38th National Spring Conference on the Environment
June 11, 2010
University of Maryland School of Law, Baltimore, Maryland

Chemicals Regulation:
REACHing for TSCA Reform

Sponsor
American Bar Association
Standing Committee on Environmental Law

Co-Sponsors
ABA Section of Administrative Law and Regulatory Practice
ABA Section of Business Law – Environmental, Energy and Natural Resources Law Committee
ABA Section of Environment, Energy, and Resources – Committee on Pesticides, Chemical Regulation, and Right-to-Know
ABA Section of International Law
ABA Section of Litigation – Environmental Litigation Committee
ABA Section of Public Utility, Communications and Transportation Law
ABA Section of Real Property, Trust and Estate Law
ABA State and Local Government Law Section – Environmental Law Committee
ABA Section of Tort Trial and Insurance Practice – Toxic Torts and Environmental Law Committee

In cooperation with
University of Maryland School of Law, Conference Host
Enacted in 1976, the Toxic Substance Control Act (TSCA) is the primary means by which the United States regulates commercial chemicals. Although intended to be ambitious in scope, TSCA has proven to be a poor regulatory framework and generally is considered inadequate. In the 33 years since its enactment, advances in toxicology and analytical chemistry have raised new questions about the effects of certain chemicals on human health and the environment. These questions have left the public anxious and confused about the safety of myriad different products. Technology seems to have outstripped the regulatory regime.

There is a growing national consensus that the United States needs to modernize its chemical management law. In recent years, individual states have entered what they perceive to be a regulatory vacuum, raising the prospect of an inconsistent regulatory patchwork. The European Union’s recently enacted REACH initiative has dramatically expanded the regulatory compliance obligations for United States companies doing business in the EU. Moreover, the Obama Administration has identified risk-based chemical regulation as one of its environmental priorities. While affirming the Administration’s commitment to green innovation, U.S. EPA Administrator Lisa Jackson also has called on Congress to grant the Agency new enforcement authority and has proposed a new funding mechanism for generating the information necessary to assess chemical safety. Recent high-profile Congressional hearings also underscore the momentum for change. It is very likely that both Houses of Congress will take up the issue of TSCA reform in the next term.

This 38th National Spring Conference on the Environment addresses the question of chemical management regulation. Featuring prominent federal, state, and private-sector experts at the center of the emerging proposals for TSCA reform, the day-long conference will provide a wide-ranging discussion about the unprecedented opportunities and challenges inherent in crafting a national regulatory framework capable of ensuring public and environmental safety while also promoting green-chemistry innovation. The conference will consider the legal implications of regulatory change and will focus on the key policy choices at the heart of the reform process.

Keynote presentations from the primary initiator of TSCA and the Senior U.S. EPA Policy Advisor responsible for the Agency’s current TSCA efforts will add unique and timely perspectives to this critical set of discussions.

Program Co-Chairs
Rebecca M. Bratspies  •  Sara K. Orr
Blake A. Biles
PROGRAM

8:15 a.m.  
REGISTRATION AND COFFEE

8:45 a.m.  
WELCOME AND OPENING REMARKS

- Edith Brown Weiss, Chair, ABA Standing Committee on Environmental Law; Francis Cabell Brown Professor of International Law, Georgetown University Law Center, Washington, DC
- Rebecca M. Bratspies, Professor, CUNY School of Law, New York, NY
- Sara K. Orr, Latham & Watkins, Washington, DC

9:00 a.m.  
OPENING KEYNOTE ADDRESS: OVERVIEW OF TOXIC SUBSTANCES CONTROL, PAST AND FUTURE
The chemical regulatory reform movement in the U.S. and internationally has seen several significant developments in the past year. The Toxic Substances Control Act of 1976 (“TSCA”) is the primary federal law in the U.S. regulating commercial chemicals. The U.S. Environmental Protection Agency (U.S. EPA), the federal agency that implements and enforces TSCA, recently announced new initiatives under TSCA, including the Agency’s stance on essential principles for reform. Both business and public interest organizations also have articulated their views on the key elements of congressional changes to the law. To better understand the importance of TSCA reform, our opening keynote speaker will give an introductory overview of TSCA and explain some of the factors that have led to the current efforts for reforming the law. He will then describe some of the longer-term changes that are needed if the regulatory system is to deal with both current inadequacies and the impact of powerful new technologies.

J. Clarence Davies, Senior Fellow, Resources for the Future, Washington, DC

9:30 a.m.  
TSCA REFORM IN THE ERA OF REACH
It is most likely that the next Congress will overhaul the 33-year old TSCA. Many factors have played a role in this long-awaited reform, including new technologies, public concerns, requirements adopted by other countries, and intense stakeholder interest. Under the Obama Administration, the U.S. EPA has made toxic chemical reform a major priority. The Agency announced TSCA reform principles in September 2009 and recently published plans to address four groups of chemicals under TSCA (phthalates, short-chain chlorinated paraffins, PBDEs, and perfluorinated chemicals, including PFOA). Our first panel brings together key stakeholders to discuss the significance of TSCA reform, highlight the potential impacts of pending bills, and provide suggestions on the best “fixes” from a variety of perspectives. The panel also will discuss the effects of the European Union’s REACH program on the TSCA reform movement.

Moderator: Rebecca M. Bratspies, Professor, CUNY School of Law, New York, NY

Speakers:
- Wendy Cleland-Hamnett, Director, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Washington, DC
- Richard A. Denison, Ph.D., Senior Scientist, Environmental Defense Fund, Washington, DC
- Veerle Heyvaert, Ph.D., Lecturer in Law, London School of Economics and Political Science, London, England
- Michael P. Walls, Vice President, Regulatory and Technical Affairs, American Chemistry Council, Washington, DC

11:00 a.m.  
NETWORKING BREAK
11:15 a.m.
STATE AND FEDERAL COOPERATION IN REGULATING TOXIC SUBSTANCES
Over the last several years, states have enacted a number of laws regulating commercial chemicals, including substance-specific and more comprehensive green-chemistry requirements. In December 2009, thirteen states (including California) issued principles for reform of TSCA, including calling for strengthening of the federal law while expressly preserving the authority of states and localities to implement chemical management measures, and increased funding for state programs in order to facilitate state involvement in TSCA implementation. This panel examines how the federal government and states interact as players in the chemicals regulatory regime. Discussions will include the role that preemption plays with states and localities regulating specific substances; potential delegation of the federal TSCA program to states; and the current resources of states to implement programs under new legislation.

Moderator: Peter Hsiao, Morrison & Foerster LLP, Los Angeles, CA

Speakers:
• Charles M. Auer, President, Charles Auer & Associates, LLC, Poolesville, MD
• Mark A. Greenwood, Ropes & Gray LLP, Washington, DC
• Rena Steinzor, Professor of Law, University of Maryland School of Law, Baltimore, MD
• Jeffrey Wong, Ph.D., Chief Scientist, Department of Toxic Substances Control — Cal/EPA, Sacramento, CA [invited]

12:45 p.m.
KEYNOTE ADDRESS: VIEW FROM THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Robert M. Sussman, Senior Policy Counsel to Administrator Lisa Jackson, U.S. Environmental Protection Agency, Washington, DC

1:30 p.m.
LUNCH

2:00 p.m.
LIFECYCLE MANAGEMENT OF CHEMICALS
How can the reform of TSCA promote green chemistry and other technological and chemical design innovations across the product lifecycle? Green chemistry reduces or eliminates the generation and/or use of hazardous substances from chemical products and processes, and seeks to improve on chemical products by reducing their impacts on human health and the environment using innovative chemical processes. The panel discusses these developments, including reference to some chemicals/products (e.g., Bisphenol A, or BPA) for which human health concerns may be addressed in part by making environmentally friendly modifications to existing technologies and formulations. Panelists also address market-driven approaches to product development that do not involve traditional command-and-control regulatory measures.

Moderator: Renée Cipriano, Schiff Hardin LLP, Chicago, IL

Speakers:
• Gregory G. Bond, Ph.D., Corporate Director of Product Responsibility, Dow Chemical Company, Midland, MI
• Matt Kistler, Senior Vice-President, Sustainability, Walmart, Bentonville, AR [invited]
• Joel Tickner, Principal Investigator, Lowell Center for Sustainable Production, University of Massachusetts Lowell, Lowell, MA
• Kira J.M. Matus, Ph.D., Senior Policy Analyst, Center for Green Chemistry and Green Engineering, Yale University, New Haven, CT
3:30 p.m.

**LEGAL LIABILITY, RISK MANAGEMENT, AND REGULATORY INCENTIVES**

Panelists will exchange ideas for modifying and enhancing TSCA risk-management provisions in order to create incentives for stewardship and compliance activities that go beyond minimal legal requirements. The panel will also consider how U.S. EPA’s general failure to regulate existing chemicals under TSCA potentially has affected companies’ operations and risk-management strategies. The panelists will address liability issues facing companies related to chemical issues, including risk management, toxic tort litigation, insurance coverage disputes, and personal liability of corporate officers. *CLE Ethics credit has been requested for this panel.*

**Moderator:** Blake A. Biles, Arnold & Porter LLP, Washington, DC

**Speakers:**
- Julia A. Hatcher, Latham & Watkins LLP, Washington, DC
- Erik D. Olson, Director, Food & Consumer Product Safety Programs, The PEW Health Group, Washington, DC [invited]
- Ernie Rosenberg, President and CEO, The Soap and Detergent Association, Washington, DC

5:00 p.m.

**CLOSING SESSION WITH PANEL MODERATORS**

5:30 p.m.

**NETWORKING RECEPTION, Sponsored by Latham & Watkins LLP**

---

**Financial support for this program is generously provided by**

**Latham & Watkins LLP**

*Silver Supporter*

Arnold & Porter LLP • ENTRIX • McCarter & English LLP

Schiff Hardin LLP • Stikeman Elliott LLP

*Bronze Supporters*

---

**CONFERENCE HOST AND SITE**

This conference is hosted by the University of Maryland School of Law and takes place in the Ceremonial Moot Court Room at the Nathan Patz Law Center, 500 W. Baltimore Street, Baltimore, Maryland.

**Traveling to the Conference Site**
- **By car:** From I-95, take route 395 (“Downtown Baltimore”) and exit onto Martin Luther King, Jr. Blvd. Turn right at fourth traffic light onto Baltimore Street. Turn left at second traffic light onto Paca Street. Go ½ block and turn right into the Baltimore Grand Garage. Lexington Market garages also are available on Paca Street.
- **By plane:** Conference participants may use any of the three regional airports. The closest and most convenient is Thurgood Marshall/Baltimore-Washington International (BWI). If you prefer to fly into the Washington, DC area, use Reagan National Airport (DCA) or Dulles International Airport (IAD). Shuttle and light rail to Baltimore are available from BWI, and rental cars are available at all three airports.
- **By train:** Baltimore’s Penn Station is on main Amtrak routes and close to the School of Law. More information may be found at [http://www.amtrak.com/stations/bal.html](http://www.amtrak.com/stations/bal.html). Amtrak and MARC commuter trains also run from Union Station in Washington, DC to Camden Yards and Penn Station in Baltimore. **Note:** MARC runs only Monday-Friday.

**Persons with special needs** should contact Suzann C. Langrall at least 72 hours in advance at 410/706-4529.

**Accommodations:** A block of rooms will be held until May 10 at the Days Inn Inner Harbor, 100 Hopkins Place, Baltimore, MD 21201, located just a few blocks from the Law School. To receive our rate of $139 + tax, advise the hotel that you are with the “ABA Standing Committee on Environmental Law National Spring Conference on the Environment.” To reserve a room, call 410/576-1000. To receive the conference rate, reservations must be made by phone using our group designation.
Register using this form or on our web site at
http://www.abanet.org/publicserv/environmental

____ YES, I will attend. Reserve a space for me at the fee circled below. I enclose a check or credit card authorization payable to “American Bar Association” (government employees may enclose an authorized purchase order).

CONFERENCE FEE *

☐ ABA Member $275  ☐ General Attendance $350  ☐ Academic/NGO/Gov’t $75  ☐ F/T Student $25

GROUP FUNCTION ATTENDANCE

I will attend _____ Lunch _____ Reception

(Please check all that apply)

Please reserve space for (print or type):

Name ______________________________________________________________

Title ______________________________________________________________

Firm/Affiliation ______________________________________________________

Address ___________________________________________________________

__________________________________________________________

Telephone ______________ Fax ______________ Email ___________________

If using a credit card, check one:

☐ Visa ☐ MasterCard

Card # __________________________ Expiration Date ______________________

Authorized Signature _______________________________________________

*Your conference fee covers admission to all sessions, course materials, breaks, lunch and reception.

This program will be submitted for Continuing Legal Education (CLE) credits. CLE forms and course materials will be available on-site.

CANCELLATION POLICY

We will give full refunds of registration fees, less a non-refundable administrative charge of $50, for cancellations received by May 28, 2010. Cancellations received after that date will not be refunded, but substitute registrants may be designated in writing with advance notification to our office. We are not responsible for sleeping room, meal, travel or other charges or fees arising from cancellations or changes, and will bill registrants for any costs we incur in such connection.

Questions? Contact us at scel@staff.abanet.org or call us at 202/662-1694.

If mailing, return completed form along with payment made payable to “ABA” to:
Carrie Coleman, American Bar Association, 740 15th Street, NW, Washington, DC 20005,
or fax form with credit card information to 202/638-3844, Attn: Carrie Coleman.