

## InsideEPA.com: Downstream Users Emerge As Key Industry Players In TSCA Debate

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Published March 3, 2009

Some downstream chemical users, including health care providers, computer manufacturers, retailers and others, are emerging as a key business constituency that could drive reform of U.S. industrial chemicals management law because they are aligning with environmentalists in asking Congress to reform the law so they can ensure products they are using are safe.

Downstream users “will drive the debate more than anyone” because they are very concerned with data about chemicals they use and the need to demonstrate chemicals are safe, one informed source says.

The downstream users may also split the business community, providing important leverage to Democrats and environmentalists seeking to force stricter data and safety requirements on manufacturers in the nascent congressional debate over reforming the Toxic Substances Control Act (TSCA).

The issue was on display at a Feb. 26 hearing before the House Energy & Commerce Committee’s Subcommittee on Commerce, Trade & Consumer Protection, where a representative of health care provider Kaiser Permanente called for additional legal mechanisms to help downstream users choose the safest-available products.

Kaiser’s Kathy Gerwig said many companies are unable to afford the rigorous product-testing regime the health care provider has established, arguing such a regime is necessary to ensure the safety of many products.

Cal Dooley, president of the American Chemistry Council (ACC), even acknowledged the need to reform the law in a way that satisfies downstream users. “Let’s set up a system where we are providing more information and data, let’s identify those chemicals that we should be most concerned with in terms of the health risks, [and] let’s ensure that EPA has the resources and the ability to make a safety assessment of those chemicals that are going into the marketplace, because ultimately my manufacturers want to ensure that [downstream users like Kaiser] have confidence in the products that they’re using,” he said.

Companies like Kaiser bring considerable leverage to the debate over reforming TSCA because they purchase significant quantities of chemical-containing products. Environmentalists have long targeted the downstream users, urging de-selection of products that contain potentially harmful chemicals and stores that sell them. “They don’t need the chemical, they need the functionality,” the informed source says.

The tactic has prompted frustration with chemical manufacturers who have sought to beef up their relationship with Wal-Mart and other large down-stream users to prevent de-selection or provide safer alternatives.

Such approaches are already the driving force behind a group of companies and activist organizations organized by the Business-NGO Working Group for Safer Chemicals & Sustainable Materials, which has adopted principles for ensuring the use of safer chemicals in

products, including encouraging better collaboration between activists and industry and developing tools and criteria for moving to safer chemicals.

Member organizations include Kaiser, Dell, Corporate Express -- a Staples office supply company -- Natural Resources Defense Council, Whole Foods and the Breast Cancer Fund.

A source with the working group says buying power can leverage change, saying his company declines to purchase products containing chemicals it considers hazardous, causing suppliers to change their products. "That's the power of a company with a buying power like ours, and that ultimately is how we can fix" U.S. chemical management, the source said recently.

But not all downstream users are on board with the Business-NGO group's approach. Trade associations representing some downstream users of chemicals, including the Consumer Specialty Products Association, the Soap & Detergent Association and the Grocery Manufacturers Association, sent a Feb. 26 letter to House trade subcommittee Chairman Bobby Rush (D-IL) and ranking member George Radanovich (R-CA) prior to the hearing that generally backed ACC's priorities for reforming the law.

In addition to finding a way to prioritize chemicals -- a goal of chemical manufacturers -- the letter said it was important that EPA be able to meet deadlines for prioritizing chemicals, continue to weigh the costs and benefits of new restrictions and potential alternatives, and "integrate the patchwork quilt of laws governing product safety."

A source with the Environmental Defense Fund (EDF) says the TSCA debate needs "more Kaisers at the table," while another activist source also remarked on "the different voices that have not been heard before" as an important takeaway from the hearing.

In addition to downstream users, witnesses at the hearing included representatives of industry, environmental justice organizations, activist groups, organized labor, and health groups focused on specific adverse impacts. Future hearings could include input from additional sectors, such as insurance companies and retailers, in addition to the industry and activist groups, the EDF source says.

At the hearing, Gerwig said Kaiser seeks to use safer chemicals and, when it started looking at alternatives for vinyl flooring, it developed its own testing protocol and had in-house industrial hygienists test alternatives to determine their health impacts.

"That degree of investment is simply not feasible for most products and materials we buy, nor is it possible for smaller organizations that do not have the resources and organizational skills that Kaiser Permanente has developed over decades," she said. "Mechanisms are needed to support downstream users in procuring the safest products and materials for our needs."

The company has a history of seeking out safer products in the health care sector. In 2001, the company began a program to replace products containing di(2-ethylhexyl) phthalate, commonly known as DEHP, and in 1997 it began a program to eliminate mercury from its facilities.

But Gerwig said it is often hard to get information on chemical ingredients from manufacturers, even though the company has developed its own chemicals disclosure form that asks for

information about “persistent bioaccumulative toxic compounds and carcinogens, mutagens and reproductive toxins in addition to specific existing and emerging chemicals of concern such as mercury, polyvinyl chloride, phthalates, bisphenol-A and halogenated flame retardants.”