

Notes from the Environmental Council of the States (ECOS) Cross-Media Committee

At the 2011 ECOS Annual Meeting

Sept. 26, 2011

JW Marriott Hotel Indianapolis, Indiana

The session began at approximately 10am Eastern. Committee Chairman Ted Sturdevant (Washington) called the meeting to order and welcomed members and guests.

Mr. Sturdevant introduced the first guest speaker, Wendy Cleland-Hamnett, Director of U.S. EPA's Office of Pollution Prevention and Toxics (OPPT), who joined the meeting via speakerphone.

Ms. Cleland-Hamnett provided a slideshow as part of her presentation on OPPT programming. A copy of the slideshow may be viewed here: http://www.ecos.org/section/committees/cross_media/meetings/

Ms. Cleland-Hamnett noted that EPA Administrator Lisa Jackson is doing everything she can under current authorities in an attempt to ensure the safety of chemicals in the U.S. marketplace, but the agency is also advocating for improvement of the current federal law—the Toxic Substances Control Act (TSCA). “We need to get better information on chemicals,” Wendy said. In her slideshow, Ms. Cleland-Hamnett outlined the actions EPA took in 2011 to monitor the safety of chemicals, and the agency's plans for action in 2012.

Wendy said that Section 6 is the provision within TSCA that allows EPA to ban use of a chemical or compound. Section 6 has not been used since 1989 when EPA tried to ban asbestos. The action was overturned by a Court of Appeals decision. EPA is looking into possibly banning mercury in certain products, and possibly banning lead in wheel weights.

Regarding high-production volume (HPV) chemicals, Wendy said that EPA has released a final HPV 3 Test Rule, and will soon propose an HPV 4 Test Rule and significant new use rule (SNUR). Wendy encouraged ECOS members to review the final HPV 3 Test Rule, and the proposed HPV 4 Test Rule and SNUR when they are released.

Wendy said that EPA recently held a webinar to engage stakeholders on the criteria and data sources the agency plans to use to identify chemicals for review and possible risk management action under TSCA (see Slide 6 for details).

Wendy noted that EPA is moving toward using electronic reporting when possible.

Wendy also noted that EPA plans to require more substantiation of claims of confidential business information (CBI) from industry (see more information on Slide 7).

TSCA REFORM PANEL DISCUSSION

Ted thanked Wendy for her presentation on OPPT. Next, Ted asked Wendy to begin her presentation regarding EPA's principles for TSCA reform in order to initiate a panel discussion on the subject.

Wendy had a separate slideshow to accompany this presentation which may be viewed here:

http://www.ecos.org/section/committees/cross_media/meetings/

Wendy explained that Sen. Lautenberg (D-NJ) introduced a bill to reform TSCA in the Senate in April 2011. There has been some discussion on a companion bill in the House, but nothing has yet materialized.

TSCA hasn't been reauthorized or amended since it was enacted in 1976 and is in need of reform, Wendy said.

Wendy explained that EPA can collect product use and exposure data every 5 years unless a company claims CBI. There is no mandatory program to determine the safety of chemicals. There are hurdles which largely prevent EPA from requesting and receiving health and environmental effects data on various chemicals.

Wendy explained EPA's principles for TSCA reform (see slideshow). Wendy emphasized that chemicals should be reviewed against safety standards that are based on sound science and risk-based criteria protective of human health and the environment. All chemicals on the market should be reviewed to determine their safety.

Ted thanked Wendy for her presentation, and then he weighed in on the subject. Ted explained that potential human health impacts from chemicals of concern are of primary interest to the Washington State Department of Ecology and the Washington state health agency. Ted also said that addressing these issues at the state level is challenging due to limited resources.

The Washington State Department of Ecology is currently trying to clean up the Puget Sound, Ted said. Millions of dollars are being spent cleaning up sediments, and the effort has produced some observable improvements. But now the agency is now seeing phthalates get into the Sound. These phthalates are settling on top of the older sediments. The phthalates pollution is coming from its ubiquitous use in consumer products.

Now Department officials are wondering how they can address concerns about the phthalates pollution. There is concern that the pollution would have to be cleaned up several years later through an expensive process similar to the sediments.

Ted said that the Department has also been concerned about the increasing presence of flame retardants in the Washington environment. This led to state legislation banning retardants that went into effect in January of this year. But Ted noted that there are other chemicals now being used as

substitutes in those products. So you “squeeze” the problem here, and then it pops up again over there, Ted said.

TSCA has not been reformed since the 1970s, Ted reiterated. And the prevalence of chemicals in the environment has been rising ever since then. There is public concern and government concern. Without a federal framework, states are each taking different approaches resulting in a patchwork of laws across the country, Ted explained. This is what is driving the discussion regarding reforming the federal system.

It would be good to have better flow of information between state and federal governments, Ted said. CBI is important, but I think there are ways to get states information and get around the sharing concern of industries, Ted said. Washington State doesn’t like having to take action that disproportionately affects Washington industry, but we sometimes feel we have to, Ted said. I imagine that states don’t want to have to do this work, Ted said. It’s hard [work], [and] it’s resource intensive.

Thirty states have passed chemical policy laws, Ted said. It gets harder and harder to unravel that patchwork. But there is a driver to do this sooner rather than later.

Ted admitted that the prospects for TSCA reform do not seem likely with the current Congress due to a seeming reluctance to address the issue in the House. Ted said that if TSCA reform is undertaken in such a way as to effectively preempt the states, that would be OK for Washington State because then the state could use its limited resources to tackle other environmental problems if the federal government does a good job ensuring the safety of chemicals.

Next, Ted invited Jeff Gearhart from the nonprofit organization, The Ecology Center (based in Ann Arbor, Michigan) to speak on the issue.

Jeff began by emphasizing that “these issues are real issues.” Whether we are landfilling wastes or trying to inventory the volume of chemicals released into the environment, these products are in our lives and will impact the environment for generations to come, Jeff said.

These problems require state action, Jeff said.

Jeff provided a slideshow to accompany his presentation.

Jeff explained that 62,000 chemicals were grandfathered when Congress enacted TSCA in 1976. Testing has been required on only approximately 30 chemicals since then.

Jeff presented information about the “GoodGuide.” While shopping, individuals who own smartphones can use the devices to scan GoodGuide codes that are visible on various consumer product labels. If your smartphone has the right application software, it can provide you with the GoodGuide rating of how safe the product is considered to be.

Jeff noted that retail stores and other private companies are sensitive to the perceived safety of products. For example, Walmart bypassed federal regulators to ban controversial flame retardants

being sold in products in their stores. Apple and other companies have reduced the use of PVC and flame retardants in their products.

Jeff noted that in recent public polling, the chemical safety of children's products was cited as the third most important issue after the economy and terrorism.

On the international scene, the European REACH program has influenced chemical product use and production. In the European system, the burden of proving the safety of a product is placed on the industry and not on the government, Jeff explained.

Ted thanked Jeff for his presentation, and next invited Sarah Brozena of the American Chemistry Council (ACC) to speak.

Sarah explained that ACC has been in favor of modernizing TSCA for 3 years now. ACC's TSCA reform principles may be viewed at: <http://www.americanchemistry.com>

ACC recognizes the public loss of confidence in federal regulation of chemical-based products, Sarah said. Sarah emphasized that ACC believes that chemicals should be safe for their intended uses and that industry should provide sufficient information to EPA so the agency can better evaluate the safe uses of priority chemicals. Regulators should not just be focused on a chemical's composition and toxicity profile, but "What is its intended use, and what are the exposure pathways?" Regulators should determine the safety of the intended uses of the chemical products.

EPA ought to prioritize chemicals, Sarah said. ACC has developed a tool to integrate exposure information to help EPA determine which chemicals they should focus on. ACC invites public comment on this tool, Sarah explained. Such information would help consumers as well as the federal government.

Industry should provide information to the government and allow the government to make safety use determinations, Sarah said. Industry includes manufacturers, processors, users, and distributors. Regulators should apply risk management if necessary. Prioritization should be based on science rather than public perception. A chemical's hazard profile is one tool in the chemical evaluation toolbox. For example, some chemicals might be appropriate for use in manufacturing processes, but not for use in a consumer product, Sarah said.

One part of TSCA that has worked well is innovation, Sarah said. ACC thinks it was Congress' intent to allow innovation to thrive in America when they enacted TSCA. Until recently, more chemical patent applications were filed in the U.S. than anywhere else in the world, due in large measure to the new chemicals provisions of TSCA. China is now leading the world in chemical patent applications. The U.S. needs to keep its innovative edge so we can make better products and retain a strong economy.

ACC is working to make the case to reform TSCA in a way that is science-based and maintains our innovative economy, Sarah said. EPA is already embarking on a prioritization activity. We appreciate the recent dialogues on this issue. EPA's Chemical Data Reporting rule will also be a game-changer. This

will help EPA focus its prioritization and risk management on the right chemicals. Sarah recommended that ECOS members look at EPA's new reporting rule.

Sarah said that Congress will probably turn to the TSCA reform issue in earnest after the upcoming presidential election. She forecasted that it would likely not be until 2013 when Congress gets serious about TSCA reform. Sarah said that ACC is working with other associations which represent businesses along the whole value chain to discuss the TSCA reform issue. Chemistry touches 96% of all manufactured goods so is vital to American industry, businesses, and the economy. It is also vital to the development of new technologies that not only improve the quality of our lives but are critical to the protection of our health, safety, and environment, Sarah said.

Ted thanked Sarah for her presentation and next invited Julie Froelicher of the Procter and Gamble (P&G) Company to speak.

Julie said that P&G is the world's largest consumer product company, and serves over 4 billion consumers every day. P&G agrees with ACC's positions on TSCA reform. Julie noted that the American Cleaning Institute and other groups have also been visible on Capitol Hill talking about this issue. P&G believes that a strong chemicals management model is important to ensure consumer confidence in the safety of these products. This is helpful so states don't have to spend their limited resources developing a patchwork of chemical laws and regulations. P&G sells products across the country and around the globe.

It has recently been reported in the press that lead and cadmium-contaminated products have been imported into the U.S. from China. Concerns over chemical safety are amplified by the media networks and through social media. Mothers want to protect their children. Julie noted that she has been working on chemicals issues over the past three years and has sat in on key dialogues. Julie noted that she has flown to Washington, DC many times to talk with congressional staff and with EPA. Julie said that it sounds to her like there is a lot of common ground between various stakeholder groups on this issue.

Julie noted that P&G has invested many years working on life-cycle analyses. State governments are using these as they undertake alternatives assessments (resulting in California's Green Chemistry regulation and Washington State's alternatives assessment document, for example).

Alternates assessments should be approached in a holistic way, Julie said. Alternatives must still make for useful products, be cost effective, and result in a product the consumer will accept. Consumers do not like to buy higher-priced goods that do the same thing. Also, they are not very willing to accept an increase in price or reduction in product effectiveness. We want to work with the states which are showing leadership on the alternatives assessment front, Julie said.

Ted thanked Julie for her presentation, and said he wanted to echo that last statement by Julie. Ted noted that Washington State thanks P&G for their collaboration.

Next, Ted opened the floor for questions or comments from the membership.

Gary Gill of Hawaii said he appreciated hearing comments from the industry on this issue. Gary noted that federal regulation can be good for industry and set a common level playing field. But on the flip side, if federal regulations are inadequate, there still might result a public health threat. The search for that common ground is what we deal with on a daily basis, Gary said. Gary noted that he is new to the TSCA issue, and said he appreciates the discussion.

Next, Tom Burack of New Hampshire noted that Sarah Brozena of ACC had said that the safety of a product's intended use should be the central focus. Tom asked Sarah whether the disposal or downstream fate of a product should be considered part of its intended use in her opinion. Sarah replied that the safety determination would require an exposures assessment. For example, EPA would look at exposure, consider the hazard profile, and look at likely exposures (including consumer exposure).

Next, Paul Aasen of Minnesota said he was interested in the ACC prioritization tool. He asked who had helped develop it.

Sarah Brozena said that expert consultants in toxicology developed it. She said that she could provide a web link to the tool. Sarah explained that the tool was released just prior to EPA's announcement of its prioritization effort.

Next Michael Gibbs of California requested that Sarah explain again where she thought the burden of proof should lie regarding a chemical's safety determination.

Sarah said that individual companies should be required to provide information to EPA and EPA can determine if the chemical is safe. Sarah added that, while 60,000 chemicals have been identified or invented by scientists, only about 15,000 of these chemicals are used in commerce.

Ted again thanked all of the speakers and panelists for their presentations and willingness to speak to ECOS.

Next, Ted opened the floor for proposal of ECOS policy resolutions, saying that he expected two resolutions to be proposed during the session. He invited Mark Smith of Massachusetts to introduce the first resolution "Urging Creation of a Dental Amalgam Separator National Review Committee." Mark introduced the resolution. A motion to endorse the resolution was offered and seconded, and the resolution passed. The resolution may now be viewed here:

<http://www.ecos.org/section/policy/resolution>

Next, Ted invited Ken Zarker of his staff to introduce the second resolution "On Chemicals Prioritization and the Safer Chemistry Challenge Program." A number of motions were offered and seconded to amend the draft resolution. These motions were discussed and then adopted. Then a motion to endorse the resolution was offered and seconded, and the amended resolution passed. The resolution may now be viewed here: <http://www.ecos.org/section/policy/resolution>

Ted asked if there were any final items for business.

Jennifer Roberts of Alaska noted that a resolution was poised to sunset, "Supporting Work on Contaminated Site Response to Emerging Contaminants and Related Risk Communication Issues." Jennifer noted that Alaska would like to see the resolution tabled for further consideration. Ted said that the committee would table the resolution for further consideration.

This concluded the session. Ted thanked fellow ECOS members for their participation and adjourned the session at approximately 11:30am.