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FEDERAL TOXIC SUBSTANCES ACT

In mid-October the President, by signing S 3149, The Toxic Substance Control Act, gave the Environmental Protection Agency considerable control over the production, distribution, use, and disposal of chemical substances and mixtures. The Act, effective January 1, 1977, makes significant demands of chemical manufacturers and processors and gives the EPA authority to limit, prohibit, and otherwise control substances found to present an unreasonable risk to health or the environment.

This legislation comes in the wake of, and largely in response to, serious contamination by DDT, polychlorinated biphenyls (PCBs) and kepone. Properly administered it would prevent similar future disasters.

Although S 3149, broadly speaking, preempts state regulation of chemical substances and mixtures, it seems that Virginia's own Toxic Substances Information Act, Va. Code Ann. §32-428, will remain substantially unaffected. According to the Toxic Substance Control Act, no state may require testing of a chemical substance which duplicates testing required by the EPA or institute controls to protect against a particular risk if the EPA has already taken steps to protect against that risk. Since Virginia's legislation provides for no testing requirements and provides no mechanism, there appears to be no conflict as far as preemption is concerned, with the federal legislation.

Congressional policy, as set forth in §2 of the Act, is to require industry to bear the burden of developing data with respect to the effects of a chemical substance on health or the environment, and to give the EPA authority to regulate chemicals which present an "unreasonable risk to health or the environment" if regulation does not unduly impede or create economic barriers to technological innovation.

Certain manufacturers and processors bear considerable burdens under the legislation. They are required to finance the testing of certain chemical substances, to give the EPA 90 days notice of intent to manufacture new chemical substances and to put any currently produced chemical substance to a new use, to keep records and submit records to the EPA, and to inform the EPA of any information which could reasonably support the conclusion that a chemical might present an unreasonable risk to health or the environment. Also, manufacturers and processors of PCB's are required to phase out operations over the next 2½ years unless they apply for and are granted exception by the EPA.

S 3149 gives the EPA substantial new powers. Under the Act the EPA is authorized

to: (1) prohibit or limit, during the 90 day pre-production notice period, production of any new chemical substance or any currently produced chemical substance planned to be put to a new use; (2) prohibit or limit manufacture of, or prescribe labeling or disposal requirements, for any chemical substance which it feels presents an unreasonable risk to health or the environment. Other control measures deemed necessary by the EPA must be approved by a district court of appropriate jurisdiction, before they can be implemented. Measures requiring such approval include EPA decisions to prohibit production of new or "new use" chemical substances after expiration of the 90 day pre-production notice period, and to seize or provide other relief from chemicals found by the agency to present an imminent hazard to health or the environment.

Suits by private citizens against companies for failure to comply with the law, and against the EPA for failure to enforce the law, are authorized by the Act. Also, civil and criminal penalties are set for violation of the Act.

The Toxic Substance Control Act appears to be a complex and comprehensive piece of legislation. Its promise, as one environmentalist put it, is that "body counts will no longer be necessary before products are controlled." A more detailed analysis of the mechanism of the legislation will appear in a subsequent edition of the EPN.