

January 2008

Toxic Chemicals in Products

Newsletter of The Investor Environmental Health Network



Executive Director's Letter

"Beyond Compliance": The Essential Starting Point for Strategically Managing Business Risks From Toxic Chemicals In Products

Federal environmental and product safety regulation increasingly appears to be a hollow façade. Therefore it is essential that corporate managers and investors look beyond compliance with federal law to strategically manage business risks from toxic chemicals in the products they make and sell.

The robust media coverage of product recalls in recent months has highlighted the sad state of federal law and regulation. They're truly like the Potemkin villages of old--a false front suggesting that the federal government is effectively protecting public health and the environment. But in reality, existing laws, regulations, staffing, and budgets are grossly deficient and have been for many years. Recent congressional pronouncements about limited staff and budgets at the Consumer Product Safety Commission bring to mind the famous scene in the movie *Casablanca*, where Captain Renault closes down the gambling in Rick's café. Renault declares "I'm shocked, shocked to find that gambling is going on in here", and is then handed his winnings by the croupier.

States are stepping forward to fill the void. California's clearly the leader, inspired by regulatory developments in Europe over the last several years. There are now twenty-seven nations in the European Union; California's adopted so many of Europe's chemical regulations that it's been jokingly suggested that California should consider becoming the 28th. Following the EU, California has adopted new laws on brominated flame retardants, toxic chemicals in electronics goods, cosmetics safety, and phthalates in toys. A senior marketing VP for a major retailer commented on this pattern at a meeting with shareholders who had filed a resolution on product safety: "We look over there in Europe because what happens in Europe comes over to the States. We look at California and the East Coast because that's what's going to shape the marketplace for us."

California's not alone. Similar initiatives have been launched in Washington, New York, Maine, and Massachusetts, among others. In mid-December 2007, Maine Governor John Baldacci announced he will incorporate into his 2008 legislative package some of the recommendations of a task force on reducing toxic chemicals in consumer products. He can select from recommendations including publication of a list of chemicals of high and moderate concern, requiring disclosure by companies of these chemicals in their products, and restricting chemicals in consumer products when safer alternatives are available and affordable.

B2B (business to business) initiatives complement those from the states. Wal-Mart's sustainability policies, including its precautionary preferred substances (chemicals) policy, have drawn considerable attention. The health care sector, responsible for 16% of US Gross Domestic Product, is a hotbed of safer chemical initiatives, observing the precept of "first, do no harm." Consorta is a group purchasing organization (GPO) representing 60% of all the Catholic health care systems in the US. Consorta's just launched *Evergreen* magazine, captioned "The magazine for healthcare environmentally preferred purchasing." The journal will go to at least 50,000 healthcare managers and its regular chemical feature will focus on such substances as mercury, flame retardants, phthalates and pesticides.

So what do all these developments mean for corporate managers and for the investors assessing their companies? First, a company with solely a federal compliance mindset has its head in the sand and will be ill-prepared for toxic lockouts of products from various marketplaces. Second, a company needs to systematically gather information from its suppliers on the toxic chemicals in its supply chain. This can be quite difficult where supply chains are quite extended and local regulations and political cultures are not supportive of disclosure. Third, those companies launching sustainability initiatives must have strong chemical foresight mechanisms developed where appropriate-akin to the foresight mechanisms insurance companies have evolved to flag emerging risks. Fourth, such companies should establish suitable goals and metrics for toxicity reduction to ensure success in potentially turbulent chemicals markets ahead. Fifth and last, beginning the safer chemicals journey, especially for companies with no prior experience or internal expertise, can be an intimidating process. Companies should aggressively explore opportunities to partner with companies within and outside their businesses, and with those NGOs that have developed strong technical competencies, to speed their journey.

For their part, investors should heed the lessons from 2007's recalls of various consumer products: the companies they invest in need solid policies and practices in place for tracking chemicals in products...or face toxic lockouts from the marketplace, reputational damage, sizeable reductions in shareholder value, and possibly lawsuits.

A handwritten signature in dark ink that reads "Richard A. Liroff". The signature is written in a cursive, slightly slanted style.

Richard A. Liroff, Ph.D
Executive Director

Representative Corporate Safer Chemicals Policies

As a service to companies considering development of their own safer chemicals policies—a commitment to continual reduction and elimination of toxic chemicals in products to reduce costs, lower reputational risk, and avoid "toxic lockout" from the marketplace—IEHN has compiled a sampling of existing corporate safer chemicals policies.

The main themes woven through these policies, [excerpted on the IEHN website with links to corporate websites](#), include precaution, innovation, going beyond compliance, and doing all these things while serving customer wants and needs. The excerpts are from a mix of U.K. and U.S. retailers and manufacturers, including such household names as Wal-Mart, Dell, and Nike in the United States and The Body Shop (now owned by L'Oreal) and Boots (now taken private by KKR) in Europe. These are but a small sub-set of the growing numbers of companies adopting such policies.

Wal-Mart, for example, has established a goal to provide its customers "affordable and effective products where all chemical ingredients are preferred for Mother, Child and the Environment delivered in the most efficient and effective way". This summary goal is backed up by a longer policy statement signaling that Wal-Mart will take precautionary action against toxicants that cause cancer, build up in the environment, and have other undesirable characteristics. Wal-Mart explicitly embraces a precautionary approach, stating that "when we suspect that an ingredient in a product or the product itself is capable of causing harm to human health and the environment, we will act to find better alternatives."

Investors Engage Companies by Phone, Letter, and Shareholder Resolutions

Shareholder resolutions are just the tip of the iceberg of investors' engagements with companies, so counting the number of resolutions only partly gauges an issue's importance for concerned investors. For example, thus far this proxy season investors have filed a shareholder resolution on the use of polyvinyl chloride (PVC) in products and packaging at Circuit City. But letters inquiring about PVC policies have been sent to many more companies, continuing IEHN's emphasis on PVC from past proxy seasons. Corporate replies provide insight into market dynamics, revealing which companies are phasing out chemicals, even when they don't advertise this, and which are not. The latest round of PVC letters revealed, for instance, that Nokia has virtually completed its phase-out of PVC packaging, and described Logitech's progress in doing so. Replies to letters can lay the groundwork for a resolution or constructive dialogue in lieu of one. Even when resolutions are filed, they may be withdrawn for dialogue, as in 2007's withdrawal of a resolution at Sears that led to Sears' recent announcement of a PVC phaseout policy.

[Thus far in the 2008 proxy season, investors have filed 15 resolutions](#), on such topics as toy safety, nanomaterials in cosmetics, pesticides' link to asthma, and use of brominated flame retardants in products. The City of New York's employee pension funds, in collaboration with the State of Connecticut's pension fund and other investors, has filed five product safety resolutions at Home Depot, JC Penney, Mattel, Target, and Wal-Mart. In addition, investors have sent letters to approximately 50 companies on a range of issues. Following on the heels of a resolution at Whole Foods Market that prompted the company to pull baby products containing the chemical Bisphenol-A from its shelves, investors have contacted more than a dozen food processors and baby bottle manufacturers inquiring about their policies and practices regarding Bisphenol-A.

Toxic Chemicals and Safer Products in the News

[Compilations of additional news items are available on the IEHN website.](#)

Sears, Kmart to remove products with polyvinyl chloride

Retailer promises to substitute safer alternatives when possible
Cary Spivak, Milwaukee Journal Sentinel
Dec. 12, 2007

Sears and Kmart will reduce or eliminate a popular plastic linked to serious health problems from packaging and merchandise in their 3,800 stores - an action announced Wednesday after more than a year of talks with environmental and shareholder groups. By saying that its Sears and Kmart stores would phase out PVC, Sears Holdings Corp. is following the lead of Wal-Mart Stores Inc. and Target Corp.

Mercury in Mascara? Minn. Law Bans It

Martiga Lohn, Associated Press
December 14, 2007

The Investor Environmental Health Network (IEHN) is a collaborative partnership of investment managers, advised by nongovernmental organizations, concerned about the market and health risks associated with corporate toxics policies. It serves as an informational resource and secretariat for investors working to reduce portfolio risk related to toxic chemicals. For more information, visit us on the internet at www.iehn.org or contact RLiroff@iehn.org.