

# TSCA Reform: Understanding Implementation of the New Chemical Safety Law

An Overview by **Mike Belliveau** for the

Collaborative on Health and the  
Environment (CHE)

13 July 2016



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# New TSCA will Reduce Some Harm

- **Modest, net positive federal reform means:**
  - EPA handcuffs removed, but agency still burdened
  - Strictly health-based standard, but new & untried
  - Enforceable deadlines, but a slow pace of action
  - Improved testing authority, but no minimum data
- Some annoying roll backs in federal authority
- **State authority curtailed, but remains critical**
- **IMPLEMENTATION MATTERS – Get involved!**



# Protecting Health: IMPROVED

- New “unreasonable risk” standard must be applied upfront without regard to cost
- Vulnerable populations must be protected
- Aggregate exposure *may* be assessed
- The two barriers that prevented EPA from banning asbestos have been removed
- CAVEAT: EPA decisions will be contested, *and* the analytical burden on EPA remains high



# Filling Data Gaps: IMPROVED

- EPA can now require testing of chemicals by expeditious “order” rather than by slow “rule”
- Improved testing authority to prioritize chemicals, evaluate risks, & screen new chems
- Broad discretionary testing authority retained
- CAVEAT: Mandates a reduction in animal testing, and does *not* require a minimum data set for any new or existing chemicals



# Restrict Use of Existing Chemicals

EPA recently completed TSCA risk evaluations for three toxic solvents. EPA must adopt rules within 3.5 years to eliminate their unreasonable risks from exposure to workers and consumers:

- Methylene chloride (dichloromethane, DCM))
- N-Methylpyrrolidone (NMP)
- Trichloroethylene (TCE)

**TEST CASE: How well will EPA reduce risk?**



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# Evaluate Risk of Existing Chemicals

Within 6 months, EPA must have first 10 risk evaluations underway, and determine whether they pose an unreasonable risk within 3.5 years

These could include any of 90 Work Plan chems:

- Flame retardants: Tris, HBCD, TBBPA or others
- 1,4-dioxane, 1-bromopropane (BP), or others

**Tell EPA (Jim Jones) which chemicals to choose!**

**TEST CASE: Will EPA do good risk assessments?**



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# FULL PACE: 20+ Chems at a Time

Year 1	2	3	4	Year 5	6	7	Year 8
<b>FEDERAL ACTION</b> by the U.S. Environmental Protection Agency							
<b>HIGH PRIORITY</b>	<b>RISK EVALUATION</b>			<b>RULE-MAKING</b> (if needed)			
<b>Propose &amp; Review</b>	<b>Conduct Risk Evaluation</b>		<b>Extend</b>	<b>Develop Rule to Reduce the Risk</b>		<b>Extend Deadline</b>	
<b>X</b> <b>Finalize in 9 – 12 months</b>	<b>X Publish scope of risk evaluation within 3 - 6 mos. (the state preemption trigger)</b>			<b>X Determine if chemical poses “Unreasonable Risk”</b>			



# ... but Years for Each Chemical

9	10	11	12	Year 13	14	15
<b>Agency (EPA) on high-priority chemical substances</b>						
<b>GRACE PERIOD before COMPLIANCE</b>					<b>PHASE-OUT TRANSITION</b>	
Establish compliance deadlines “as soon as practicable” but not later than 5 years					Unlimited time allowed to complete a “reasonable transition” to a full phase-out	
<b>✘</b> If yes, adopt final rule to eliminate unreasonable risk (or exempt uses for an unlimited “reasonable” time), and specify the effective date (the final preemption trigger)						





# TEPID: A Fast Track for PBTs?

Persistent, bioaccumulative and toxic chemicals (PBTs) skip risk assessment, and move right to risk management rule making to reduce exposure to “extent practicable”, BUT ...

- One-time effort limited to Work Plan chemicals that are moderate-to-high PBTs
- Excludes PBTs subject to other provisions
- Industry can opt out in favor of risk evaluation



# New Chemicals: ~ IMPROVED

For the first time, EPA must affirmatively decide whether a proposed new chemical is likely or not to meet the safety standard or requires more data to make such a determination, BUT:

- Still no minimum data set required upfront
- Timeline remains unchanged: a 90-day review
- Chemical can still enter market during testing
- Remains opaque to public review and input



# ROLL BACK: Consumer Products

- EPA must make a new finding of reasonable potential for exposure before it can require notification by rule of significant new uses of dangerous chemicals in imported articles
- EPA can only restrict uses of a high priority chemical in articles to the extent necessary to eliminate the identified unreasonable risk

**TEST CASE: Will EPA adopt Significant New Use Rule (SNUR) for the flame retardants, PBDEs**



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# Federal Preemption of the States

STATES BLOCKED:	REMAIN FREE TO ACT:
No new restrictions on EPA high priority chems	On chemicals EPA hasn't yet prioritized
When EPA says its safe	To require reporting
From being more protective than EPA	On non-TSCA chemical uses, eg food packaging
Harder to win waiver from preemption	On first 10 Work Plan, or industry requests



# Successful TSCA Implementation

## WILL REQUIRE:

- A commitment from senior EPA management
- Adequate Congressional funding (in order to leverage and complement industry fees)
- Strong scientific, technical, and legal input from independent experts at every stage
- An NGO campaign to hold EPA accountable, coordinated with market and state leadership



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