INGREDIENT COMMUNICATION AND TRANSPARENCY IN CLEANING PRODUCTS: A WIDENING LANDSCAPE

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Since the era of the seventies, requirements for more information about cleaning product ingredients have been part of the legislative and regulatory landscape. In just the past decade, stakeholders including industry, nongovernmental organizations, and consumer interest groups have engaged on many fronts. Changes in federal chemical management laws, interest in supply chain transparency, digital trends, and competition inside the industry have mainly driven these developments.

Retailers have watched these developments and many are looking at a hazard-based listing regime to eliminate certain chemical ingredients from products on their shelves. Some retailers are considering a sort of scorecard or similar evaluation scheme to achieve designated or desired goals. Others have focused on the removal of specific chemicals. Some others have designed and implemented fully scaled initiatives pushing ingredient disclosure on major items, with ingredient disclosure on all products in their inventory as a future goal.

In 2017 California legislation was signed into law requiring ingredient disclosure for consumer cleaning products, resetting the landscape yet again. New York is likely to continue its work on a similar approach through regulatory requirements. With all the engagement and recent developments, manufacturers up and down the supply chain are undoubtedly affected by requests for more information about exactly what is in a product. The reasons for these requests range from perceived reputational risks to consumer exposure interests.

Common to all these developments and interests, there continues to be a "push and pull" on prospective and progressive ingredient communication and transparency initiatives of various types versus mandated right-to-know and disclosure requirements. In the course of trying to figure out, among other things, what type of information should be transmitted, how it should be done, and to what extent, a related question to the so-called push and pull aspect is why? Why communicate product ingredients? Is the basis for the information transmission grounded in a risk-based analysis for product ingredient information recognizing exposure and use considerations? Or, is it a hazard-based evaluation grounded in mandated disclosure that could perhaps lead to eventually no level of the ingredient being subject to any permissive use at all?

Industry has provided active leadership on these questions and more. In the mid 2000s, the cleaning products industry developed a consumer-focused ingredient communication initiative for four major product categories: air care, automotive care, cleaning, and polishes and floor maintenance products. In 2010, the industry rolled out a proactive voluntary program creating a uniform system for providing ingredient information to consumers in a meaningful and easy-to-understand way. The initiative largely followed the risk-based U.S. labeling conventions that consumers are familiar with for food, drugs, and cosmetics, listing ingredients present at concentrations greater than 1 percent on the product label. These listings were provided electronically, via a toll-free telephone number, or through some other non-electronic means. The initiative balanced confidential business information (CBI) needs through the use of functional class descriptors so that manufacturers could continue to innovate. In 2017, the industry went further and publicly identified available hazard data through an inventory of 582 ingredients used in consumer cleaning products sold in the United States (*available at* www.cleaninginstitute.org/CPISI/).

Notwithstanding industry efforts, several states have at some point sought cleaning product ingredient disclosure, the genesis generally starting with phosphate content in dish detergents. Over time some of these state measures have developed

into right-to-know disclosure requirements, but these state activities have been spotty and uneven. For instance, on the regulatory front, the New York State Department of Environmental Conservation (DEC) currently is pursuing guidance on household cleansing product information disclosure. This regulatory move is pursuant to DEC's interpretation of seventies-era requirements originally governing disclosure of phosphate content in cleaning products (*see* Environmental Conservation Law Article 35 and New York Compilation of Codes, Rules and Regulations part 659). With a nod to the modern era, it is anticipated that any final DEC disclosure guidelines will rely on information via manufacturers' websites. Massachusetts, on the other hand, repealed its phosphate disclosure regulation because it was found to be unnecessary in light of voluntary industry activity (that is likely to expand) in this arena (*see* 105 Code of Massachusetts Regulations 680.000: Phosphates in Household Cleaning Products, which contained an ingredient disclosure provision).

In addition to New York and Massachusetts, several other states have their own legislative proposal regarding phosphate content and/or ingredient disclosure for cleaning products. Oregon considered, but never acted on, a cleaning products ingredient disclosure legislative measure in 2013 (H.B. 2937, referred to Oregon House Committee on Health Care). New Jersey has an ingredient labeling and phosphate content bill currently pending (A. 624 Wolfe; and S. 285 Holzapfel). Of interest, but more broadly, New Jersey passed a right-to-know statute in 2013 requiring disclosure of primary ingredients above certain concentrations in the workplace (New Jersey Worker and Community Right to Know Act (N.J.S.A. 34:5A-1 et seq.). Current 2018 legislative proposals also exist in Maryland (H.B. 1080; died at the end of session) and Minnesota (H.F. 2647). Federally, Representative Raul Ruiz (D-CA-36) was the sole sponsor of the Cleaning Product Labeling Act of 2017 (H.R. 2728), which was referred to the Subcommittee on Digital Commerce and Consumer Protection in June 2017. The measure is substantively similar to prior congressional introductions directing the U.S. Consumer Product Safety Commission to provide ingredient information on cleaning product labels.

Fast forward to October 15, 2017, when California Governor Jerry Brown signed California Senate Bill 258, the Cleaning Product Right to Know Act of 2017, http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB258. For the first time in law, designated cleaning products are now subject to ingredient transparency requirements of cosmetics and food products. The new law requires manufacturers of designated products, as defined by the law, to disclose certain chemical ingredients on the manufacturer's website by 2020, or on the product label by 2021. Designated products are "a finished product that is an air care product, automotive product, general cleaning product, or a polish or floor maintenance product used primarily for janitorial, domestic, or institutional cleaning purposes." Cal. Health & Safety Code § 108952(f). Exceptions apply, such as referencing that the ingredient information is available on a website, or providing a toll-free phone number.

The thrust of voluntary industry initiative focuses on risk-based principles, which is consistent and aligned with much of the federal approaches on chemical management. For example, manufacturers of consumer and institutional products subject to the Federal Hazardous Substances Act (FHSA) are required to provide certain warnings about the principal hazard and recommended emergency care, but FHSA does not require the disclosure of a list of chemical ingredients. However, under the new California law, for the first time intentionally added chemicals that are included on designated or hazard-based lists or, certain fragrance allergens designed under EU regulations, must now be disclosed (chemicals on the so-called Proposition 65 list published by California are not required until January 1, 2023). Notably, the California law does not designate an agency to administer provisions or to consider changes through notice and comment rulemaking.

Under the new California law, protected CBI includes any intentionally added ingredient that the U.S. Environmental Protection Agency has approved for inclusion on the Toxic Substances Control Act (TSCA) Confidential Inventory, or a chemical ingredient claimed under the Uniform Trade Secrets Act. This inclusion is a departure from functional class descriptors under the voluntary industry initiatives. Balancing CBI considerations with demands for disclosure will continue to be a key element in future ingredient communication and transparency efforts.

While the trend toward ingredient transparency and communication is real and growing, continued challenges remain for consumer products industries to innovate, quickly get sustainable products to market, and protect intellectual capital. A simple reliance on hazard-based lists is likely to forgo the important work of a focused opportunity for notice and comment rulemaking on ingredients or chemical lists. A reliance on 'look no further' hazard-based lists may actually impair innovation in sustainable chemistries and products. Therefore, incentivizing innovation through CBI protections and a risk-based system is paramount.

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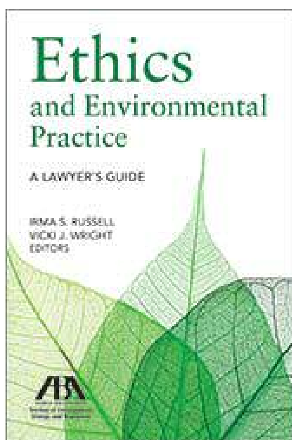

Ethics and Environmental Practice: A Lawyer's Guide

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FAST FASHION TRANSFORMING TO A GREEN STYLE

Elaine (Wuping) Ye

Unless you are familiar with fashion production processes, it may hardly cross your mind that everyday garments can be a major source of pollution to the environment. To provide affordable and continued cycles of seasonal fashion designs in short periods, fast fashion companies replace expensive natural materials, such as cotton, wools, and cashmere, with synthetic substitutes. Fast fashion companies tend to adopt nonsustainable production methods to drive down costs and keep up with the production demand. These production methods and the use of synthetic substitutes have become some of the largest polluters to the environment where upstream manufacturing and downstream disposals are located.

In 2017, several major news media reported that multiple U.S. and European fast fashion brands had been purchasing viscose fiber from factories in Asian countries. Tansy Hoskins, *H&M, Zara and Marks & Spencer Linked to Polluting Viscose Factories in Asia*, The Guardian, June 13, 2017, 8:24 AM, https://www.theguardian.com/sustainable-business/2017/jun/13/hm-zara-marks-spencer-linked-polluting-viscose-factories-asia-fashion. Viscose is a cheap and durable alternative to cotton. Even though viscose is considered more sustainable because it is made from bamboos that are fast-growing plants, the production of viscose is chemically intensive as it involves highly volatile and flammable substances that are then exposed to residents living near manufacturing plants. Other non-environment-friendly materials and production methods, such as use of acrylics and improper disposing of apparel waste, are also widely used in the fast fashion industry. Reports indicate that investigators found severe environmental damage, including water pollution from untreated contaminated waste surrounding factories, and air pollution in ten manufacturing sites in China, India, and Indonesia. *Id.*