

Guilty until Proven Innocent



Chemical disclosure is on the forefront of proactive minds across the processing industry. What is your company willing to divulge? From the dispersants used in the BP oil spill in the Gulf of Mexico to hydraulic fracturing (or fracking) chemical disclosure to Consumer Product Safety Commission databases to Bisphenol A (BPA) safety concerns, everyone wants to know what's in their daily inventory of product and how safe it is.

When it comes to a jury trial, a criminal is innocent until proven guilty. This paradigm signifies that even if there is just a tiny bit of reasonable doubt that the alleged perpetrator did not commit a crime, he or she does not do the time. Apparently it works the same way with public safety and chemical dangers.

For example, the gas drilling industry is bringing jobs and newfound fortunes to residents in and around the Marcellus Shale, but a lack of operational transparency has many questioning the long-term environmental impacts. Regulations for fracking vary as you cross state lines, and generally require minimal disclosure of the concentration and quantity of chemicals used to break apart the gas-rich rock formations. Groundwater tests have not indicated a threat to human health, but by keeping the public in the dark, gas drilling companies are forcing many to assume the worst.

Similarly, for more than 30 years, chemicals have been deemed innocent (or safe) until proven guilty (or unsafe). If a new chemical is produced, a manufacturer needs only submit a pre-manufacturing notification to the Environmental Protection Agency (EPA), and under the Toxic Substances Control Act of 1976 (TSCA), the EPA can only call for safety testing after evidence surfaces demonstrating a chemical is dangerous. If it doesn't, it is tacked onto a long list of virtually unregulated chemicals without further "undue" regulation.

As a result, the EPA has required testing for just 200 of the more than 80,000

chemicals currently registered in the United States and has been able to ban only five dangerous substances. This process also grandfathered in approximately 62,000 chemicals at the time it was passed. It stands to reason then that, in an effort to protect trade secrets and other proprietary information, the TSCA has left the public in a lurch in the way of safety, or at the very least, fending for ourselves for any accessible chemical information.

As we continue to sputter through this quicksand of a recession-turned-recovery, nobody wants to bog down any industry with more regulation than necessary, but is the TSCA offering the public the best possible protection against unsafe substances?

U.S. Senator Frank R. Lautenberg (D-NJ), who chairs the Senate Subcommittee on Superfund, Toxics and Environmental Health, doesn't think so. In April 2010, he introduced the Safe Chemicals Act of 2010 as a means to replace the TSCA. Lautenberg explained that he believes the contemporary law is too antiquated to be effective and leaves Americans at too great of risk.

To address his concerns, the Safe Chemicals Act of 2010 requires safety testing of all industrial chemicals, and puts the burden on industry to prove that chemicals are safe in order to stay on the market. The new legislation would also give the EPA more power to regulate the use of dangerous chemicals, and require manufacturers to submit information proving the safety of every chemical in production and any new chemical seeking to enter the market.

In the State of the Union, President Barack Obama announced, "To reduce barriers to growth and investment, I've ordered a review of government regulations. When we find rules that put an unnecessary burden on businesses, we will fix them. But I will not hesitate to create or enforce common-sense safeguards to protect the American people. That's what we've done in this country for more than a century."

I think that, whether it's the Safe Chemicals Act or a separate piece of legislation, we need to proactively seek out potentially unsafe chemical substances and instigate businesses to use safer alternatives. It would, at least, allay some fears floating out there in the ether.

With search engines and online news sites thrusting headlines, such as The Top 10 Toxic Products You Don't Need and Everyday Exposure to Dangerous Levels of Toxic Chemical BPA Unavoidable for U.S. Families onto the public, Americans are more aware than ever—and possibly paranoid—about the presence of dangerous substances in everything from household products to toys. While industry and regulators ponder action, companies such as Wal-Mart and Clorox have found a way to profit from the situation by positioning themselves as "green" and "safe."

In fact, even many chemical companies seem to encourage legislation. The line between safety and over-regulation can blur sometimes, but in a somewhat unregulated industry, it's more important than ever to find a solution to looming consumer concerns—perhaps the Safe Chemicals Act of 2010 is a step in the right direction.

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