We often hear that regulation of toxic chemicals in the U.S. is the best in the world. That may be true, but it is also irrelevant. The question to ask about chemical regulation is, "Is it adequate to protect public health and the environment?" If it is adequate, then why would we care whether or not it is the best in the world? If it is adequate, then it is good enough. And if it is INADEQUATE and it is the best in the world, that only tells us something dismal about ourselves and about the rest of the world.

The U.S. regulatory system for toxic chemicals is now 21 years old. This seems long enough to reveal whether or not the system is adequate to protect public health and the environment.

The Toxic Substances Control Act (TSCA) was passed by Congress in 1976. It is a complicated law and many excellent books have been written to tell people how to comply with it.[1]

The basic idea of the law is that government should decide which chemicals, among the 70,000 or so now in use, are dangerous, and then government should decide how to protect workers and the general public from the dangers (how to "manage the risks," to use today's buzz words).

It may be a surprise to some people, but even a huge bureaucracy like our federal government has a very limited capacity to conduct studies of chemical safety. For example, the National Toxicology Program (NTP) -- a consortium of eight federal agencies -- tests ONLY the cancer-effects of chemicals, and manages to test only a couple of dozen new chemicals each year. (Effects on the nervous system, the reproductive system, the immune system, the endocrine system, and major organs such as kidney, liver, heart and brain are simply not considered by the NTP.) During a typical year, while the NTP is studying the cancer effects of one or two dozen chemicals, about 1000 new chemicals enter commercial markets. Our federal government is simply swamped by new chemicals and cannot keep up. Furthermore, it is highly unlikely that this situation will change. No one believes that our government -- or anyone else -- will ever have the capacity to fully evaluate the dangers of 1000 new chemicals each year, especially not in combination with the 70,000 chemicals already in use.

Congress understood this situation in 1976 and wrote provisions into TSCA to compensate for the government's intrinsic shortcomings. Under Section 8(e) of TSCA, any chemical manufacturer, processor, or distributor who becomes aware of "any information which indicates that their chemicals present a substantial risk of injury to human health or the environment" must report the information to EPA [U.S. Environmental Protection Agency]. To be reportable, such information does not need to establish conclusively that a substantial risk exists. Instead, information must be reported if it "reasonably supports the conclusion" that a chemical presents such a risk. The law says such information must be reported to EPA within 15 days and provides a penalty of $5,000 for each day that the reporting is late.

A recent book on TSCA describes the importance of Section 8(e): "In some respects, Section 8(e) is the most critical of the TSCA reporting requirements. EPA views its information-gathering under this section as an early-warning mechanism for keeping the Agency and citizens apprised of newly discovered chemical hazards."[1, pg.57]

For 14 years, EPA relied upon the TSCA 8(e) early-warning system. However, in 1990, EPA had to admit that the system has not been working.

From 1986 to 1990, EPA engaged in a 4-year legal battle with Monsanto Corporation over Monsanto's pesticide Santogard PVI. In 1990, Monsanto agreed to pay a fine for failing to report scientific data that the company had acquired in 1981 showing that Santogard PVI causes tumors in rats. Because the law provides fines of $6000 per day for failure to report under Section 8(e), in 1990 Monsanto should have paid a fine of 9 years x 365 days x $6000 = $19.7 million. EPA settled for $198,000, which, to a company the size of Monsanto, is not a life-threatening fine. (Even a fine of $19.7 million would not have slowed Monsanto, which had 1996 sales of $9.2 billion.)[2]

This event revealed (once again) the government's feebleness. It can't even collect fines from scofflaws, as provided by statute. This incident also gave the agency a hint that Section 8(e) wasn't producing the data needed to protect public health and safety.[3] EPA then sent a letter to all chemical manufacturers urging them to submit any data they had failed to report under Section 8(e). Six months later, the Chemical Manufacturers Association asked for a meeting with EPA officials and together they hammered out an "amnesty" program whereby companies that had violated 8(e) reporting requirements year after year would send EPA all the data they had withheld. In return, EPA would limit its fines to $15,000 for any human study and $6,000 for any animal study or other type of health study. In addition any one corporation's total liability would be capped at $1 million.

While this amnesty was in effect, during the period 1991-1994, more than 120 companies sent EPA 11,000 studies or reports of adverse health effects from chemicals on the market that had never been reported in scientific literature. The DuPont corporation alone submitted 1380 studies; the Ciba-Geigy corporation submitted 580; Shell Oil corporation submitted 351; Hoechst Celanese corporation submitted 200.

Some studies had been on company shelves since 1960 and had not been submitted when TSCA was passed in 1976. Under the law, any such study submitted in 1991 should have drawn a fine of 15 years x 365 days x $6000 = $32.9 million dollars. Thus the "amnesty" saved these chemical corporations hundreds of millions of dollars if not billions (and impoverished the taxpaying public by an equal amount).

(A skeletal description of each of the 11,000 studies is available from EPA on 3 IBM-compatible computer diskettes, free for the asking. It is called the "Triage" database. Phone [202] 554-1404.)[4]

Clearly, any taxpayer, or any member of the public hoping their government is going to protect them from toxic chemicals, will be greatly disheartened by these revelations. Anyone who examines this situation dispassionately can see that these corporations have been bamboozling the government for years, thumbing their noses at the most important toxic-chemical-control law on the books, and dancing away from major liability. Meanwhile, EPA is carrying their water for them. How many thousands of people have been poisoned because these corporations withheld crucial information from EPA's "early-warning" system? After these corporate scofflaws and poisoners are caught red-handed, the government bends over backward to minimize any pain they might feel from their crimes.

EPA considers this program a great success. The NATIONAL LAW JOURNAL reports, "EPA views the program as an important success, and it has already attempted to duplicate it."[3] For example, to induce the natural gas industry to comply with another chemical-reporting law, EPA has waived $25,000-per-day fines and has agreed to cap liability at $3,000 per chemical, while capping any single company's liability at $90,000. Last year EPA began applying this same principal to "enforcement" of the nation's Right to Know law. EPA sent letters to thousands of food processors that have ignored the Right to Know law for years, waiving the $25,000-per-day fines and capping each corporation's liability at $2,000. This is called enforcement.[3]

How could EPA consider such programs a success? Because EPA has realized that it is powerless against the chemical corporations, who have bigger staffs, MUCH bigger budgets, and many, MANY
The Triage database is reportedly also available on the internet.

The NATIONAL LAW JOURNAL summarizes it this way: "EPA policy makers have themselves concluded that they cannot count on the traditional techniques of deterrence to prevent crime on this beat. Not with thousands of factories, hundreds of thousands of products and a complex set of laws--the meaning of which are subject to perpetual debate."

What better summary of our situation could we ask for? Any large corporation can tie up EPA in legal snarls for years or decades.

The idea of "regulating" corporate behavior to prevent the poisoning of the environment is a joke. It never has worked, and it never will work. It cannot work. The entire result of 21 years of steady effort under TSCA has been to remove 9 chemicals from the market. We could multiply the size of our federal government by ten (a truly frightening thought) and it would still be no match for the Fortune 500.

Yet these corporate behemoths have a gaping vulnerability. They are amazingly weak. If you stop to think about it, they are nothing more than the wizard of Oz. Behind their enormous displays of green smoke and thunder, all of their power boils down to this: they were given a single piece of paper, as a matter of privilege (not a matter of right), by a state legislature. That paper could be withdrawn or modified at any time. Their power endures only so long we, the people, fail to develop strategies focused on this huge vulnerability.

Any time we decide that the situation needs changing, we have the legal power under the Constitution to change it. Most of us sit idly by, watching the planet's ecosystems being shredded by unnecessary "developments" and unneeded products, its species genetically engineered and poisoned and displaced, the vast majority of the world's peoples deracinated, impoverished, and enslaved. Most of us sit idly by, dreaming of new regulations to replace the old regulations that never worked and never COULD work. Instead, we should be thinking long and deeply about the corporate form. Thomas Hobbes, the 17th century British philosopher, called corporations "worms in the body politic." Obviously, the body politic needs to develop a modern immune system to protect itself against these particular worms and any similar ones that might come along.

But this task will require us to remove our rose-colored glasses and stop pretending that regulation can control the behavior of these worms. Regulation is a ruse, a foil, a ploy invented and created by corporate brigands in the period 1885-1915. The environmental community needs to stop playing their game.

And, unpleasant as it may seem, we need to point our fingers and demand of those who DO play such games, Which side are you on? And, unpleasant as it may seem, we need to point our fingers and

--Peter Montague (National Writers Union, UAW Local 1981/AFL-CIO)


[4] The Triage database is reportedly also available on the internet via gopher: gopher.epa.gov/EPA Offices & Regions/OPPP/Toxic Substances/Triage though the day we looked for it, it wasn't there.

You need an IBM-compatible computer and 45 megabytes of free space on your hard disk to install the Triage database. This database allows you to search for studies by chemical, by company, and by other criteria. Some of the database records contain abstracts of the actual studies, but most records are pathetically inadequate summaries of what the studies revealed -- in many cases you only learn that a particular type of animal was exposed to a particular chemical. Full copies of each of the 11,000 actual studies themselves are also available, for copying fees, by mail from EPA.

IMPORTANT CONFERENCE MAY 2-4 IN OREGON

Once again the University of Oregon at Eugene is hosting an important conference on public interest science, May 2-4, 1997. During this century, science has become a powerful political force. Therefore, it has fallen almost completely under the domination of corporate money pursuing a corporate agenda. However, there are several thousand scientists in the U.S. who define themselves as "public interest scientists" -- people who investigate scientific questions and try to communicate scientific information relevant to the public interest. This is their conference. My experience with this conference is that it brings together a first-rate group of scientists, students, and citizen activists to discuss scientific questions, ethical questions, and political questions. If you attend, you won't be disappointed. For further information, send E-mail to: psc@darkwing.uoregon.edu, or check out their web site: http://darkwing.uoregon.edu/~psc. --Peter Montague

Descriptor terms: regulation; toxic substances control act; tsca; national toxicology program; ntp; triage database; monsanto; dupont; ciba geigy; hoechst celanese; corporate charter; corporations; santogard;