



## Episode Title: TSCA Reform *Reform?* -- A Conversation with Dennis Deziel

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**Lynn L. Bergeson (LLB):** All Things Chemical will reach our third anniversary on October 23, and we want to share this celebration with you. Everyone who sends us an e-mail at [podcast@lawbc.com](mailto:podcast@lawbc.com) during October will be entered into a prize drawing. Prizes include headphones, books authored by us, TSCA Tutor® classes, and other items we think our sophisticated chemical sector listeners will enjoy. Your e-mail can include guests or topics you would like to hear in the months coming, provide feedback on how we're doing, or just be an opportunity to say hi. Go to our web page at [www.lawbc.com/podcasts](http://www.lawbc.com/podcasts) for more information.

Hello, and welcome to All Things Chemical, a podcast produced by Bergeson & Campbell (B&C®), a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I'm Lynn Bergeson. This week I sat down with my new colleague, Dennis Deziel, B&C's and our consulting affiliate, The Acta Group's, Senior Government Affairs Advisor, to discuss TSCA reform. Dennis served as Director of Federal Government Affairs for the Dow Chemical Company when TSCA amendments were considered and, of course, eventually enacted by Congress in 2016. After leaving Dow, Dennis served as U.S. Environmental Protection Agency (EPA) Region 1 Administrator, which covers the New England area. I thought it would be interesting to speak with Dennis and seek his views on TSCA reform as it was happening when he was a senior executive for one of the world's largest chemical companies and then as a Senate-confirmed political appointee after TSCA reform was enacted and he was part of the team implementing it.

Now here is my conversation with Dennis Deziel. Dennis, I am so excited about chatting with you this morning. Thank you so much for being here.

**Dennis R. Deziel (DRD):** Thanks, Lynn.

**LLB:** You have served in a lot of different positions. You were, of course, Director of Federal Government Affairs for the Dow Chemical Company and have had an amazingly eclectic and diverse career as a senior government leader. Department of Energy (DOE), Homeland

Security, EPA, the Council for Environmental Quality. Just kind of amazing. How about, in your own words, walk us through that career as a government leader.

**DRD:** Thanks for the question. Yes, sounds like I go from job to job. It's sort of a D.C. thing, I feel like. Yes, federal employee for over 20 years with some private-sector experience. Half of those years as a federal employee at EPA, and those years equally divided between Pesticides, so Ag chemicals, and then five years working TSCA Industrial Chemicals.

Then I followed a theme of chemical policy, and energy and environmental issues. As you mentioned, a stint at the White House Council on Environmental Quality under George W. Bush. Pushed from there to help stand up a new chemical security program at the Department of Homeland Security, followed by the opportunity to serve as a Deputy Assistant Secretary, DOE, and then with a little bit of [Capitol] Hill work in there also.

Then after the DOE job, got an opportunity to work with Dow Chemical as Director of Federal Government Affairs, again, in the energy/environment/regulatory world, sort of keeping that theme again with a chemical company. And then lastly, I had the opportunity to go back to my home turf of New England as Regional Administrator at EPA, again working on the latest and greatest energy environmental policy issues. So the theme in my career is energy, environment, a lot of chemical policy matters. And now, I'm happy to be here with Bergeson & Campbell, one of the leading firms addressing chemical issues.

**LLB:** Thank you, Dennis. And we are just so thrilled that you're part of the team with your background, your skill set, and your extraordinary experience. You are a perfect team member.

Let's go back -- one of the reasons that we're chatting today is because I'm fascinated by your role as both being kind of in the room, as it were, when TSCA reform was percolating five years ago and earlier, and then kind of implementing it as a member of the EPA senior staff, as EPA Region 1 Administrator. A little over five years ago, many of us were just bristling with excitement over the possibility of TSCA reform. Negotiations were underway in earnest. Tell us what was going on then and take us back to the spring of 2016. The process was, as you know, not really transparent. What was happening, and what were some of the drivers leading to TSCA reform?

**DRD:** Five years ago, it seems like such a long time ago. So much has changed!

**LLB:** I know. Doesn't it?

**DRD:** Like TSCA dog years or something. At the time, I was working for Dow. I had, again, that TSCA experience, so I had some firsthand knowledge about how it worked or how it didn't work, its strengths and weaknesses. And with Dow, we had been working on TSCA reform for several years. And I think nowadays to pass major legislation, you're working on it for seven, eight, nine years, which was certainly the case for TSCA reform. And through that process, working on different bills, different policy aspects.

Dow, of course, was proud of the products and the process for getting those products to market safely: industry leader with a leading voice. And so we wanted to be at the table and on the menu when it came to TSCA reform. The primary driver, of course, was that the 40-year-old TSCA just wasn't keeping up with the science, the pace of innovation. There were delays in EPA decision making because these science issues and chemical policy issues were piling up.

Five years ago -- to me, the primary driver, as we've talked about, because people seem to have different recollections of the drivers and the outcomes and the process -- to me, the primary driver was that EPA inaction or issues with decision making, which was leading to states deciding to take action and then depending on the state, with often different outcomes, different regulatory actions. Companies like Dow were facing a patchwork of state regulations, state process. As a global company, you don't make state-by-state products. It's hard to manage that process. Again, we believed in our products and the science behind the product. So revamping, modernizing TSCA was what we thought was the approach to go, and through seven, eight years of process, all coming together, and in spring and summer of 2016, we were able to do that.

**LLB:** Did you have -- and I know it's really hard to look at the past objectively and try to set aside the filtering that goes on with the here and now. We know what we know now. We certainly didn't know then the calamitous events from 2017 on -- but did you *then* have any idea we would be at where we are at today, granted that the past five years have been, in my view anyway, just extraordinarily disruptive? The fact that we've had three administrations intervene, as it were, between mid-2016 and now third-quarter 2021. But from your perspective and various perches that you've occupied, what do you think? Is this the new normal, or is this extraordinary?

**DRD:** Gosh, I hope it's not the new normal, and you're right. It's been an interesting five years, very, very political. I don't think this was envisioned back in 2016. The reasons for the politicization and the polarization, that's probably a whole other podcast that you can have, but I know that when we were talking about TSCA reform and modernizing the law, the way you bring a coalition together and you get agreement and we worked across the board: We worked with non-governmental organizations (NGO) and industry, associations, and EPA. We were easier to get, I guess, in retrospect, a framework that works that everyone can agree on. And then when you start talking about details, you know, then people have different opinions. And I think one of the things that you see now is that a lot of the implementation details were left to the reg writing portion.

**LLB:** Right.

**DRD:** So the battle for the soul of TSCA really went to the reg writers. And then, right in the middle of that process, you get your three administrations, you get the politicized atmosphere, and that, I think, spread to the rulemaking process also. So I think we knew the devil was in the details. I don't think we understood the extent of what that would be, and we also knew that TSCA reform was not going to be perfect. Lots of room for improvements. TSCA 1.0, add 40 years, so let's give TSCA 2.0 a chance. And so it's been five years. The next five years will be important, hopefully, finding some more middle ground processes that work. Continuous improvement, I think, will be important. Still, I'm a firm believer that TSCA reform was important, a critical step in updating our chemical regulatory system and just continue to work to keep making it better.

**LLB:** I agree. I often wonder, because I was not in the room. I was one of those anxious TSCA lawyers on the outside wondering, what the heck's going on in there, and what's going to come out of this process? And you kind of wonder if the people actually writing the law sat back and appreciated in the moment how momentous some of the changes to TSCA have proven to be. What is a condition of use? How do you infuse environmental justice through the law in a way that the current Administration, and I think even the prior one, envisioned, given the emphasis on potentially exposed or susceptible subpopulations? So perhaps it was

best not to consider how best to implement those legislative changes, because it could actually have prevented the consensus that miraculously was achieved back in 2016.

**DRD:** And certainly you want a framework that ensures and encourages innovation. There's no bigger innovation in my mind than the chemical industry in the U.S., and so the framework needs to support that sort of model, not stifle that. Finding the balance is important and hard.

**LLB:** From my perch, we have yet to find that balance, but that's a whole different kettle of fish for a different podcast. I'm really interested in when you left the milieu of being part of a very important C-suite infrastructure as Federal Government Affairs Manager at Dow. And then you became an Administrator of a really important region, EPA Region 1. When you took over that position, Dennis, what surprised you the most when you move from an industry perch to the government perch? What advice can you offer the business community, given your experience as EPA Region 1 Administrator?

**DRD:** Thanks for the question. I loved that job. I loved the people I worked with. Part of that, of course, was going back to my home turf. My family's in New Hampshire and Vermont and Boston. It was so good for me, and important for me also as a guy who had worked for 20 years on *national* energy, environmental, and regulatory issues. To go to the front line of implementation and policy development to see how the national rhetoric works out at the local level, state level, to see how the decisions made inside the Beltway can impact the regional atmosphere. And then how does the regional environment impact the national dialog?

It gave me a great, new-found respect for EPA workers. I still don't think they get the credit they deserve. It gave me a much better sense of the role of states in terms of not just implementation, but how they can drive national dialogs because often they're the ones who see the issues first and have to figure out solutions first, reach out to the federal level. States are talking all the time, so suddenly these issues to me became much less abstract and more real. And you could see how lines were directly impacted on decisions that were being made that range from environmental justice and per- and polyfluoroalkyl substances (PFAS), and Superfund cleanup, Brownfield grants, just so much more real to me. And so I would, like I said, your question is how would I advise the business community. I would say get to know the regional offices, because they're the real nexus between federal and state energy and environmental policy. They have the relationships that can impact these policies, and they have such an on-the-ground perspective that I think is critical for everyone, including EPA headquarters to some degree. An essential partner, I feel that, so important voice, important perspective. I just loved the experience.

**LLB:** I certainly share your view that EPA workers, employees, are the unsung heroes and do not get the appreciation and support in all cases that they deserve. They're just an extraordinary group of people that I've worked with for three decades now and really like and appreciate our EPA workforce.

**DRD:** I think that was part of my DNA, too. As a new political appointee, but with 20 years of federal experience, I think the federal piece is part of me, part of my DNA. And so that was an important aspect of how I look at the issue.

**LLB:** Now, given where we're at, and in your role as a government affairs expert, and knowing what we know about the trajectory of TSCA implementation, do you envision a TSCA reform *reform* initiative at any point, especially given the somewhat toxic legislative climate that we are in and as we approach an election year?

**DRD:** TSCA reform *reform*? I love that. No, I'm a glass half full kind of guy. I think anything's possible. I don't know if you'll get another full framework review in this generation or the next generation. I think the framework piece that was possibly the form that was the Lautenberg Act, I think that it's a good framework, it makes sense. But like we talked about before, just the need for continuous improvement to identify what works and what doesn't work and addressing those concerns. That'll be part of, I think, how it moves forward, and so I think, like what we just talked about, when it comes to innovation and, for example, more sustainable chemicals getting to market. If the framework or the current approach makes the process of getting more sustainable chemicals to market harder, then something needs to be tweaked.

And so I think Congress, all the stakeholders involved with TSCA, I think if they identify issues, I think people can come together to address and fix those issues. One thing I've noted, and I think we've talked about this a little bit in the past, where one new concern I have is that there's so much attention going to climate change and infrastructure legislation, focus on air and water programs and in cleanup to some extent. I do worry that some of the chemical management programs get lost in the dust a little bit. And so one of the ways to make a program work is to make sure that it gets the attention it needs and it gets the funding and resources that it needs. And so you can't reform TSCA and then walk away. It needs continuous attention and investment and dialog and this sort of retrospective view where you're reviewing all the time, what's working, what's not working, and working with Congress and others to address the issues. And I do think that process is actually happening now, and I think it will continue.

**LLB:** I'm pleased to hear that, Dennis, because I share your view and we have spoken quite a lot in the more recent past about just how important chemical innovation is. And it's a critical part of the problem solving of climate change, right? And I agree with you that it does get a little bit lost in the mix because air issues, and water contamination, and other issues seem to be more in the moment and may be relatable to people on Capitol Hill. But we are committed to making that case and have a number of initiatives that we are pursuing, which we will make the subject of other podcasts because climate change and the role of the chemical sector in making the world a better place is a critical point that is not getting the attention it deserves.

**DRD:** And lots of the solutions involve innovations that are going to come from the chemical sector. So, yes.

**LLB:** Absolutely. Another aspect of TSCA reform *reform* relates to what I still think some people didn't see coming, were amendments to the National Defense Appropriations Act, otherwise known as the NDAA, that have already been implemented into law, that have materially amended TSCA in very consequential ways. The addition of [Section] 8(a)(7), requiring PFAS reporting, which is the subject of a proposed rule that people are commenting on now and will continue to do so for about the next week, is a perfect example. Can you address this type of collateral intervention with TSCA, and do you see more of those interventions coming in the future?

**DRD:** Yes, to me there's a correlation between Congress acting chemical by chemical and whether TSCA is working as envisioned or not. So I think one of the reasons behind TSCA reform was to me, if you're doing it right, you don't need chemical-by-chemical intervention. You look to EPA to follow the science, to follow the process that's been outlined, and manage risks in that way. The fact that PFAS -- and I guess PFAS is obviously a little different and sort of taking a life of its own, which I know is the subject of other podcasts. But the fact

that they're taking on PFAS is maybe a symptom that the process isn't working that perfectly. Also, asbestos was the poster child of TSCA reform because if you can't ban asbestos, what can you ban? Now you see there are separate bills on banning asbestos, so it's another sign, another symptom that you don't want to see. So to me, if TSCA is working as envisioned, you're getting out of the chemical-by-chemical legislation and amendment writing and back into the full process. I think you're always going to see how some chemicals, they use the science and turn political. Some of them are so big and hard to manage. You don't want to wait, or you can't wait, or you question the approach that's being taken. There's always going to be, I feel like, these interventions passed, but I do think if you get a healthy TSCA and healthy dialogs and coalitions where people are actually talking, then I think those are minimized.

**LLB:** Well, good to hear. I'm also really interested in your thoughts on the Biden Administration's so-called all-of-government focus on environmental justice (EJ). Obviously, a very laudable objective, but I worry and sometimes question whether the business community has a good grasp of what that means. What is EJ, and what can the business community -- the industrial chemical community in particular -- do in preparing for and participating in that all-of-government focus? Are there thoughts or advice, Dennis, that you can share with listeners who may be struggling to contextualize EJ in a business operations context?

**DRD:** Right, it's so important, the basic message, the basic inclusion piece of EJ is so essential to business. The only advice I've got is the model, I think, that has been seen in the past, EJ is treated as an afterthought or as a side program. And I think we've learned that it's got to be baked into every decision and every approach that you're taking. And I saw this to some degree in the region. There's so many clean air issues, cleanup issues, clean water issues where the biggest concerns were in overburdened communities that had EJ challenges, who didn't always have a voice or were shut out of the process. And acknowledging that up front, figuring out ways to include things like that, is just, it's essential. It's something that businesses need to figure out, need to address, and make as part of every decision.

The Biden Administration has taken big steps in terms of figuring out how to do this, all sorts of ideas and approaches, again, that resource thing they're investing in their EJ office with their appropriations process. And so I guess the basic advice I've got is to consider it everywhere, all the time, in terms of what you're thinking of for projects and programs, products, and make sure it's given serious consideration.

**LLB:** I'd like to pivot to the other side of the Office of Chemical Safety and Pollution Prevention house, and that is agricultural chemicals and biocides. I think, Dennis, you and I first met each other when you were working in the Office of Pesticide Programs, and you're very familiar with agricultural chemicals, given your work there and, of course, your work with Dow, a major agricultural chemical manufacturer and registrant of many products. What are your thoughts regarding key challenges on which the business community should be focused right now in that context?

**DRD:** Yes, it's a lot like TSCA. I guess one issue is that TSCA gets, they suck the oxygen out of the room. They get so much attention because there's so much going on in TSCA, and so sometimes the Pesticide Program gets lost in the shuffle also. But much like the TSCA industrial chemical side of the house, the ag chemicals, again, you want EPA to follow the risk assessment process. You want them to have a clear understanding and approach when it comes to managing the risks. The dialog, the relationships are going to be so important because you want EPA to make decisions that are based not just on sound science, but on an understanding of the universe of how it's used and where it's used.

The pesticide world was always a little interesting because the nature of the chemicals inherently presented challenges. Again, I know that the Pesticide Registration Improvement Act (PRIA), which is reauthorized every five years, it's an important tool for bringing industry and EPA together to make sure that the program is functional and it's possible. The great thing about having it reauthorized every five years is it does bring in that concept, which I think is important, called retrospective reviews. You get a chance to see what's working and what's not and then make improvements in five-year increments. I think that's so important. Then again, as I learned as a Regional Administrator, states have such an important role and perspective when it comes to these pesticidal chemicals. A lot of the programs are pushed to the states from headquarters. And so understanding the state rules, understanding what they're seeing, how to help address the issues there. I think that's also so important for the business community.

**LLB:** Agree, and as you mentioned, all of the issues confronting the Office of Pesticide Programs and the fact that TSCA does seem to suck the oxygen out of the room, but our practice here, of course, is heavily focused on pesticide issues. And one of those is the NGO community's relentless focus on endangered species as a consideration in pesticide reviews. Where do you see this going? Will the Endangered Species Act (ESA) be amended at any point in the future?

**DRD:** All you have to do is Google Endangered Species Act, and the same story from 2021, you can find it in 2004, so it's obviously such a huge issue. It's an important part of how the chemicals are in the environment. They're being applied to areas where there's all sorts of debate about application and use. The ESA dialog is very important. I do feel like with the stakeholders involved now -- ranging from CropLife America, to the Center for Biological Diversity, to states, to others -- I do feel like people are starting to focus on the fact that we need to protect the species. One of the things I've found is if you have a common understanding of the problem, you can figure out a common understanding of a solution. When you don't agree on the problem, it's hard to come to a solution.

I do think, based on the dialog that I've seen, that there is discussion, meaningful discussion. And I think progress is being made that we all agree on, that the species need to be protected. How that plays out legislatively, how that plays out at EPA, I wish I had that crystal ball, but that'll certainly -- as PRIA 5 becomes part of the dialog in Congress over the next year or two, as the next farm bill gets considered, the Endangered Species Act and all of its implications will be, I think, a huge piece of the discussion.

**LLB:** I think you've just answered the next question I was anticipating asking you, which is, are there major legislative issues on the horizon targeting ag chemicals? It sounds like PRIA 5 and the farm bill and, maybe in the background, some effort to incorporate or address Endangered Species Act issues. Anything else? That's a lot, coming up.

**DRD:** Exactly. That's a lot. I wonder, watching EPA as they regulate chlorpyrifos, it's such a political issue. It's Congress and others getting involved with the chemical, where you would hope that EPA is following their risk assessment and then this management process. So sometimes you see a chemical like that and you worry about separate legislative action. I don't know if that will be something that is on the horizon indefinitely, but there's always going to be chemical-by-chemical issues. Chlorpyrifos raises a flag to me in terms that it's a little separate from the process that you would expect from EPA and that, in itself, create other agricultural legislative opportunity.

**LLB:** Dennis, one final question. Again, it circles back to your just absolutely dream experiential background. I mean, the DOE, DHS, EPA TSCA, EPA FIFRA, the Council on Environmental Quality, Director of Federal Government Affairs for a major agricultural and industrial chemical producer. You really are the full package, the real deal. What advice can you offer? Any take-home messages, given your extraordinary background to senior folks in the industrial and agrichemical community, just confronting chemical issues today? You have worked both sides of the aisle and both sides of the government and industry sectors. And I think your experience and perspective are absolutely invaluable. How should people be looking at all the divisive issues that are confronting our society today and trying to move forward and find those solutions that so far have proven elusive? What are your thoughts?

**DRD:** Oh, my. I've learned a couple of things. I guess, one, if you're looking for perfect solutions, you're never going to be satisfied. I think compromise is critical. Working, like we talked about, toward continuous improvement is critical. It's based on relationships, honest, frank relationships, where dialog is possible and enabled. It's about having as many voices involved as possible. Again, that state and regional perspective, that was so important to me. Again, my experience is based on, at this point, the whole of government. I get that: the regional, and the executive branch, and the legislative branch. And the coalition building and the relationship building, I think, is so important, and finding common ground.

TSCA, to me, it's the perfect example of -- it is amazing to me how people came together in 2015 and 2016 to address a problem that everyone thought needed to be fixed, and coalitions were built, relationships that you wouldn't expect, unexpected alliances. Dow worked closely with EDF (Environmental Defense Fund) and others to figure out what made sense for everyone, and so that approach, I think, works across the board for all sorts of issues, whether it's TSCA, whether it's climate change, whether it's a chemical-specific issue. And so I'm all about sitting at the table together and finding things that we can agree on and building from there. And I know that's easier said than done, but I do think that that matters a lot.

**LLB:** It probably explains why you've had such a phenomenally successful career, Dennis, and why we here at Bergeson & Campbell are so thrilled to have you as our Senior Government Affairs Advisor, because you embrace bipartisanship, getting to yes, compromise, and sitting down and working hard to fix the extraordinary challenges that we in the chemical community face these days.

Well, I hope our listeners reach out to you and enjoy the vast experience that you bring and the problem-solving skills that you offer. And I want to thank you for joining me today on this podcast. I've really enjoyed it, and I learned a lot. Thank you so much, Dennis.

**DRD:** Thank you, Lynn.

**LLB:** Thanks again to Dennis for speaking with me today about TSCA reform from various perspectives outside the government while crafting the law and inside the government while implementing it.

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