

## **Washington Watch**

### **Making a List and Checking It Twice: A Precautionary Approach to Schools**

**Lynn L. Bergeson**

In autumn 2004, parents, teachers, and children were doing what they typically do at that time of year -- namely, preparing to return to school. Others, however, were preparing for the school year in a different way.

The Coalition for Healthier Schools, a broad coalition of educational, environmental, health, and civic organizations, was preparing a "Back to School Environmental Checklist," and doing their best to ensure that the Checklist received significant media attention and broad circulation among school districts across America.<sup>1</sup>

The Checklist is intended to help parents, teachers, and students identify and address "unhealthy conditions" in their schools, including polluted indoor air, lead exposure, asbestos, chemical fumes, pesticides, and related conditions believed to be hazardous.

The Back to School Environmental Checklist initiative is one in a series of actions that have been taken within the past several years in an attempt to diminish potential exposures to chemicals and abate other conditions that are believed to pose risks to children.

This "Washington Watch" column offers some background on the growth of concern about children's health and environmental risks. It then focuses specifically on the Back to School Environmental Checklist, and some of the important issues it raises.

#### **Focus on Children's Safety**

For the past ten years, virtually all federal environmental legislative initiatives, regulations, and public health policies have reflected a strong "children's health" component. Some attribute this development to the efforts of former U.S. Environmental Protection Agency (EPA) Administrator Carol Browner. Others argue that it merely reflects the significance of a concept that is supported by many stakeholders, and whose time has come.

What is not debatable is that former Administrator Browner's clear legacy of emphasizing the importance of children's health continues today, and in a big way.

#### **Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks**

President Bill Clinton's Executive Order 13045, signed on April 21, 1997, entitled "Protection of Children from Environmental Health Risks and Safety Risks," requires that each federal agency make it a "high priority" to identify and assess environmental health and safety risks that disproportionately affect children.<sup>2</sup>

This Executive Order also requires each federal agency to ensure that its policies, programs, and activities address any disproportionate risks to children that may result from environmental health or safety hazards.

### ***Task Force on Environmental Health and Safety Risks to Children***

The Executive Order created a Task Force on Environmental Health Risks and Safety Risks to Children, which is co-chaired by the Secretary of the Department of Health and Human Services and the Administrator of EPA. The Task Force includes representatives from 16 departments and federal agencies and is charged with recommending strategies to protect children's environmental health and safety.

In October 2001, President Bush signed Executive Order 13229, extending the work of the Task Force for an additional 18 months. In April 2003, President Bush amended this Executive Order, extending the work of the Task Force an additional two years.

The Task Force identified four initial priority areas: asthma, unintentional injuries, developmental disorders (including lead poisoning), and cancer. The Bush Administration believes the work of the Task Force is consistent with President Bush's "No Child Left Behind" theme.

### ***Impact of Executive Order 13045***

The significant impact of Executive Order 13045, particularly on EPA regulations and policy initiatives, was under-appreciated in 1997. Few then would have forecast the profound influence that children's health concerns now have on many EPA regulations and policies.

In the area of air quality regulation, concern with the incidence of asthma in children has significantly impacted the development of EPA's standards on air toxics, particulate matter, and sulfur dioxide.

Similarly, regulatory initiatives by EPA's Office of Water have been, and continue to be, influenced greatly by children's health issues. For example, rules on the use and disposal of biosolids, promulgated pursuant to Clean Water Act Section 503, reflect risks to children and other sensitive subpopulations. In addition, concerns about the effect on infants of excess nitrates from agricultural feeding operations influenced EPA's Concentrated Animal Feeding Operations (CAFO) rule, which was issued in 2003.

In the case of pesticide regulations, children's health concerns have had a very significant influence. For example, in reviewing pesticide tolerances under the Food Quality Protection Act (FQPA), the Agency applies a ten-fold safety factor when no reliable data exist regarding the pesticide's effect on developing infants and children. EPA's Office of Pesticide Programs routinely considers children's health issues in risk assessments, and has developed an impressive list of guidance documents and risk models to complete such assessments.

## **Legislative Initiatives on Children's Health**

Over the years, a number of legislative initiatives aimed at protecting children's health have garnered some measure of support.

One such initiative was the School Environmental Protection Act (SEPA), which was drafted in 1999, introduced in 2001, and reintroduced in 2003. If passed, this legislation would have required vastly more notice and control over the application of pesticides in schools.

SEPA sought to amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and would have required schools to develop plans mandating the use of integrated pest management (IPM) approaches to pest mitigation. It also would have required notification to parents and others of pesticide applications at schools and the posting of signs regarding application of pesticides. In addition, it sought to prohibit the application of pesticides under some circumstances, and otherwise aimed to more significantly control the application of pesticides in schools.

While the 2001 version of the legislation received broad support among industry trade groups and environmental activists, it was rejected in conference. (It should be noted that this legislative initiative focused on the use of pesticides in schools, a considerably narrower range of potential hazards than that covered by the Back to School Environmental Checklist.)

More recent legislative initiatives have been introduced that would have achieved some of the original SEPA goals, but none of the bills has passed. Given the Republican-controlled House and Senate, it is unlikely that SEPA or even a "SEPA-lite" will be seriously entertained any time soon.

Perhaps it is for this reason that the Coalition for Healthier Schools opted to pursue a high profile "checklist" approach to reducing health hazards in schools. This voluntary approach, albeit not enforceable, is likely to be as effective as legislation in terms of elevating the profile of the environmental, health, and safety hazards that the school environment poses for children -- thus potentially hastening their abatement.

### **The "Back to School Environmental Checklist"**

According to the Coalition for Healthier Schools, some 54 million students and six million teachers and related staff attend or work in America's schools. The Coalition states that half of this large population "may be exposed to unhealthy conditions: polluted indoor air, exposures to lead, asbestos, chemical fumes, pesticides, molds and other toxins, overcrowding and lack of sanitation" (citing EPA). Additionally, the Coalition notes the growing prevalence of diseases among children, including asthma, learning disabilities, and cancer.

To address these and other hazards, the Coalition proposes an approach that has the appeal of common sense: Walk through the local school building (where children can be expected to spend at least six hours a day, five days a week), use the Checklist to identify

potential problems, and then develop a “precautionary action plan” to prevent or remediate any problems found. The Checklist poses ten questions:

- Is the school clean, and are carpets, floors, ceilings, and air intakes free of water stains and mold?
- Do classroom windows open, and are heating, air conditioning, and ventilation systems in order?
- Do trucks, buses, and cars load or idle well away from the school?
- Are renovations and repairs completed?
- Are cleaning products and science and art supplies free of toxic substances?
- Does the school control pests and unwanted weeds without the use of pesticides?
- Are school grounds clean, and free of air, water, and soil contamination, and is wooden playground equipment made of non-arsenic treated wood?
- Are steps taken to prevent food-borne illnesses?
- Are drinking water and building paints lead free?
- Is the school fully accessible to all students and staff with asthma, environmental, learning, developmental, and physical disabilities?

If all these questions can be answered “yes,” checklist users are encouraged to thank the appropriate school board and send a letter to the local newspaper. If any question is answered “no,” users are encouraged to address the problem and to remediate the health risk the hazard is believed to pose.

## **Implications of the School Environmental Checklist**

### ***Precautionary Principle***

One of the most interesting implications of the Back to School Environmental Checklist is its obvious application of the Precautionary Principle. The Beyond Pesticides press release that was issued when the Checklist was rolled out goes so far as to state:

The parent-friendly Checklist shows communities and schools how to identify problems and how to heed early warning signs and prevent toxic exposures by taking a precautionary approach. Based on every parent’s commonsense approach of “be safe not sorry” and the “first do no harm” approach of medicine, the

precautionary principle shifts the question asked from “what level of environmental harm is acceptable” to “how can we prevent harm?”

The Checklist plainly takes the Precautionary Principle out of treatises on environmental policy and puts it, up close and personal, in the hands of thousands of parents and teachers.

### ***“Toxic Substances”: The Questions Left Unanswered***

Another interesting aspect of the Checklist is the not very subtle connection it makes between the presence of “toxic substances” and harm to children.

The Checklist’s “tips” accompanying the question “Are cleaning products and science and art supplies free of toxic substances?” urges replacing “toxic substances” with “non-toxic” alternatives. But it offers no direction on what the non-toxic replacements may be.

It also does not address the issue of whether “toxic substances” found in schools are in fact likely to pose harm. Absent is any consideration of exposure or efficacy. Chlorine, for example, would almost certainly be regarded as a “toxic substance.” But it is also an effective chemical that is commonly used to kill germs in pools.

Similarly, any science classroom or school laboratory is likely to contain chemicals. Schools routinely use personal protective clothing and equipment to ensure students are not adversely affected when conducting science projects or chemistry experiments. While the Checklist is likely not intended to put a stop to high school chemistry experiments, the text of the Checklist could be read to support this interpretation.

The omission of efficacy information or any reference to the potential benefits of certain chemical substances represents a significant flaw in the Checklist’s approach. In fact, a rush to condemn the use of certain pesticides might actually invite more harm than good.

For example, the use of rodenticides and pesticides to kill disease-carrying rodents and other pests might well be the most efficient, safe, and cost-effective pest management tool in a school system that is strapped for cash.<sup>3</sup> Nonetheless, the Checklist urges the control of pests “without the use of pesticides.”

### ***The Dangers of Oversimplification***

This raises the most fundamental issue of concern with the Checklist. Any checklist, not just the School Environmental Checklist, runs the risk of over-simplifying the identification of problems and their solutions. Checklists by their very nature must take a broad-stroke approach that applies to as many situations as possible.

What gets lost in the application, however, is the more challenging and important issue of striking a balance between, for example, chemical substances and the value they offer.

All school environments must be free of known health hazards, including asbestos, lead paint, unhealthy indoor air, and related hazards. The use of chemicals (including pesticides), however, should not be assumed to constitute a health hazard since use of chemical products, including pesticides, can actually protect children's health. The use of rodenticides is just one example; there are many others.

More to the point, perpetuating the message that all chemicals are bad and should be avoided may actually put children (and others) at risk, particularly where chemicals may well be abating a greater hazard posed by any number of threats to human health, including bacteria, germs, and similar disease-carrying organisms.

## **Conclusion**

The current focus on children's health issues will continue to be an integral part of federal and state environmental health and safety policy and rulemaking for years to come. In addition, more private initiatives along the lines of the Back to School Environmental Checklist are likely to emerge.

The Checklist properly seeks to sensitize parents, teachers, and others to the potential health risks that children face in schools. As a risk communicator, however, the checklist approach would be improved if it avoided characterizing chemicals as something to be avoided under all circumstances, and better attempted to integrate the concept of exposure and risk/benefit when addressing chemical substances.

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## Notes

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- <sup>1</sup> The checklist is available at <http://www.besafenet.com>.
- <sup>2</sup> 62 Fed. Reg. 19883 (April 23, 1997). Available at <http://www.epa.gov/fedrgstr/eo/eo13045.htm>.
- <sup>3</sup> The author's law firm serves as outside counsel to the Rodenticide Registrants Task Force, which includes most domestic manufacturers of rodenticides.