

## How States Are Spearheading Chemical Regulation

By Mark N. Duvall and Alexandra M. ("Andie") Wyatt

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In the absence of major legislation to overhaul the federal chemicals management laws, states are stepping in. As 2011 legislative sessions begin, a number of states, and groups of states, are considering new policies and proposals intended to monitor and regulate the production, labeling, use, and disposal of chemicals and a wide range of products containing chemicals. These initiatives raise concerns for a very wide range of chemical producers and users as well as product manufacturers and distributors.

### **Interstate Chemicals Clearinghouse**

The environmental agencies of nine states (California, Connecticut, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon and Washington, along with the city of Portland, Ore.) have formally launched the Interstate Chemicals Clearinghouse (IC2).

This initiative, under the auspices of the Northeast Waste Management Officials' Association (NEWMOA), began in 2008. It has held a number of work-group meetings and webinars for its member state agencies as well as "supporting member" NGOs. The formal launch in January 2011 is the result of a new memorandum of understanding and governance structure that cements the states' participation.

IC2's stated goals are to:

- ◆ Avoid duplication and enhance efficiency and effectiveness of state, local and tribal initiatives on chemicals through collaboration and coordination.
- ◆ Build agency capacity to identify and promote safer chemicals and products.
- ◆ Ensure ready access to high quality chemicals data and assessment methods.

Toward these ends, the IC2 plans to build online databases for priority chemicals listed by government entities, hazard and toxicity information, chemical use information, and safer alternatives assessments. Its Database Workgroup "has been reviewing a variety of chemicals databases from

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around the world and discussing how the clearinghouse may develop its own data system to meet the needs of its members.”

IC2 also plans to assist states with development of regulatory and voluntary programs, sharing of information and strategies, training to build regulatory capacity, and increasing collaboration with the U.S. Environmental Protection Agency.

Notably, IC2 aims to share “outcomes on chemicals prioritization initiatives,” such that a chemical listing or restriction in one jurisdiction could more easily trigger similar — but likely not identical — requirements in other IC2 member states.

NEWMOA also operates the Interstate Mercury Education and Reduction Clearinghouse (IMERC), now in its 10th year, and prior experience with that initiative demonstrates that IC2 may have a real impact on industry. Among other impacts, IMERC has helped spur member states to enact and to some extent streamline a variety of mercury product labeling, notification, collection, phase-out, and prohibition statutes and regulations.

According to its press release, IC2 is “inviting additional governmental entities, businesses, nongovernmental organizations, academic researchers, consultants and others to join them in the partnership.” Interested companies and trade associations may therefore bring their perspective to the table — as long as they “demonstrate support” for “reducing the use of toxic chemicals or the generation and release of toxic pollutants [and] promoting environmental sustainability,” and the IC2 board of directors votes to approve their membership applications.

### **Other State Initiatives**

The National Caucus of Environmental Legislators (NCEL) recently announced that a variety of chemicals management-related bills would be introduced in at least 30 states and the District of Columbia in the current legislative session. According to NCEL, the bills are likely to include:

- ◆ Comprehensive state laws (Connecticut, Illinois, Massachusetts, Michigan, Minnesota, New York, Oregon, Washington and Vermont).
- ◆ Bisphenol A (BPA) phase-outs in children’s products and/or receipt paper (Connecticut, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, New Jersey, New York, North Dakota, Ohio,

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- Oregon, Pennsylvania, Tennessee, Texas and the District of Columbia).
- ◆ Banning cadmium in children's products (Florida, Kentucky, Maine, Maryland, Michigan, Mississippi, New Jersey and New York).
- ◆ DecaBDE phase-outs (Alaska, Massachusetts, New York and the District of Columbia).
- ◆ State resolutions calling on Congress to overhaul the federal Toxic Substances Control Act (TSCA) (Alaska, California, Delaware, Georgia, Iowa, Maine, Massachusetts, Montana, South Dakota, Texas and Wisconsin).

So far, a number of these bills have been introduced. For example, resolutions in support of TSCA reform have been introduced in a number of states, including Montana, South Dakota and Kentucky. Some of these resolutions cite, among other justifications, the establishment of IC2. Several of the proposed bans or phaseouts of BPA, cadmium, and decaBDE have also been introduced at the time of this writing.

While introduction is a far cry from passage, number of similar green chemistry and chemical-specific regulations, such as restrictions on BPA in products, have been passed at state and local levels in recent years. Green chemistry regulatory provisions continue to be developed in California under its Green Chemistry Initiative. It should be noted, however, that issues related to chemicals did not make the "Top 11 for 2011" list of critical state legislative issues released by the National Conference of State Legislatures.

In addition to their potential direct impacts on industry, these bills may affect the prospects for federal TSCA legislation. Industry increasingly faces a patchwork of inconsistent and burdensome state and local chemical regulations. Preemption of state laws is therefore a key motivation for industry support for TSCA reform. However, the bills introduced during the last session of Congress by Democrats in the House and Senate would have removed even TSCA's current, limited preemption provisions.

The Environmental Council of the States issued a policy recommendation in 2010 supporting "congressional action on TSCA reform that ... ensures the preservation of state authority to protect citizens and the environment from toxic exposures and to manage chemicals of concern; and only restricts that authority if compliance with both state and federal law would be impossible."

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In light of general Democratic, NGO, and state opposition to federal preemption of state legislation, a multiplicity of state chemicals management proposals may complicate stakeholder negotiations.

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