

# A Perspective On State Trends In Chemical Regulation

**William K. Rawson**  
**Latham & Watkins LLP**  
**March 19, 2008**

# Overview

- Why are we seeing an increase in state/local chemical product attacks?
- Why are we seeing an increase in state/local chemical control initiatives?
- How might industry respond to these emerging trends?

# Why The Increase In Product Attacks?

What the sponsors are saying:

- Federal chemical control laws are inadequate;
- Industry testing and product stewardship is inadequate;
- Chemical products pose serious health risks.

# Are Allegations True?

## My perspective:

- Limitations of federal chemical control laws are greatly exaggerated;
- Quality and extent of product stewardship is not fairly recognized;
- Allegations of health risks are not supported by weight of the scientific evidence.

# Example: Phthalates In Toys

- Comprehensive safety assessment by CPSC, supported by independent panel.
- No “failure of TSCA.”
- Industry product stewardship has been strong, including extensive testing and a voluntary standard in mid-80’s (to address cancer concern that was later found not relevant by IARC).

# So Why The Increase In Local Activity?

- Faster, cheaper, easier.
- Legislation requires votes, not science; avoids risk assessment paradigm.
- No substantive criteria or procedural safeguards (vs. federal rulemaking).
- Can shop for favorable forum, then leverage success in other states.
- Attractive to politicians.

# What Are The Consequences?

- Bans of safe products.
  - Erosion of public confidence in the safety of products generally, in the federal regulatory scheme, and in industry's product stewardship.
- Doesn't really matter why it is happening, if these are the consequences.

# How Might Industry Respond?

- Must defend individual products against unscientific attacks.
- Must have a strategy for restoring public confidence in industry products generally.
- Must have a strategy for restoring public confidence in the federal statutes and regulations.

# Responding To Individual Product Attacks

## Essential elements:

- Science.
  - Resources.
  - Downstream industry engagement.
  - Willingness to be strong, challenge bad science.
- Helps to have independent voices occupying the field.  
Need to be ready before attacks occur.

# Responding To Attacks On The Adequacy Of Federal Programs

- Need a broader strategy to demonstrate adequacy of federal programs.
- Need greater recognition of layers of protection embedded in these programs.
- Need greater transparency and recognition of product stewardship activities of chemical industry and downstream industry.

# How To Do That?

- Need engagement of entire industry.
- Need engagement of other affected industries.
- Need independent voices.
- A missing element in the past – evidence of a comprehensive approach under TSCA.

# Take Home Messages

- Trend will continue as long as it works.
- Must be viewed not as a series of product-specific attacks, but as an attack on federal programs generally, and industry generally.
- If current targets are banned, expect trend to accelerate, with new targets.