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Setting State Model, New York Enacts New Chemical Regulatory Program

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New York Gov. Andrew Cuomo (D) last week enacted a new state program governing chemicals used in children's products, which environmentalists say will help drive the market to safer substances and be a model for other states but which an industry source says is unnecessary given EPA implementation of the new federal toxics law.

"Manufacturers who want to have access to the New York state market, they're going to have to abide by this law," said Cecil Corbin-Mark, deputy director of WE ACT for Environmental Justice.

"And that in turn will create a broader benefit for people in this country, because as New York goes and as California goes, markets in this country change because manufacturers who want to play in those two largest markets in the country will adjust accordingly."

Cuomo April 3 enacted [the legislation](#), S501B, as part of the state's fiscal year 2021 budget.

The legislation generally requires manufacturers to disclose to the state Department of Environmental Conservation (DEC) "chemicals of concern" in children's products, bans, after three years, the sale or distribution of children's products containing any "dangerous chemicals," and creates a regulatory framework for DEC, in consultation with the state Department of Health, to add additional chemicals to the disclosure and phase-out lists in the future.

The law lists dozens of chemicals that are subject to reporting and bans, including some, like 1,4 dioxane, that EPA is assessing for some conditions of use under the federal Toxic Substances Control Act (TSCA). New York is not preempted from regulating the chemical's use in children's products under TSCA because EPA precluded [consumer uses](#) from the scope of its risk evaluation of 1,4 dioxane.

The New York law also adopted a series of criteria for additional chemicals to be added to the two lists, including if they are present in humans, present in household dust, indoor air, or drinking water; present in fish, wildlife or the natural environment; present in a consumer product or present in the home, school or children's day care center; or banned for sale in another state.

The law is not the first of its kind, with the justification section noting similar legislation in Washington, California, and Maine.

But Corbin-Mark says this legislation is the strongest of its kind in the country, adding that its inclusion in the budget comes at a time when sales of children's entertainment products have spiked due to social isolation measures taken during the COVID-19 pandemic.

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He notes that the legislation, sponsored by Sen. Todd Kaminsky (D) and other lawmakers, was expanded from the original version to include not just a reporting requirement but also provisions banning "dangerous chemicals."

Corbin-Mark also notes that the bill was expanded to address chemicals that drive asthma and other respiratory illnesses. Provisions regulating such asthmagens "are there to make sure that this epidemic of asthma that we have in New York State is something that we can curb by making sure that some of the chemicals that trigger that asthma are being taken out of these products. For asthmatics, many places in this country will benefit from that right now," he says.

He adds that the legislation and its implementation could be a model for several other states given that New York's DEC is a "pioneer of" and member of the Interstate Chemicals Clearinghouse, a coalition of state and local agencies that pool resources to identify potentially harmful chemicals and share that data amongst their members. IC2 members include state and local agencies in California, Minnesota, Oregon, Vermont, and Washington.

"We were among the first states to invest in that infrastructure, so the cost of understanding what chemicals are in what products are shared by the states in that infrastructure," said Corbin-Mark. "Having that infrastructure in place is no doubt one of the most important things in having this bill be successful and move forward."

'Unnecessary Laws'

But Owen Caine, an executive vice president at the Household and Commercial Products Association (HCPA) says the law is not needed because EPA is regulating chemicals under TSCA.

"The whole purpose of TSCA reform is that over time, these kinds of state laws would be unnecessary, because the federal government will continue to analyze all chemicals that are in commerce," he said. "They will make scientific decisions about which chemicals should and should not be allowed in exposure to consumers and workers."

While the legislation requires manufacturers to report chemical use to DEC at "practical quantification limits," Caine says his "biggest concern" with laws like New York's is that it does not provide consumers with enough information to make informed risk-based decisions about actual exposures to chemicals in products, rather than tarring products simply because they contain a particular chemical.

Manufacturers "are constantly fighting this battle with chemophobia. There's a constant struggle with consumer-facing products of these risk and exposure and hazard arguments - just because there's something that at some level could be bad for you, our feeling is, if it's not at that level, you don't have to worry about it."

"That is why we work with agencies like the EPA . . . to figure out the appropriate levels of chemicals in any product. Consumer reporting requirements make it a lot tougher to have those kinds of frank debates with the consumer," he says.

Caine also raises concerns that lawmakers did not use scientific criteria when listing "chemicals of concern" and "dangerous chemicals."

"The concern is that when you have a root law, an underlying law, that is not based on scientific inquiry, over time it can get expanded to other product categories, and different parts of consumer products," he said. "And then, god forbid, my members have to respond, and it gets to my members' products, and we're dealing with a scientifically flawed underlying law." -- Diana DiGangi (ddigangi@iwpnews.com)