

Stifling Innovation

By ACSH Staff — June 4, 2009

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Despite the plethora of bad economic news this year, good news abounds for pro-regulatory, litigation-happy "consumer activists" on the left -- and their attorney camp-followers.

Administrator Lisa Jackson recently announced her plan to subject chemicals in our environment to even more stringent risk assessments, chasing minuscule risks to human health for no real purpose. Her plan involves the IRIS program -- Integrated Risk Information System -- which will now be used to characterize health risks of chemicals, however tiny the exposure. The chemophobes running the EPA are once more taking the lead in promulgating junk science, likely in an effort to justify their request for a budget increase of 37%, amounting to over \$10 billion.

It appears Jackson's unstated goal is to import here, by stealth, the European system, which employs the Precautionary Principle. This dogma asserts that substances in our environment are hazardous until proven otherwise, necessitating bans and product withdrawals until long-term studies prove them safe. This "better safe than sorry" tenet would lead to stagnation of new product development. What company with any sense would invest millions of dollars in formulating any truly new product, knowing that litigation and regulation will force them to delay marketing until some far-off approval from the EPA? Worse still, the "toxicity" of synthetic chemicals is inferred from high-dose rodent tests, bearing little or no relevance to human health.

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While Jackson states that this overhaul is needed to improve "transparency" of risk assessment for public health entities, the real beneficiaries will be plaintiffs' attorneys, who will use these "risks" as a basis of litigation, alleging various adverse health effects. Even the threat of such lawsuits will likely cause many companies to cave in to activists' demands for product withdrawals or scary labeling -- with big settlements as part of the deal. None of this has anything to do with enhancing human health.

The new administration is pushing an anti-business agenda, cutting through resistance from industry and true consumer advocates. Last week, President Obama ruled that federal agencies must review regulations dating back to the Clinton years to eliminate some that relied on federal preemption (that is, even products deemed safe at the federal level will now be more easily subject to state-by-state lawsuits). With uniform federal-level regulations comes a stable business climate for development of innovative new products. Conversely, the imminent loss of such stability -- as federal dominance yields to a patchwork of unwieldy local laws -- will lead to risk-aversion and stagnation. Unmoored local standards will ultimately be deformed by persuasive trial lawyers and lay juries.

New product development will slow to a trickle -- consumer choice on a range of products will become the victim of stultifying intimidation from "consumer activists" and their coterie of lawyers, as has already been demonstrated in the area of innovative pharmaceuticals.

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The Association of Trial Lawyers of America has lately refashioned itself as the "American Association for Justice," and its membership would have you believe they are now merely simple seekers of Truth and Justice -- but this tiger has not changed its stripes. The trial lawyers' concern with "the rule of law," which they claim motivates their new campaign against preemption, goes exactly as far as strategically necessary to produce big damage awards or settlements -- wrung from jury-fearing, meek corporate bottom-liners.

Add to this the imminent replacement of Justice Souter, a relative moderate on many regulatory issues, may soon be replaced a more "empathic" and lawsuit-friendly Sotomayor, and we have a formula for big trouble ahead.

In this climate, every time EPA -- with its new, stricter, more precautionary approach -- hints even in a non-committal fashion at the possible "toxicity" of some chemical or product, it will be inviting a wave of state-by-state lawsuits, with the plaintiffs stifling industry and likely getting a sympathetic hearing from the High Court at the end of the day. Let us hope Congress and the public are very cautious about embracing EPA's precautionary new mission.

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