CBI
- Sections 15, 16 and 17 - prohibited acts, penalties & EPA's enforcement powers.
- Section 20 and 21 - citizen actions
- Section 26 – use of categories versus specific substances



# How Did We Get Here

Proponents are claiming:

- Inadequate federal regulation (EPA, FDA, CPSC)
- Increased health costs due to exposures from chemicals
- Data information gaps
- States should lead because of federal gov't failures
- Economic opportunity for new businesses



# How Did We Get Here

## **Presumption of Safety: Limits of Federal Policies on Toxic Substances in Consumer Products**



February 2008





## How Did We Get Here

- Proponents hailing REACH as the new “gold standard” in chemical regulation
- Significant interest by many States (ME, CA, WA, VT, MA, CT, RI, MN,)
- New York?
- Likely subject of Congressional interest as federal TSCA criticized



## How Did We Get Here

Declaration of Maine State Policy, Section 1692, Chapter 643, Public Laws of 2008:

- “To reduce exposure of children and other vulnerable populations to chemicals of high concern by substituting safer alternatives when feasible.”



## Activities in New York?

- Legislation Introduced over the years:
  - Precautionary Principle, Environmentally Preferable Purchasing, Healthy Schools, Green Buildings, Green Cleaning Products, Health Tracking, Product Bans & Restrictions
- Governor's Executive Order #4
- Creation of P2 Institute
- Chemicals Regulation Roundtables
- OGS EPP Policies re: Green Seal

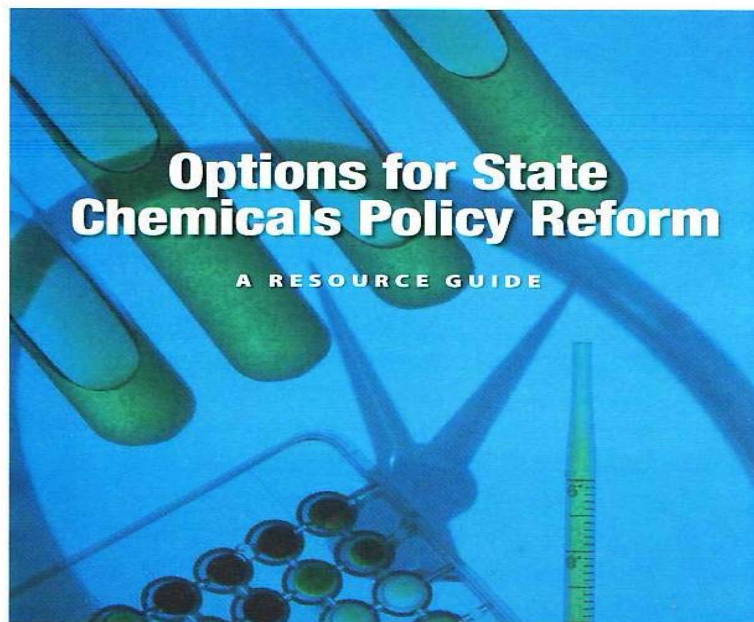


# New York in Play

- Lack of technical and scientific expertise in chemical regulation
- Lack of resources (\$) to take this on as governmental policy
- Easier to play on fears and sympathies
- More access to state & local media
- Easier mobilization of grassroots



# Guideline for States



## Options for State Chemicals Policy Reform

A RESOURCE GUIDE



Lowell Center for  
Sustainable Production

University of Massachusetts Lowell

January 2008



American  
Chemistry  
Council



# Chemicals of High Concern

Often defined as the following:

- Carcinogen
- Reproductive or developmental toxicant
- Endocrine disruptor
- Persistent, bioaccumulative and toxic
- Very persistent and very bioaccumulative



# Priority Chemicals

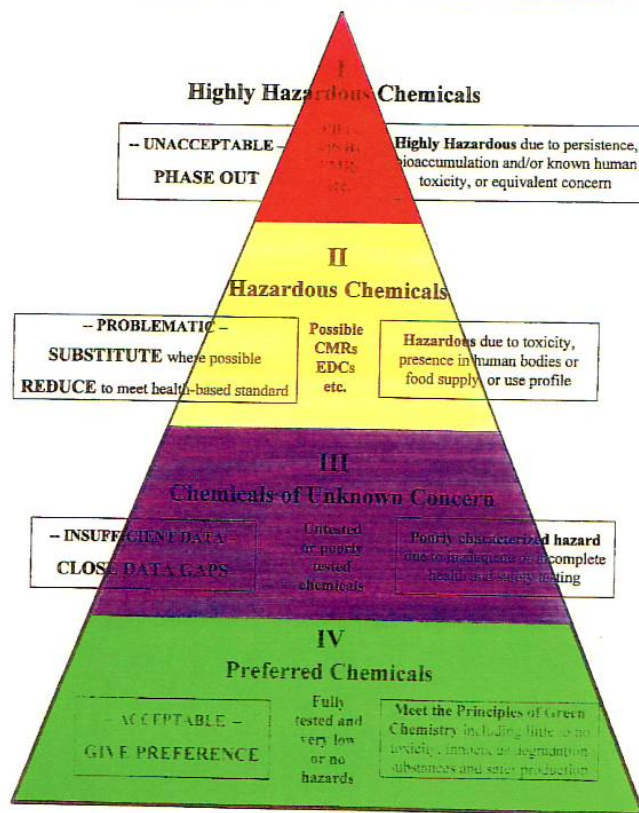
Criteria as determined by the State agency charged with regulation:

- If it's found in people (alleged biomonitoring)
- If it's found in indoor air (dust), water or the home
- If it's found in fish, wildlife or the natural environment
- If it's present in consumer products
- If it's a high production volume chemical



# Chemical Action Pyramid

The Chemical Action Pyramid –  
based on Hazards of Industrial Chemicals and their Breakdown Products





## Impact on Manufacturers

For priority chemicals, the State can be authorized to request info on:

- The likelihood of chemical release across the product's life cycle & exposure to the chemical
- It's presence in humans or the environment
- An assessment of availability, cost and feasibility of alternatives to current chemical in use
- The reason for continued use of a chemical in lieu of available alternatives



# Follow the Money

Industry may be required to pay fees to:

- Cover costs of State implementation of new regulations governing chemicals and products
- Pay for independent alternatives assessment
- State's membership in a clearinghouse



# The Nanny State

**Nanny State:** *“How Food Fascists, Teetotaling Do-Gooders, Priggish Moralists and Boneheaded Bureaucrats are Turning American into a Nation of Children”* by David Harsanyi – Reporter for the Denver Post

- *“As you read this, countless do-gooders across the nation are rolling up their sleeves to do the vital work of getting your life straightened out for you....All of the above organizations are inordinately influenced by an explosion of private-interest organizations, concerned citizen groups and ‘family values’ activists that have pumped hundreds of millions of dollars into marketing campaigns which consistently inflame public opinion and scare the holy crap out of us.”*



## The Holy Grail: “*Safer Alternatives*”

An alternative that, when compared to a priority chemical that it could replace:

- Would reduce the potential for harm to human health or the environment, **OR**
- That has not been shown to pose the same or greater potential for harm to human health or the environment as that priority chemical.”

(Section 1691, Subsection 12 of Chapter 643, Maine Public Law, 2008).



## State Action in Motion

Prohibit the manufacture, sale or distribution of children's products containing a priority chemical:

- Includes both direct *and* indirect exposure to the product with the priority chemical
- One or more safer alternatives are available



## State Action in Motion

Availability of safer alternative:

- If the alternative is not a chemical of high concern
- If the product is banned by another state
- If the alternative is sold in the United States



# What Next?

- Continued focus on New York
- Local governments trying to get into action as well
- Looking for the next “boogey man” chemical/product
- Continued link to children & children’s products
- Make connection to ailment or disease



## What Can Business Do?

- Defend products, show their benefits
- Address the myths, misconceptions and misinformation
- Address the science and the precaution *already* built into the current system
- Work with industry partners and customers
- Involve local companies & business organizations
- Speak to the media – get your message out!



# Wrap-up

Thank you