RECONSIDERING CHEMICALS POLICY: The European Challenge

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SUMMARY
- The European Union is proposing a bold restructuring of its entire chemicals policy called REACH
- The US is several years behind Europe in addressing chemicals in products and management in general.
- The US is advanced in right to know, new chemicals management and pollution prevention.

Defining Chemicals Policy
- Regulatory and voluntary policies designed to achieve long-term, integrated and prevention-oriented sustainable use of chemicals in production systems and products
- Focus is on industrial chemicals but could also include pesticides, cosmetics, etc.

The Problem (1)
- Increasing public concerns about types of chemicals (persistent and bioaccumulative and endocrine disruptors) and impacts on health and ecosystems (marine)
- Continued use of dangerous chemicals
- Policy failures and lack of public confidence
- Market pressures for safer chemicals

The Problem (2)
- Lack of regulatory programs to address chemical lifecycle risks
- Lack of integrated and comprehensive approach to chemicals management
- Lack of information on existing chemicals
- Concern about chemicals in products
- Slow risk assessment process, burden on government

US Chemicals Policy
- There is no one “US” system of chemicals management
- The federal government took an early lead internationally in precautious chemicals policy
- National policy innovation basically stalled after 1980
- Since 1980, new, more limited, policy initiatives have appeared at the state and local levels.
Federal Chemicals Legislation in the US
- 1960 Hazardous Substances Act
- 1970 Occupational Safety and Health Act
- 1970 Clean Air Act
- 1972 Clean Water Act
- 1972 Consumer Product Safety Act
- 1976 Resource Conservation and Recovery Act
- 1976 Toxic Substances Control Act
- 1990 Pollution Prevention Act

Toxics Substances Control Act of 1976
- Regulatory power to require testing
- Responsibility on industry to provide data on risks
- Regulatory power to restrict chemicals in commerce
- Requirement for pre-manufacture notification for New Chemicals
- National Inventory update
- Deference to other legislation – RCRA, OSHA, CAA, CWA

Right to Know - An Important Driver for Prevention
- Toxics Release Inventory and chemical storage and accident scenario data.
- Demonstrated inefficiencies in chemicals management
- Useful information for workers and communities to promote prevention
- Links to hazard/risk data – ie www.scorecard.org

Pollution Prevention-Indirect Chemicals Policy
- Most state programs are voluntary and poorly funded
- A few states (Massachusetts, New Jersey, Maine) have mandatory planning programs, with materials accounting and planning requirements
- EPA Sector-based initiatives
- EPA 33/50, Design for Environment, Green Chemistry

Considering US Chemicals Policy
- Fragmented and outdated federal policies
- Reasonably effective Right to Know and New Chemicals programs
- Scant information or regulation on Existing Chemicals
- States policies fragmented among differing agencies
- No coordinated system for risk prioritization or risk reduction
- Ill prepared to consider chemicals in products, life cycle risks or cumulative risks

European Chemicals Policy
- Nations use an array of tools ranging from regulations, economics, and taxes to education
- Nordic States: Regulatory
- Netherlands: Cooperative
- United Kingdom and Germany: Voluntary
- Other nations are less innovative
The REACH Proposal

In February of 2001, the European Commission issued a White Paper on the Future of Chemicals that proposed a major new policy called REACH.

REACH:
- Registration
- Evaluation
- Authorization of
- Chemicals

A duty of care on chemical producers, users, and importers for studying risks and safety.

A European-wide approach to chemicals policy – protect internal market.

Substitution of chemicals of very high concern - innovation in safer chemicals.

Bridge knowledge gap between new and existing chemicals – develop information on all chemicals.

Reduction in animal testing.

Promotion of a non-toxic environment – the “generational goal”

Registration

Essentially a notification process.

All producers and importers of substances produced over 1m ton/year (about 30,000 substances).

Phased in over 3 yrs, 6 yrs, and 11 yrs.

Pre-registration, consortia establishment.

Exemptions for R&D, intermediates, polymers, others.

Current New Chemicals are considered registered.

Requirement to submit new data.

Evaluation

Essentially a risk screening process.

Applies to 3000 substances.

Two types: standard and priority.
  - Standard: minimize duplicative testing for high production volume substances.
  - Priority: review of registration to identify additional information needs (focus on high volume/high concern and randomly selected substances).

Accelerated risk management for chemicals of high concern.

Authorization

Essentially a use restriction process.

Applies to chemicals of very high concern – CMRs 1&2, PBTs, VPVBs, and other high concern substances (1400 substances).

Requirement to request authorization for chemicals of high concern – timelines (includes use and incorporation into articles).

Consideration of socio-economic benefits, alternatives, controls in place.

Can be subject to conditions and time limits.

Role of new chemicals agency

Manage database on chemicals under registration/authorization.

Conduct check of registration dossiers.

Prepare risk assessment/socio-economic analysis for Community authorizations.

Prepare risk and socio-economic analysis for restrictions.

Forum for information on enforcement.

Technical expertise to remain in the Member States.
EU Legislative Process
- White Paper (February, 2001)
- Draft legislation (May, 2003)
- Comment Period
- Final Commission proposal (October, 2003)
- First and Second Reading Council/Parliament (time limited) with Commission debate (2004)
- Conciliation (2006)

Lessons for the United States
- The problems that have driven the Europeans to promote a new chemicals policy persist in the US as well
- The REACH Directive will affect the global market for chemicals
- It is time for the US to launch a broad-based discussion on developing a more integrated, preventive and precautious policy on chemicals throughout their lifecycle

Chemicals Policy Initiative Website

www.chemicalspolicy.org