



Richard Denison Speaks at RNRF Round Table on Threats to TSCA Implementation

Dr. Richard Denison, Lead Senior Scientist at the Environmental Defense Fund, during an RNRF Washington Round Table on Public Policy, discussed threats to the implementation of the reforms to the Toxic Substances Control Act (TSCA) enacted in 2016. The event was held on April 16, 2019 at EDF's Washington, D.C. office.

Denison began the lecture by highlighting problems with the original TSCA enacted in 1976. Existing chemicals were presumed to be safe without review, information about them was granted excessive trade secret allowances, and even where the EPA sought to regulate such a chemical, its authority was limited – the EPA had to prove that benefits exceeded cost for every possible use of a substance in order to impose restrictions. Over the 40 years after passage and before reform, EPA was able to require testing of fewer than 300 of the 62,000 chemicals grandfathered in under the original TSCA. Only five of those 62,000 had been regulated in any way.

New chemicals faced similarly lax regulation. Roughly 1,000 new chemicals subject to TSCA are developed each year. Under the 1976 TSCA, no up-front testing requirement applied and few companies provided sufficient health and environmental data, forcing the EPA to rely on prediction tools, which have limited accuracy and applicability. The EPA had little choice but to allow chemicals with insufficient information onto the market.

State and local governments began enacting their own, stricter, toxic substance laws and companies that make and sell products began to develop their own policies restricting some chemicals. In response, chemical industry players shifted from longstanding opposition to support updating the law to establish a stronger national standard to create easier geographic compliance. They joined other stakeholders in working with lawmakers, which eventually yielded the first bipartisan TSCA reform legislation in 2013. That legislation, while flawed, served as the starting point for the resulting Lautenberg Act, which became law in the summer of 2016.

The Lautenberg Act made several major improvements to the original law. These improvements include: requiring a safety finding for new chemicals before they can enter the market,

mandating a safety review of chemicals in active commerce, eliminating the cost-benefit evaluation requirement for determining whether a chemical presents risks warranting regulation, limiting corporations' ability to claim information submitted to EPA as confidential, and establishing fees to defray costs of EPA's implementation of the enhanced chemical safety program.

The EPA is performing risk evaluations of the first ten chemicals (out of more than 40,000 chemicals in active commerce), and must identify 20 more for risk evaluation by the end of 2019. Evaluations are to be completed within three years.

While these improvements in the law were encouraging, Denison notes that there have been many threats to implementation that still put people's health at risk. Under its so-called "framework rules," the EPA has refused to evaluate 'legacy' uses of chemicals, and asserts authority to exclude exposures falling under the jurisdiction of other agencies, even if those agencies have not or cannot adequately review risks. The EPA has additionally allowed inappropriate confidentiality claims to continue to be asserted that do not meet the requirements of the new law. Several lawsuits have been filed to challenge the departures of these rules from the law's requirements.

Denison also noted that the scopes of the risk evaluations for the first ten chemicals under review exclude known releases of and exposures to the chemicals. Only one draft risk evaluation has been published to date – for Pigment Violet 29. EPA proposed a determination that the chemical poses no unreasonable risks. However, Denison noted, there was a lack of environmental hazard/exposure data, a cursory workplace exposure assessment, and illegal withholding as confidential the few data on which EPA relied. Drafts of the other nine assessments are due to be out over the next few months.

While the Lautenberg Act greatly expanded EPA authority to mandate the development and submission of chemical data, Denison observed, the EPA has not used this authority despite large data gaps identified in initial chemical reviews. Additionally, the TSCA reforms allowed the EPA to mandate testing and regulation of new chemicals deemed to have insufficient risk data. During the initial phase of TSCA reform implementation, mandated testing and regulation were increased. However, in response to industry protests, then-EPA chief Scott Pruitt dramatically scaled back those mandates.

Denison further noted that during chemical risk evaluation, workers' health is often ignored. Rather than regulating under TSCA as required, EPA is deferring workplace risks to weak or inapplicable OSHA regulations. When workers are found to be at risk from toxic substances, voluntary and poorly-enforced company policies are assumed without evidence to substitute for regulation.

TSCA implementation is made more difficult by attacks from political leadership on the EPA and its scientists. Pruitt issued a directive barring EPA-funded scientists (but not industry scientists) from serving on EPA advisory panels, creating financial conflicts of interest. Executive orders

reinstated the cost-benefit test for new regulations – but not for repealing existing ones. Severe cuts proposed to the budget of the Office of Research and Development and the attrition of senior scientists from the EPA's ranks have further hampered toxic substance regulation.

The Lautenberg Act reforms to TSCA were viewed optimistically in 2016 as a means to close loopholes and bring more transparency to toxic substance regulation. In the past three years since implementation, however, it has become clear that the new rules are not being implemented in a way that meaningfully protects people and the environment, especially those most vulnerable (such as workers) to exposure to toxic substances. This EPA's implementation of the Lautenberg Act's amendments is turning out to be weaker than it was under the original 1976 TSCA.

Read more about risks to worker's health under TSCA in Denison's EDF blog post [here](#).