NAHMMA Policy Statement on Product Stewardship and Chemical Policy Reform

A one page summary of this document is also available

Introduction

NAHMMA as an organization is "Dedicated to pollution prevention and reducing the toxicity of municipal waste streams". In particular most NAHMMA members are involved in some way with hazardous products that become waste in household and small business settings. They may be involved in collection programs, education & outreach, or policy development relating to these wastes.

Two emerging policy areas have the potential to greatly impact the work of anyone involved in this field: Product Stewardship, and Chemical Policy Reform. Because of their importance to the organization, NAHMMA's Policy Committee is focusing most of its efforts in these two areas. In fact, NAHMMA as an organization is uniquely positioned to comment on the connections and synergies between the two issues.

This paper provides a separate introduction to each of the policy areas, then moves into a discussion of how the two together impact the work of NAHMMA members, and lays out NAHMMA's position on the issues. Also included are some online resources for further information.

Background- Product Stewardship

Over the past decade, state and local governments have been faced with finding solutions to rising waste quantities, strong competition for limited fiscal resources, and a growing amount of expensive and difficult-to-recycle products. These problems resist traditional solid waste management methods, which focus primarily on improving end-of-life management through better recycling and disposal programs. Product stewardship has emerged as a way to help deal with these problems.

Also known as Extended Producer Responsibility (EPR), product stewardship is defined as an approach to managing the lifecycle costs of a product in which a product's designer, producer, seller and user share the responsibility for minimizing the product's environmental impact throughout all stages of the product's life cycle. The greatest responsibility lies with whomever has the greatest ability to affect the overall environmental impacts of the product.

This concept aspires to recast the system of product responsibility from resting primarily on governments to having others – consumers, retailers and manufacturers – share in reducing the product's life cycle impacts. "Products" in this sense are defined to include durable goods, nondurable goods and packaging.

The burden on government resources will be eased when manufacturers design, businesses distribute and sell, and consumers purchase products that are less toxic and more durable, reusable and recyclable. Product stewardship shifts responsibilities "upstream" from government to a product's users, retailers, distributors and manufacturers. These parties then take greater responsibility for ensuring that products are collected and recycled, and that markets exist for the recovered materials. If there are costs to recycle or dispose of a product, those costs should be part of the product's original price. Internalizing the cost of the product and shifting end of life management can also incentivize green design.

Background- Chemical Policy Reform

In the United States (US) roughly 80,000 chemicals are used in commerce. Many of these are used as ingredients in consumer products that are available to the general public. And of course many of them are in the hazardous products that come in to Household Hazardous Waste (HHW) and Conditionally Exempt Small Quantity Generator (CESQG) Waste collection programs.

Many chemicals can have adverse impacts on human health and the environment. Body burden studies show that many chemicals are stored in our bodies. Recent testing shows that chemicals can be found in even the more remote wilderness areas of the country. And studies show that health and environmental impacts of chemicals have a large economic impact.

Commercial chemicals are regulated at the federal level under the Toxic Substances Control Act (TSCA), passed in 1976. Critics believe that TSCA does a poor job of preventing harm from chemicals. A primary criticism is that TSCA allows existing chemicals- those that were in commerce prior to the passage of the law- to be used with a minimum of testing. Today these "grandfathered" chemicals still make up over 90% by volume of chemicals in commerce. Since TSCA went into effect only five existing chemicals have been regulated.

For a surprisingly large number of chemicals used in the US there is still very little concrete data on health and environmental impacts, and much of the data that does exist is unavailable to the public.

The European Union (EU) has taken a very different approach in managing chemicals. A rule recently passed by the EU represents a sweeping change to the way chemicals are regulated there. Known as REACH- Registration, Evaluation and Authorization of Chemicals – the rule shifts the burden of proof from the government having to prove chemicals are unsafe to industry demonstrating that they are safe. American chemical companies do a considerable amount of business in Europe, and will have to comply with REACH's requirements for their activities there.

Canada has also made strides, with the recent completion of a Domestic Substances List (DSL), mandated by a 1999 law. This provides information on about 23,000 chemicals in commercial use in Canada, and identifies about 4,300 others for further scrutiny of their potential risks.

Here in the US, little progress has been made in reforming chemical policy at the federal level. However, a number of states and some local jurisdictions have passed legislation that addresses specific hazardous chemicals in commerce, such as brominated flame retardants, bisphenol A, lead, mercury, phthalates, etc., or that addresses chemical ingredients in specific categories of consumer products such as children's products.

At the same time there is growing interest in and support for the principles of Green Chemistry, defined as: "the design of chemical products and processes that reduce or eliminate the use and generation of hazardous substances throughout production, use, and disposal."

A movement is building to address chemical policy in a more comprehensive way, starting with efforts targeting local and state regulation, but with some recent movement toward federal legislation. Rather than deal with the latest concern on a chemical-by-chemical basis, comprehensive legislation could address remedying the inadequacy of data, fostering less toxic alternatives, and other approaches.

Connections & Synergies between the Chemical Policy Reform and Product Stewardship

- Both foster production of safer, less hazardous products
- In both areas, movement toward a framework approach is increasing ,while recognizing that addressing the problem product-by-product may need to continue.
- Responsibility is shifted away from government to industry, for management at end of-life in the case of product stewardship, and for acquiring data on toxicity and environmental impacts and in the case of some proposed chemical policy approaches
- Both include a continuing role for government in overseeing industry programs
- Both favor cost internalization to cover the cost of industry's enhanced role
- Both include industry compliance as a condition of sale of products
- Both issues have connections to climate change

- Product stewardship can lead manufacturers to reduce the toxicity of products
- Reduced toxicity of products facilitates collection & recycling.

NAHMMA's Position Statements

Chemical Policy Reform

NAHMMA advocates a comprehensive overhaul of chemical policy in the U.S., including TSCA, the federal law that governs the use of chemicals in commerce, in order to provide greater protection of human health and the environment. Informed and inspired by the recent initiatives in European Union and Canada, the reform effort should be tailored to the US.

Reform elements of particular concern to NAHMMA include:

- State and local governments play a critical role in environmental and public health regulation. Any reform of TSCA or other federal chemical regulatory statutes should preserve the rights of local and state governments to regulate chemicals, and resources should be provided for state level implementation.

- In order for a chemical to be on the market, adequate data regarding human health and environmental hazards and risks must be obtained

- Data that is not already available should be generated by industry, with government oversight

- Data must be readily available to all who work with and use a chemical or product, with full disclosure of all ingredients of products, including so-called "inerts"

- Prioritize the highest-risk chemicals for immediate action, including restriction of use or outright banning

- Promote green chemistry and use of safer alternatives through a variety of means to favor use of safer chemicals and disincentivize use of harmful chemicals.

- Policy changes should embrace all chemicals in commerce, moving way from separate regulatory schemes for pesticides, pharmaceuticals, etc.

    - Decisions regarding chemical usage should be based not simply on assessments of the level of harm potentially caused by a hazardous chemical, but on an assessment of a full range of alternatives.

NAHMMA supports efforts at the state and local level to adopt laws promoting these principles, as well as their incorporation into federal TSCA reform;

NAHMMA supports development of cooperative interstate efforts such as an Interstate Chemicals Clearinghouse.

NAHMMA supports the "Platform for the Reform of TSCA" statement published by The Safer Chemicals/Healthy Families Coalition

NAHMMA encourages members who work for local government and state government agencies, as well as other organizations, to become active and work towards having their employer organizations support chemical policy reform efforts in their region.

NAHMMA supports the development of international policies promoting safe management of chemicals, such as the United Nations Environment Program Strategic Approach to International Chemicals Management (SAICM).

Product Stewardship

NAHMMA supports the Product Stewardship Framework Principles, developed with the assistance of the Product Policy Institute and adopted by a growing number of regional product stewardship councils, as well as the Principles of Product Stewardship formulated by the Product Stewardship Institute and adopted by the National League of Cities, Environmental Council of States, and other organizations. These two sets of principles are included below.

Product Stewardship Framework Principles, developed with the assistance of the Product Policy Institute and adopted by several regional product stewardship councils:

1. Producer Responsibility

1. All producers selling a covered product into the State are responsible for designing managing, and financing a stewardship program that addresses the lifecycle impacts of their products including end-of-life management.
2. Producers have flexibility to meet these responsibilities by offering their own plan or participating in a plan with others.
3. In addressing end-of-life management, all stewardship programs must finance the collection, transportation, and responsible reuse, recycling or disposition of covered products. Stewardship programs must:
    - Cover the costs of new, historic and orphan covered products.
    - Provide convenient collection for consumers throughout the State.
4. Costs for product waste management are shifted from taxpayers and ratepayers to producers and users.
5. Programs are operated by producers with minimum government involvement.

2. Shared Responsibilities

1. Retailers only sell covered products from producers who are in compliance with stewardship requirements.
2. State and local governments work with producers and retailers on educating the public about the stewardship programs.
3. Consumers are responsible for using return systems set up by producers or their agents.

3. Governance

1. Government sets goals and performance standards following consultation with stakeholders. All programs within a product category are accountable to the same goals and performance standards.

2. Government allows producers the flexibility to determine the most cost-effective means of achieving the goals and performance standards.
3. Government is responsible for ensuring a level playing field by enforcing requirements that all producers in a product category participate in a stewardship program as a condition for selling their product in the jurisdiction.
4. Product categories required to have stewardship programs are selected using the process and priorities set out in framework legislation.
5. Government is responsible for ensuring transparency and accountability of stewardship programs. Producers are accountable to both government and consumers for disclosing environmental outcomes.

4. Financing

1. Producers finance their stewardship programs as a general cost of doing business, through cost internalization or by recovering costs through arrangements with their distributors and retailers. End of life fees are not allowed.

5. Environmental Protection

1. Framework legislation should address environmental product design, including source reduction, recyclability and reducing toxicity of covered products.
2. Framework legislation requires that stewardship programs ensure that all products covered by the stewardship program are managed in an environmentally sound manner.
3. Stewardship programs must be consistent with other State sustainability legislation, including those that address greenhouse gas reduction and the waste management hierarchy.
4. Stewardship programs include reporting on the final disposition, (i.e., reuse, recycling, disposal) of products handled by the stewardship program, including any products or materials exported for processing.

Principles of Product Stewardship formulated by the Product Stewardship Institute and adopted by the National League of Cities, Environmental Council of States, and other organizations:

It is in the best interest of federal, state, and local governments, companies, environmental groups, and consumers to reduce the adverse health and environmental impacts of consumer products. To achieve this result, product stewardship efforts aim to encourage manufacturers and retailers to take increasing responsibility to reduce the entire life-cycle impacts of a product and its packaging – energy and materials consumption, air and water emissions, the amount of toxics in the product, worker safety, and waste disposal – in product design and in end-of-life management. Product stewardship is a key strategy to reduce greenhouse gas impacts and address climate change issues.

The following Principles of Product Stewardship have been developed to support state and local agencies in promoting product stewardship and developing agreements with industry and environmental groups to reduce the health and environmental impacts from consumer products.

These principles will serve as the basis for stakeholder engagement in each product category. The most viable agreements will occur when the interests of all stakeholders are incorporated.

- **Responsibility**
  The responsibility for reducing product impacts should be shared among industry (designers, manufacturers, and retailers of products or product components), government, and consumers. The greater the ability an entity has to minimize a product's life-cycle impacts, the greater is its degree of responsibility, and opportunity, for addressing those impacts. Manufacturers have the greatest ability, and responsibility, to reduce product impacts.

- **Internalize Costs**
  All product lifecycle costs – from using resources, to reducing health and environmental impacts throughout the production process, to managing products at the end-of-life – should be included in the total product cost. The environmental costs of product manufacture, use, and disposal should be minimized, to the greatest extent possible, for local and state governments, and ultimately shifted to the manufacturers and consumers of products. Manufacturers should thus have a direct financial incentive to redesign their products to reduce these costs.

- **Incentives for Cleaner Products and Sustainable Management Practices**
  Policies that promote and implement product stewardship principles should create incentives for the manufacturer to design and produce "cleaner" products – ones made using less energy, materials, and toxics, and which result in less waste (through reduction, reuse, recycling, and composting) and use less energy to operate. These policies should also create incentives for the development of a sustainable and environmentally-sound system to collect, reuse, and recycle products at the end of their lives.

- **Flexible Management Strategies**
  Those that are responsible for reducing the health and environmental impacts of products should have flexibility in determining how to most effectively address those impacts. The performance of responsible parties shall be measured by the achievement of goal-oriented results.

- **Roles and Relationships**
  In realizing these principles, industry will need to provide leadership. Government will also provide leadership in promoting the practices of product stewardship through procurement, technical assistance, program evaluation, education, market development, agency coordination, and by addressing regulatory barriers and, where necessary, providing regulatory incentives and disincentives. Industry and government shall provide – and consumers should take full advantage of – information needed to make responsible environmental purchasing, reuse, recycling, and disposal decisions.

Vision Statement

NAHMMA's vision for effective chemical and product regulation: the most hazardous chemicals are banned, reducing the toxicity of products and the potential for exposure to product users; safer alternatives are developed through green chemistry and promoted through testing, labeling and other mechanisms; and products are managed in closed-loop product stewardship systems, funded by those who make and sell the products

Resources

For more information about Chemical Policy Reform and Green Chemistry:

A great place to begin is the Chemicals Policy Initiative, part of the Lowell Center for Sustainable Production, University of Massachusetts Lowell. Lots of information and links.
http://www.chemicalspolicy.org/index.shtml

EPA's Green Chemistry site:
http://www.epa.gov/greenchemistry/pubs/whats_gc.html

Environmental Defense Report: "Not That Innocent: A Comparative Analysis of Canadian, European Union and United States Policies on Industrial Chemicals"
http://www.edf.org/article.cfm?contentid=6147

2006 report by Mike Wilson, UC Berkeley scientist, detailing the Data Gap, Safety Gap, and Technology Gap
http://coeh.berkeley.edu/FINALgreenchemistryrpt.pdf

"Exposed: The Toxic Chemistry of Everyday Products and What's at Stake for American Power" by journalist Mark Schapiro
http://www.amazon.com/gp/product/1933392150?ie=UTF8&tag=centeforinves-20&linkCode=as2&camp=1789&creative=9325&creativeASIN=1933392150

Shorter article by Mark Schapiro in the October 2007 Harper's Magazine, "Toxic inaction: Why poisonous, unregulated chemicals end up in our blood"
http://www.harpers.org/archive/2007/10/0081742

2006 US GAO report on TSCA's ineffectiveness
http://www.gao.gov/docsearch/abstract.php?rptno=GAO-06-1032T

Overview of REACH by the UK Health & Safety Executive
http://www.hse.gov.uk/reach/about.htm

Body burden- biomonitoring for toxic chemicals in our bodies
http://www.bodyburden.org/

Mercury, brominated flame retardants, and other contaminants found in remote areas of several national parks:
http://www.thenewstribune.com/news/local/story/294280.html

Studies of the cost impact of chemicals in Minnesota, Oregon:
http://www.iatp.org/iatp/publications.cfm?accountID=421&refID=88338
http://www.oeconline.org/kidshealth/priceofpollution/index

California's Green Chemistry Initiative
http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/index.cfm

US EPA's Essential Principles for Reform of Chemicals Management Legislation
http://www.epa.gov/oppt/existingchemicals/pubs/principles.html

Safer Chemicals/Healthy Families Platform for the reform of TSCA:
http://www.saferchemicals.org/PDF/SCHF_Campaign_Platform.pdf

United Nations Environment Program Strategic Approach to International Chemicals Management (SAICM):
http://www.saicm.org/index.php?menuid=2&pageid=256

For more information about Product Stewardship:

Product Policy Institute:
http://www.productpolicy.org

The Product Stewardship Institute:
www.productstewardship.us

EPA's page about Product Stewardship:
http://www.epa.gov/epawaste/partnerships/stewardship/index.htm

Northwest Product Stewardship Council:
http://www.productstewardship.net/

California Product Stewardship Council:
http://www.calpsc.org