Introduction To Toxic Substances Control Act of 1976

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The Toxic Substances Control Act (TSCA), a federal statute passed by Congress and enacted in 1976, was intended to enable EPA to adequately regulate toxic chemicals in the United States. It is the only federal law that broadly provides for regulation of most chemicals both before and after they enter commerce. Some other U.S. laws enable both pre-market and post-market controls, but they apply only to particular classes of chemicals such as pesticides or pharmaceuticals. Other U.S. environmental laws, such as the Clean Air Act, Clean Water Act, Superfund and RCRA, are essentially end-of-pipe statutes aimed at regulating clean-ups and releases to the environment and workplace only after chemicals are introduced into commerce.

Though TSCA is broad in theory, its legal structure reflects an underlying assumption that only some of the chemicals in commerce are likely to be hazardous. It presumes that manufacturers have the right to market chemicals, and places a heavy burden on government to prove the need for regulation before it can interfere with that right.

Today there is a growing recognition that many of the chemicals in commerce, and not just a few, are likely to constitute some type of hazard. On this view, the structure of TSCA contains two general overriding flaws. One is that the statute makes too little information available to the government, users of chemicals and consumers about the hazardous properties of chemicals. These data gaps make it impossible for the government to fully enforce the other environmental laws and for users of chemicals and consumers to choose safer chemicals and products. The second flaw in TSCA is that it places too high a legal burden on the government before it can regulate chemicals.

Attached is a one-page outline of TSCA. The analysis is very brief, contains many generalizations and is only intended to provide an overview at the broadest level. A full and precise explanation would contain many complications that are left out here in the attempt to convey the broad outlines.

Resources

1. M.W. Wilson et al., "Green Chemistry in California: A Framework for Leadership in Chemicals Policy and Innovation," (March 2006) contains thorough discussion of TSCA and chemicals policy (http://coeh.berkeley.edu/news/06_wilson_policy.htm)
2. EPA, "Overview of OPPT Programs (OPPT 101)," provides background and reference information on TSCA (Dec. 24, 2003) (www.epa.gov/oppt/npptac/pubs/documents.htm).
3. J.H. Guth et al., Louisville Charter Background Paper No. 5, "Require Comprehensive Safety Data For All Chemicals," contains 4-5 page discussion of TSCA. (www.louisvillecharter.org)

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U.S. TOXICS SUBSTANCES CONTROL ACT OF 1976 (TSCA)

A. TSCA divides chemicals into two classes

1. Chemicals that were in commerce when TSCA was passed
   a. These chemicals are listed on the "TSCA Inventory"
   b. No safety information is required for these chemicals
      (i) EPA does require periodic information about some of the Inventory chemicals, including approximate annual volume and, starting in 2006, limited manufacturing, processing and use data
      (ii) To order a company to produce safety data, EPA must first prove a chemical "may present an unreasonable risk"
   c. To regulate production or use of a chemical, EPA must prove that:
      (i) the chemical "presents or will present an unreasonable risk";
      (ii) the benefits of regulation outweigh both the costs to industry of the regulation and the lost economic and social value of the product; **and**
      (iii) EPA has chosen the least burdensome way to eliminate only the unreasonable risk

2. Chemicals first manufactured after TSCA was passed
   a. Pre-Manufacturing Notice (PMN) must be filed before new chemical can be manufactured; EPA has 90 days to act or chemical may be marketed
   b. No safety information required in PMN (vast majority contain none)
   c. To require information or restrict production or use during PMN process, EPA must first prove a chemical "may present an unreasonable risk"
   d. Lacking actual safety test data, EPA evaluates new chemicals by computer modeling, and negotiates some restrictions and withdrawals of chemicals
   e. Once marketed, PMN chemicals are listed on the TSCA Inventory, and EPA can regulate them or request data only if it has the same proof required for all Inventory chemicals (see above)
   f. EPA handles 1,500 PMN submissions every year; about 50% of these submissions lead to marketed chemicals

B. Other provisions

1. Though companies are not required by TSCA to create safety information, if companies do create it or become aware of it, they must inform EPA if they believe it reasonably supports a conclusion of substantial risk
2. Much information submitted to EPA (even including chemical identity in PMN submissions) is designated as confidential business information

C. Current TSCA Inventory

1. 82,000 chemicals are on TSCA inventory (9,000 are made/imported at over 10,000 pounds/year/site -- totaling about 15,000 at this level over the years)
2. 62,000 chemicals were on the original Inventory; few have been evaluated; these still constitute large majority of the tonnage of chemicals in commerce
3. 20,000 chemicals have been added to the Inventory through PMN program