

## STATE AND LOCAL GOVERNMENTS STEP INTO TOXICS REGULATION

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According to the Center for International Environmental Law (CIEL), federal inaction on chemicals management and regulation has spurred state and even local government entities to step into toxics regulation. CIEL issued a position paper last May, *Cloudy Skies, Chance of Sun: A Forecast for U.S. Reform of Chemicals Policy*, predicting exactly this result. CIEL points to the fact that at least six states that have enacted legislation or issued some other state initiative to restrict certain polybrominated flame retardants. As discussed below, several recent initiatives tend to support the view that state and local governments are more willing now than previously to consider legislation on and issue regulations pertinent to chemical substances.

**California Biomonitoring**—On Sept. 29, 2006, Gov. Arnold Schwarzenegger (R) signed legislation (A.B. 289) that would require chemical manufacturers to provide information necessary for state officials to identify and measure for chemicals in the air, water, soil, and the human body. To define chemical, the bill cites the federal Toxic Substances Control Act (TSCA) and its definition of chemical substance, which specifically excludes: mixtures; any pesticide when manufactured, processed, or distributed in commerce for use as a pesticide; tobacco or any tobacco product; and any food, food additive, drug, cosmetic, or device when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device. Under the bill, a manufacturer would have one year to submit analytical test methods for a chemical and its metabolites or degradation products and other relevant information on the fate and transport of the chemical in the environment. The state could also require the octanol-water partition coefficient and bioconcentration factor for humans for the chemical.

Also on Sept. 29, 2006, Schwarzenegger signed legislation (S.B. 1379) that would create a state biomonitoring program. The bill does not include a list of specific chemicals that would be included. Instead, it

defines designated chemicals as “those chemicals that are known to, or strongly suspected of, adversely impacting human health or development, based upon scientific, peer-reviewed animal, human, or *in vitro* studies, and consist of only those substances including chemical families or metabolites that are included in the federal Centers for Disease Control and Prevention studies that are known collectively as the National Reports on Human Exposure to Environmental Chemicals program and any substances as specified.” Under the bill, a nine-member scientific guidance panel would be formed by Sept. 1, 2007, to guide development and implementation of the program. The first statewide biomonitoring assessment would be due by Jan. 1, 2010. Schwarzenegger stated: “There are literally thousands of chemicals being used in our everyday products in the United States in cleaning supplies, pesticides, cosmetics, and more. It’s important to know more about how those chemicals are building up in our bodies or how they may be affecting our health.”

**City of Berkeley Nano Initiative**—On Dec. 12, 2006, the Berkeley, California, City Council unanimously approved a proposal to require businesses to report nanoparticles being used, provide available toxicological information, and outline measures for safe handling of the materials. Under the proposal, all businesses that manufacture or use nanoparticles must submit a written report of the current toxicology of the nanomaterials reported; and methods for safe handling, monitoring, containing, disposing, and tracking the inventory. The proposal amends Title 15 of the Berkeley Municipal Code, Hazardous Materials and Waste Management, which requires the filing of disclosure information for hazardous materials when certain quantities are exceeded.<sup>1</sup>

According to the Community Environmental Advisory Commission’s (CEAC) Recommendation, Berkeley’s regulations define a hazardous material as “any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.”<sup>2</sup> The CEAC Recommendation states that questions about the need to implement a

nanoparticle reporting requirement arose during the design phase of the molecular foundries at the University of California and Lawrence Berkeley Lab. Both institutions, when questioned by the Toxics Management Division, “noted they had no special knowledge or tools to manage nanoparticles.” According to the CEAC Recommendation, after consideration and input from staff, the Lawrence Berkeley Lab, the U.S. Environmental Protection Agency, and the Woodrow Wilson Institute, “the recommended self-reporting was considered to be a minimum regulation for nanotechnology facilities.”<sup>3</sup>

The recommendation notes that, in many cases, the “user will not find sufficient information to determine the health impacts of a material. In such cases, it is hoped that a precautionary approach be used when handling the materials.”<sup>4</sup> The Rationale for Recommendation states:

Nanoparticles behave differently to macro-particle compounds and should be handled and mitigated differently. Handlers may not know much about the materials they are handling, as new information is published, the handlers should keep updating their knowledge, since government is not doing a good job regulating these materials.<sup>5</sup>

According to the recommendation, no alternative action was considered, “but clearly no action has potentially unacceptable consequences for nanoparticle workers and the community.”<sup>6</sup>

**Mississippi PFOA Initiative**—On Jan. 30, 2007, legislation (H.B. 1021) that would authorize a moratorium on new or modified discharge permits for perfluorooctanoic acid (PFOA) issued by the Mississippi Department of Environmental Quality (DEQ) died in the House Conservation and Water Resources Committee. The moratorium would have taken effect July 1, 2007, and would have remained in effect until the Mississippi Health Department could determine that the chemical is not bioaccumulative, persistent, and a likely carcinogen. While the initiative died, that it was considered in the first place is noteworthy.

These and related chemical initiatives are expected to proliferate in the years ahead. Whether these initiatives reflect federal “inaction,” as some assert, a maturing of the “right to know” movement, a growing sophistication of state and local entities in the area of chemicals management, or all of the above, remains to be seen and may not matter in the long run. Stakeholders will need to engage in new venues to protect their interests.

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#### **Notes:**

1. The amendment is available at <http://www.ci.berkeley.ca.us/citycouncil/2006citycouncil/packet/121206/2006-12-12%20Item%2003%20-%20Ord%20-%20Nanoparticles.pdf>.
2. Memorandum from CEAC to Honorable Mayor and Members of the City Council (Dec. 5, 2006) (CEAC Recommendation) at 2, available at <http://www.ci.berkeley.ca.us/citycouncil/2006citycouncil/packet/120506/2006-12-05%20Item%2013%20Manufacture%20Nanoparticle%20Health%20and%20Safety%20Disclosure.pdf>.
3. CEAC Recommendation at 2.
4. CEAC Recommendation at 2.
5. CEAC Recommendation at 3.
6. CEAC Recommendation at 3.