

Congress Considers Reform of U.S. Chemicals Control Law

By J.R. Pegg

WASHINGTON, DC, February 26, 2009 (ENS) - The U.S. chemical regulatory system is failing to protect public health and the environment and is in dire need of reform, experts told a House panel Thursday. The legal hurdles of existing law make it virtually impossible for the federal government to limit or ban the use of toxic chemicals or to even obtain the information needed to devise effective regulations, several witnesses testified before a House Energy and Commerce subcommittee.

The hearing focused on the effectiveness of the Toxic Substances Control Act. Enacted in 1976, the statute gave the U.S. Environmental Protection Agency the authority to regulate chemicals.

But the agency has only required testing for some 200 of the more than 82,000 chemicals in commerce and has issued regulations to control only five existing chemicals.

This record reflects a number of "very difficult, perhaps impossible, requirements that must be met before a chemical can be regulated," said J. Clarence Davies, a senior fellow at Resources for the Future and former EPA assistant administrator for policy in under President George H.W. Bush.

The statute requires EPA to show that a proposed chemical regulation is less burdensome than any alternative and that the risk could not be sufficiently reduced under some other law. Furthermore, it must show a chemical presents an "unreasonable risk" to human health.

The combination of the requirements creates a burden so high "that it is essentially impossible to meet," said Richard Denison, a senior scientist with the Environmental Defense Fund.



Asbestos sold as fireproof Christmas decorating snow (Photo by [Asbestorama](#))

Few examples expose the shortcomings of the law as brutally as the case of asbestos, Denison and others said at the hearing.

EPA tried to ban asbestos, a known carcinogen, under the Toxic Substances Control Act in 1989, after spending nearly a decade gathering evidence about health risks from the fibrous mineral.

But in 1991 a federal court blocked EPA's effort, ruling that the agency had failed to meet the legal hurdles outlined by the Act.

"I think most Americans would be surprised to know that asbestos, a known carcinogen, that kills 8,000 Americans each and every year has not been banned by EPA under TSCA," said Representative Bobby Rush, an Illinois Democrat and chair of the House Commerce, Trade, and Consumer Protection Subcommittee, which held the hearing.

The asbestos case is only one example that the law is "badly broken," Denison said, noting that the failures of the Toxic Substances Control Act are also illustrated in the regulatory debacle that exposed some survivors of Hurricanes Katrina and Rita to dangerous levels of formaldehyde.

Some of the formaldehyde-laden plywood in the trailers provided by the U.S. government to survivors of the 2005 hurricanes was imported from China, Denison said.

That same plywood cannot be sold domestically in China nor imported into Japan or the European Union, he explained, because those countries have set limits due to health concerns from the chemical.

California also has regulations that sets limits on the amount of formaldehyde allowed in plywood and other wood products, but EPA last year rejected a petition calling on the federal government to adopt the California standard.

The EPA said the "available information on formaldehyde - one of the most studied toxic chemicals in all of commerce - was insufficient for EPA to meet its burden of proof under TSCA," Denison said. "As bad as this sounds, what's worse is that EPA is likely right about its inability to act under TSCA."

The law is also failing to gather information on new chemicals, testified John Stephenson, director of natural resources and environment with the Government Accountability Office, the investigative arm of Congress.

"TSCA does not require chemical companies to test the approximately 700 new chemicals introduced into commerce annually for their toxicity, and companies generally do not voluntarily perform such testing," Stephenson told the committee.



Superintendent of New Orleans Public Schools, Ora Watson, stocks the cupboards of her FEMA travel trailer after her home was destroyed by Hurricane Katrina. March 1, 2006. (Photo by Marvin Nauman courtesy FEMA)



This label identifies a toxic chemical, but not all toxics are labeled. (Photo credit unknown)

Last month the Government Accountability Office added EPA's chemical management program to its list of government programs at "high risk" of failure, repeating its long-running concern that the Toxic Substances Control Act does not provide the agency with enough authority to effectively regulate chemicals.

The public is losing confidence in the regulatory system and is ready for reform, said witness Maureen Swanson, a coordinator with the Learning Disabilities Association of America.

"When people find out that the vast majority of chemicals used in products and services are not tested for health effects, first they are dumbfounded - and then they are outraged," she told the panel. "American consumers should have the assurance that if a product is on a store shelf, then its ingredients have been tested and found to be safe."

The public's concern has gotten the attention of industry, which has indicated support for revising the statute - albeit not to the extent others are demanding.

"We are supportive of a modernization of our chemical management system that is done in a manner which enhances the public's confidence that consumers and users of our products have," said Cal Dooley, head of the American Chemistry Council.

Industry representatives suggested they could support stricter testing and information requirements, but sought to caution lawmakers against dramatic changes to a system they have widely supported for the past three decades.

The Toxic Substances Control Act has been "a flexible law that has protected human health and the environment without crippling technological innovation," said V.M. DeLisi, president of Fanwood Chemical Inc. "It does not require a complete overhaul but can be enhanced."

Charles Drevna, president of the National Petrochemical and Refiners Association, urged lawmakers to resist calls to implement a system similar to the new European Union chemical management program. Known as REACH, the European system takes a precautionary approach to chemicals management and shifts to industry the burden of proving chemicals are safe.

U.S. industry groups contend the European system is too costly and overly strict.

REACH is "new and untested," Drevna said. "We have not yet begun to see what the impact of REACH will have on chemicals management in the EU or its effect on the European economy."

Republicans on the subcommittee largely echoed such concerns and promised to ensure reform efforts do not overreach.

Congressional review of the law could show that it is "fine and that more funding and enforcement would cure various criticisms," said Representative George Radanovich, a California Republican. "If that is the case, let us be surgical ... if something more is needed, we should not use an elephant gun to kill a mosquito."

Ohio Democrat Zack Space countered that lawmakers also should be careful not to underreach with their reform efforts, given the weight of evidence documenting the failings of Toxic Substances Control Act, saying. "We should not use a bug light to kill an elephant."



A few of the thousands of chemicals in use in the United States (Photo by [Peter Eiper](#))