

**BizNGO Forum – Safer Chemicals in Products**  
**June 2011**

# **Fixing Our Broken Federal Chemical Safety System**



ENVIRONMENTAL  
**HEALTH**  
STRATEGY CENTER

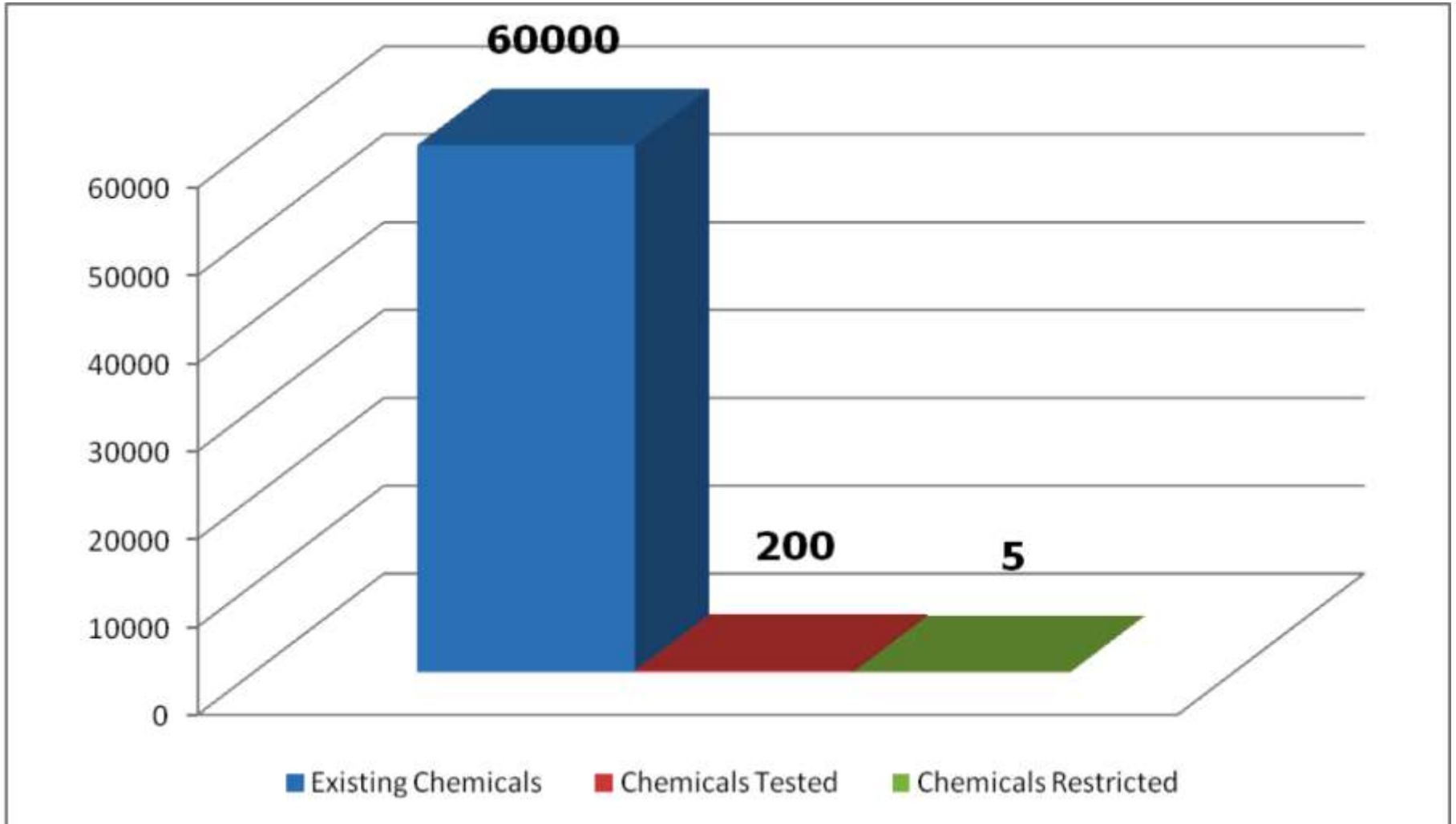
[www.preventharm.org](http://www.preventharm.org)



**Safer Chemicals**  
**Healthy Families**

[www.saferchemicals.org](http://www.saferchemicals.org)

# A Badly Broken Safety System



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**GAO**

United States Government Accountability Office

Report to the Congress



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January 2009

# HIGH-RISK SERIES

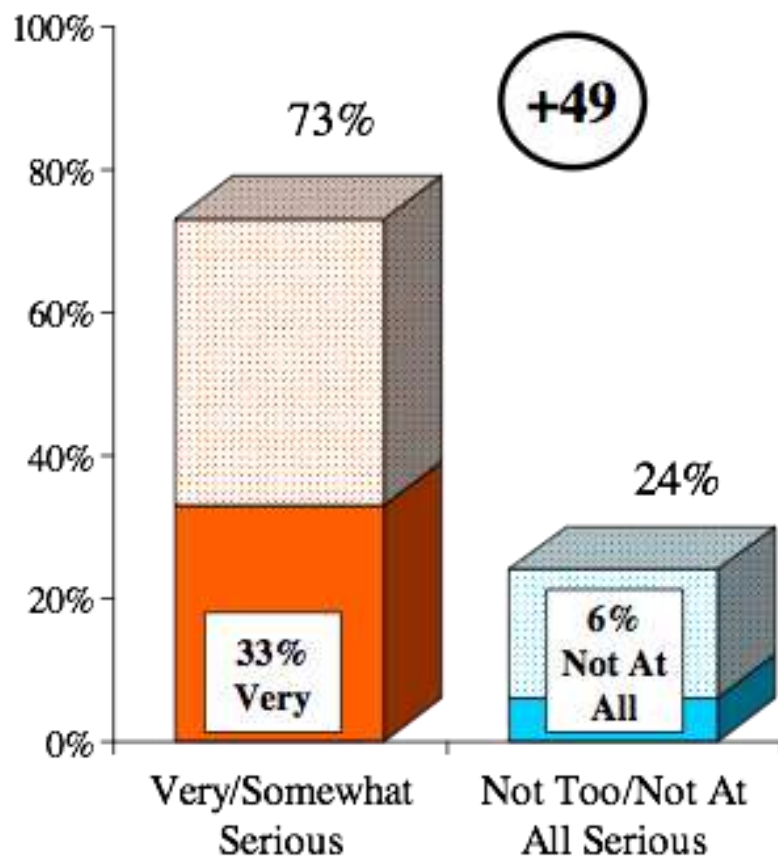
**Transforming EPA's Processes for Assessing and Controlling Toxic Chemicals.** EPA does not have sufficient chemical assessment information to determine whether it should establish controls to limit public exposure to many chemicals that may pose substantial health risks. Actions are needed to streamline and increase the transparency of the Integrated Risk Information System and to enhance EPA's ability under the Toxic Substances Control Act to obtain health and safety information from the chemical industry.

# The Trouble with TSCA

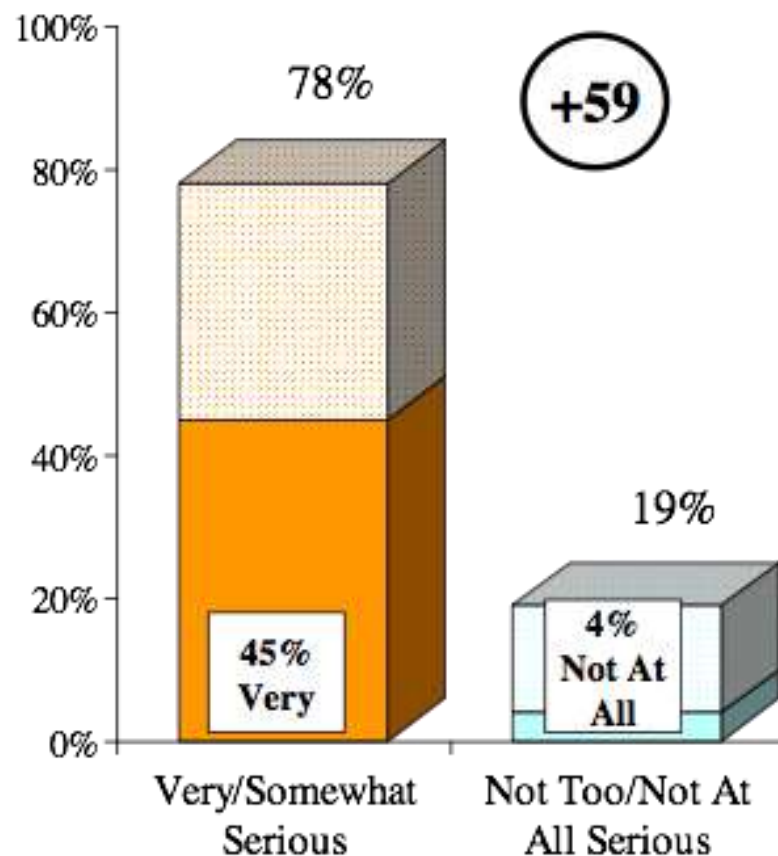
<input type="checkbox"/> Few data required	<input type="checkbox"/> Too many secrets
<input type="checkbox"/> Burden on government	<input type="checkbox"/> No prioritization
<input type="checkbox"/> Safety not required	<input type="checkbox"/> Weak safety standard
<input type="checkbox"/> Old – Grandfathered in	<input type="checkbox"/> New - Weakly screened
<input type="checkbox"/> Authority handcuffed	<input type="checkbox"/> Innovation stifled

# Huge Majorities Believe That Exposure To Toxic Chemicals In Every Day Life Presents A Serious Threat

Generally speaking, how serious is the threat posed by exposure to toxic chemicals in day-to-day life –very serious, somewhat serious, not too serious, or not serious at all?



Generally speaking, how serious is the threat posed *to children* by exposure to toxic chemicals in day-to-day life –very serious, somewhat serious, not too serious, or not serious at all?





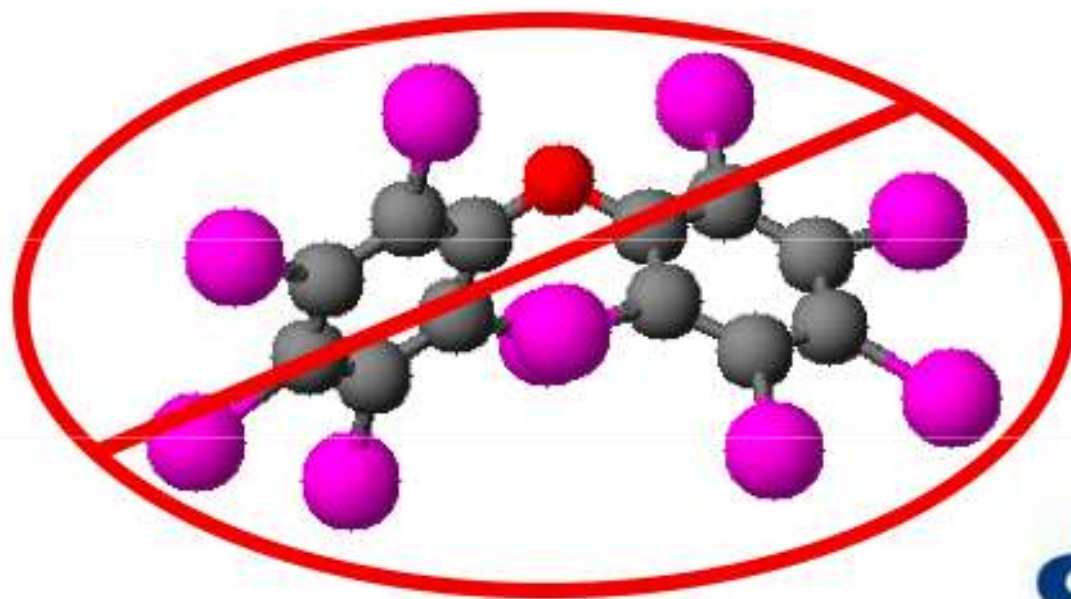
## Wal-Mart bypasses federal regulators to ban controversial flame retardant

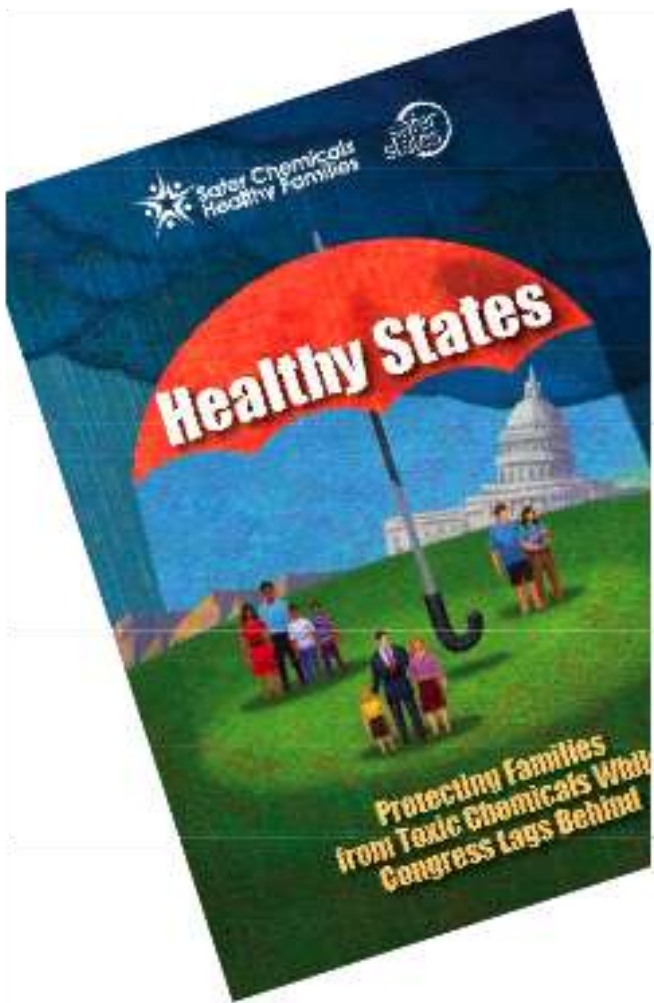
By *Lyndsey Layton*

Washington Post Staff Writer

Saturday, February 26, 2011; 10:13 PM

<http://www.washingtonpost.com/wp-dyn/content/article/2011/02/25/AR2011022502977.html>





**TABLE 1**  
**The Quickening Pace of State Action on Toxic Chemicals**

Year	# of State Laws Passed		Number of States Acting (cumulative)
	by Session	by Legislature	
2003	2	7	2
2004	5		5
2005	6	8	8
2006	2		9
2007	10	25	11
2008	15		15
2009	15	31	17
2010	16		18
<b>In 8 years</b>	<b>71 state laws passed</b>		<b>in 18 states</b>

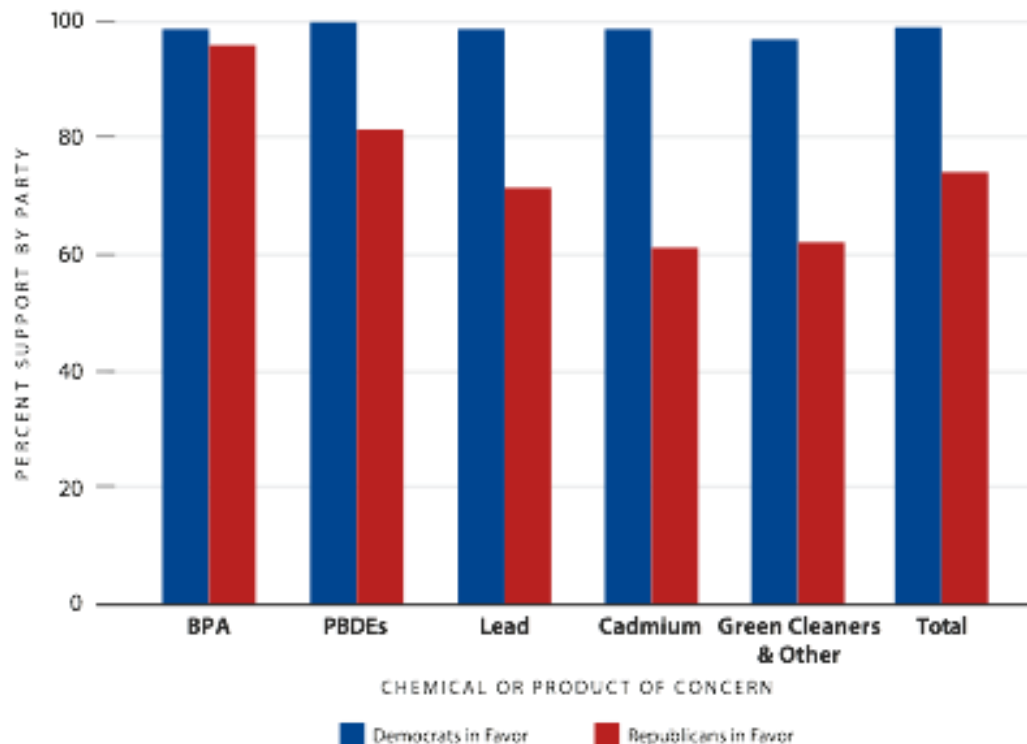
# An Overwhelming Super-Majority Favor Stricter Regulations On U.S. Chemicals

## A Majority *Strongly* Favor Stricter Regulations

Do you favor or oppose stricter regulations on chemicals produced and used in the U.S.?

THE **MELLMAN** Group

FIGURE 2  
New State Laws Target Specific Chemicals and Products of Concern



	Favor	Oppose
Democrat ID	84%	6%
Independent ID	73%	14%
Republican ID	64%	23%
Young Women	77%	12%
Young Men	70%	16%
Older Women	82%	10%
Older Men	67%	18%



**Healthy States**

# 2011 Failure of Tea Party Rollbacks

- Maine Governor Paul LePage on BPA:

“The worse that could happen is that women would get little beards”



- BPA phase-out ***upheld*** by a 145 – 3 vote of Legislature
- Chemical industry attack on Kid Safe Products Act ***stopped***

# Safe Chemicals Act of 2011 (S. 847)



"Our children should not be used as guinea pigs. It's time to update the law to protect them."  
Senator Frank Lautenberg  
(D-NJ)

- ✓ Minimum data required
- ✓ Greater access to information
- ✓ Burden of proof on chemical industry
- ✓ Chemicals prioritized for action
- ✓ Safety assessment required – old and new
- ✓ Health-based standard using best science
- ✓ Clear risk management authority
- ✓ Incentives for green chemistry

# TSCA: Safety Data

- Few data call-ins are issued
- Fewer chemicals are required to be tested
- No minimum data set is required even for new chemicals



# REFORM: Safety Data

- Up-front data call-ins for all chemicals would be required.
- Minimum data sets (MDS) on all new and existing chemicals sufficient to determine safety would be required to be developed and made public.



# TSCA: Chemical Use Data

## *Problems with Inventory Use Reporting (IUR):*

- Infrequent reporting (every 5 years)
- Many exemptions; data turnover
- Not granular enough to inform safety determinations
- Chemical manufacturers don't know all uses
- Supply chain doesn't know all chemicals used

# REFORM: Chemical Use Data

**S.847 (2011) – discretionary EPA authority to request use data**

**Proposed in HR 5820 (2010):**

- DISCLOSURES TO COMMERCIAL PURCHASERS.— all manufacturers and processors of chemical substances and mixtures shall disclose
  - (1) the chemical identity of the chemical substance or, for mixtures, the chemical identity of all chemical ingredients;
  - (2) all information regarding toxicological properties;
  - (3) the list of health and safety studies; and
  - (4) any records of significant adverse reactions

# TSCA: Confidential Information

- Companies are free to claim, often without providing any justification, most information they submit to EPA to be confidential business information (CBI), denying access to the public and even to state and local government
- EPA is not required to review such claims, and the claims never expire

# REFORM: Confidential Information

- All CBI claims must be justified up front
- EPA would be required to review them, and only approved claims would stand
- Approved claims would expire after no more than 5 years, except in limited cases
- Other levels of government could access CBI

# TSCA: Burden of Proof



***Joe Darabant, Johns-Manville Plant in H Building***  
*from Breath Taken: The Landscape & Biography of Asbestos*  
*Bill Ravanese 1990 & Center for Visual Arts in the Public Interest, Inc.*

# REFORM: Burden of Proof

- Industry would bear the legal burden of proving their chemicals are safe



# TSCA: Sorting Priorities

- No criteria are provided for EPA to use to identify and prioritize chemicals or exposures of greatest concern, leaving such decisions to case-by-case judgments.



# REFORM: Sorting Priorities

<b>Priority Class 1</b>	<b>PBTs with widespread exposure potential</b>
<b>Priority Class 2</b>	<b>Uncertainty that chemical would meet safety standard based on a more-than-theoretical concern</b>
<b>Priority Class 3</b>	<b>Intrinsic properties of safety across life cycle of chemicals</b>

# REFORM: Acting on Priorities

<b>Priority Class 1</b>	<b><i>Immediate risk management:</i></b> Greatest practicable exposure reduction; residual risk assessment
<b>Priority Class 2</b>	<b><i>Safety standard determination:</i></b> Possible risk-management actions to ensure safety standard is met
<b>Priority Class 3</b>	<b><i>No immediate action:</i></b> Set aside; still subject to minimum data req'ts

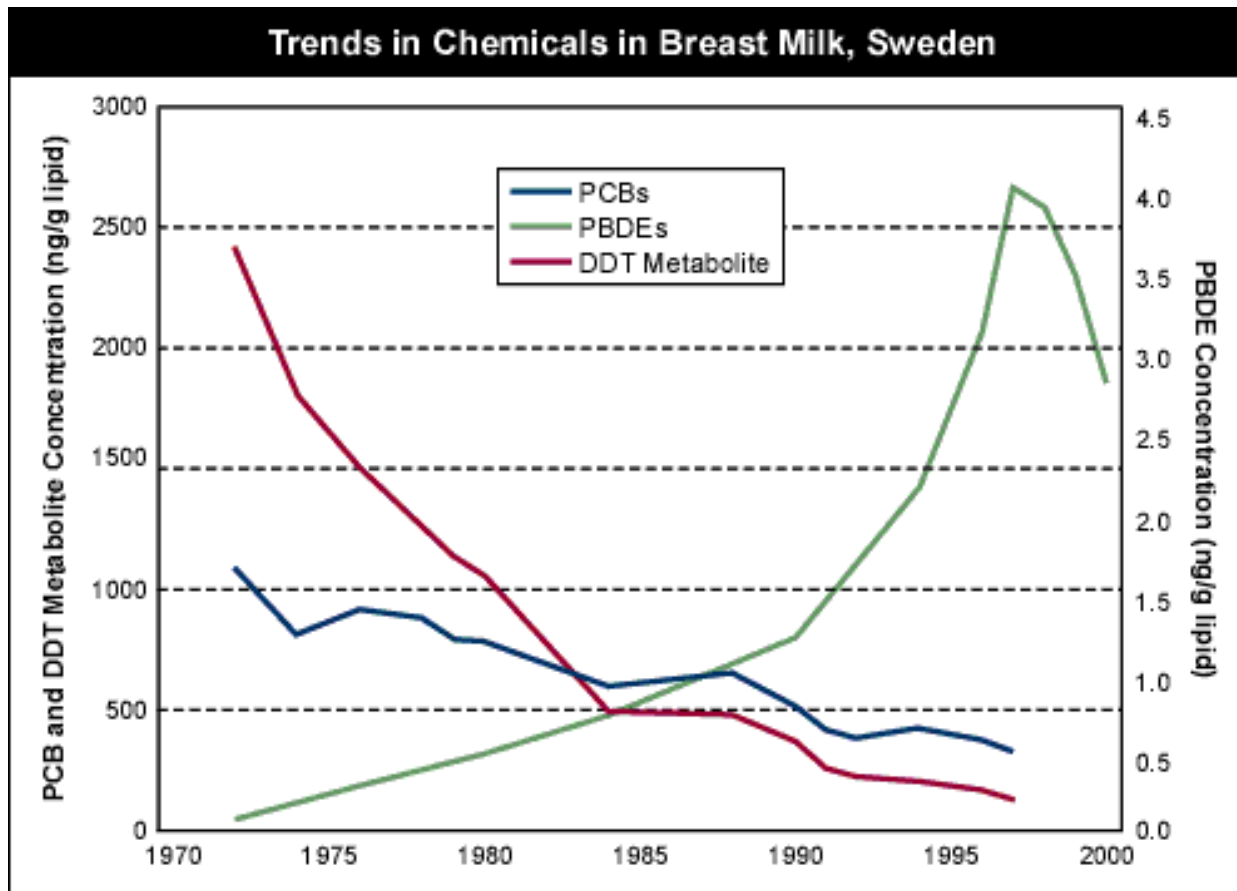
# REFORM: Hot Spots

- EPA must develop placed-based action plans to reduce disproportionately higher exposures



# TSCA: Safety Assessment

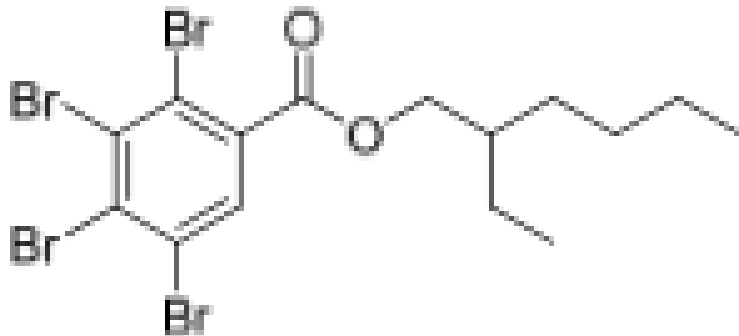
- **EXISTING CHEMICALS:** No mandate exists to assess the safety of existing chemicals



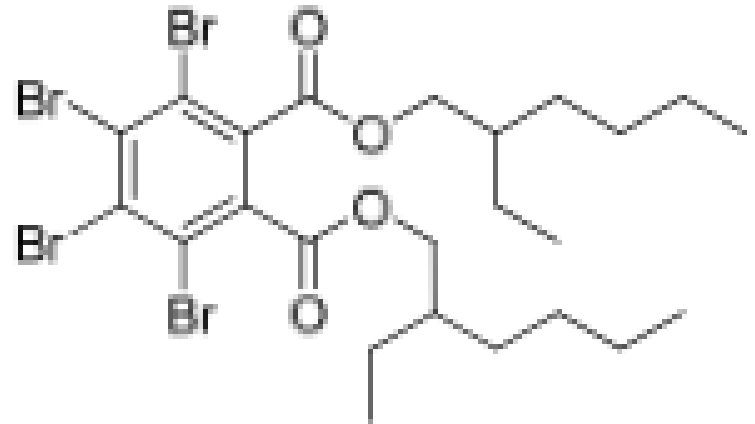
# TSCA: Safety Assessment

- **NEW CHEMICALS:** New chemicals undergo a severely time-limited and highly data-constrained review

*Example:* Firemaster 550 replaced PentaBDE:



TBB, 183658-27-7



TBPH, 26040-51-7

# REFORM: Safety Assessment

- Both new and existing chemicals would generally be subject to safety determinations as a condition of entering or remaining on the market,
- Using the best available science that relies on the advice of the National Academy of Sciences
- Chemicals designated by EPA to be intrinsically safe would not require assessment or further action unless new information indicated

# TSCA: Safety Standard

- No requirement to assess exposure to all sources of exposure to a chemical
- No assessment of risk to vulnerable groups
- No guidance on how to determine whether a chemical presents an "unreasonable risk"
- Determined to include cost-benefit analysis

# REFORM: Safety Standard



EPA must account for aggregate exposures to all uses and sources of a chemical, and consider cumulative exposure data

Must ensure protection of vulnerable populations:

- susceptible (e.g., children, the developing fetus) or
- disproportionately higher exposure (e.g., low-income communities living near contaminated sites or chemical production facilities)

# REFORM: Regulatory Action

- EPA would have authority to restrict production and use or place conditions on any stage of the lifecycle of a chemical needed to ensure safety



# TSCA: Rulemaking

- To require testing or take other actions, EPA must promulgate regulations that take many years and resources to develop
- EPA must show potential for a chemical to cause harm in order to require testing, a Catch-22

# REFORM: Rulemaking

- In addition to the minimum data set requirement, EPA would have authority to issue an order rather than a regulation to require reporting of existing data or additional testing, and need not first show evidence of harm

# Sec. 31 – Safer Alternatives and Green Chemistry and Engineering

- Expedited review of chemicals manu's submit alts analysis indicating it's a safer alternative
- Recognition for safer alternatives
- Green chemistry research network
- Green chemistry and engineering research grants
- Green chemistry workforce education and training



# REFORM: Safer Alternatives

- Expedited review of new chemicals
- Basis of temporary exemption from a restriction: no feasible alternative

## ***Benefit of HR 5820 (2010):***

- Definition of safer alternative
- Definition of alternatives assessment methodology



Thank you!

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