

## **Reforming TSCA Legislation**

**By**

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There has been a lot of talk about Toxic Substances Control Act (TSCA) reform lately. Sadly, that is all it is, talk. The prospects for TSCA reform legislation passing any time soon continue to be dim, even with the Democrats retaining control of the Senate. This column explains why.

### **Background**

In the 112th Congress, Senator Frank R. Lautenberg (D-NJ), then Chair of the Senate Environment and Public Works (EPW) Subcommittee on Superfund, Toxics, and Environmental Health, was a vigorous advocate for his Safe Chemicals Act of 2011 (S. 847) (SCA). The SCA was intended to modernize TSCA to require chemical companies to demonstrate the safety of industrial chemicals and EPA to evaluate safety based on the best available science. The bill passed a vote in the Senate EPW last July, but went no farther.

Senator Lautenberg recently announced his decision to step down as Chair of the EPW Subcommittee and not seek reelection in two years. Senator Tom Udall (D-NM), who is philosophically aligned with Senator Lautenberg, is now Chair. While this does not mean

Senator Lautenberg has thrown in the towel, as he will always be a zealous advocate for TSCA reform, it does mean the window of opportunity to see his legacy of TSCA reform legislation enacted while he is still in the Senate is closing.

Senator David Vitter (R-LA) last year invited chemical company representatives and others to suggest an alternative to Senator Lautenberg's bill. Senator Vitter is now ranking Republican on the EPW, and rumored to be preparing draft TSCA legislation. Once any alternative legislation is proposed, efforts can be made to assess whether competing proposals can be aligned to produce an agreed upon package.

The House of Representatives is reportedly content to take a back seat to the Senate. The House Energy and Commerce Committee, Chaired by Representative Fred Upton (R-MI), appears in no hurry to move TSCA reform legislation in the House. Some speculate that without House action, Senate efforts will continue to fall flat.

Many important issues remain unresolved. Perhaps most important is the issue of the appropriate risk standard, specifically whether the standard for chemical risk evaluation in TSCA should be based on a "reasonable certainty of no harm." This language appears in the applicable standard for pesticide exposures in food, as found in the 1996 Food Quality Protection Act. Some argue that such a standard for food safety is inappropriate for chemical exposures, or otherwise represents a "zero risk" standard that would have likely significant regulatory costs for

uncertain improvements in “real” risk reduction. Senator Vitter’s bill is expected to offer a different safety standard, but what exactly that might be is unclear. Even if TSCA receives significant Congressional attention in 2013, this issue, among others, may prove to be an insurmountable hurdle towards enactment of any legislation.

### **The Consequence of Delay**

In the meantime, state chemical bills and related measures continue to abound. Approximately 20 states are considering chemical control measures of one form or another. The absence of a viable federal chemical control law will continue to elicit state measures to fill the void.

Similarly, the U.S. Environmental Protection Agency (EPA) is continuing to promote its priority chemicals “work plan” program. EPA recently issued the first five risk assessments generated under the program, and more are expected. Similarly, EPA’s increased reliance on TSCA Section 5 Significant New Use Rule (SNUR) authority can be expected to continue. EPA can also be expected to continue to press for changes to narrow the universe of information amenable for confidential business information treatment, diminish the scope of the article exemption from Section 5 SNUR authority, and otherwise use what authority it has under TSCA as aggressively as possible.

TSCA reform needs to happen -- and soon.

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