Chemical Legislation in New York (Existing and Proposed)

- **Bisphenol A-Free Children and Babies Act**

  In 2010, the New York legislature enacted a ban on the use of BPA in child care products, defined as pacifiers and unfilled beverage containers to be used by children under three years old for the consumption of liquids. Effective December 1, 2010, the law prohibits the sale or offer for sale of any BPA-containing child care product intended for use by children three years of age or younger. Additionally, the Commissioner may authorize labeling of products not containing BPA as “Bisphenol A Free” or “BPA-Free.”

  N.Y. ENVTL. CONSERV. LAW §§ 37-0501-37-0511 – http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLENV0A37T5 +&LIST=LAW+&BROWSER=BROWSER+&TOKEN=03516925+&TARGET=VIEW

- **TRIS-Free Children and Babies Act**

  On August 1, 2011, the Governor signed into law a ban on the use of the flame retardant tris(2-chloroethyl) phosphate (TRIS) in products intended for use by children under the age of 3 years (including baby products, toys, car seats, nursing pillows, crib mattresses, and strollers). Effective December 1, 2013, the law prohibits any person or corporation from selling or offering to sell such products.

  N.Y. ENVTL. CONSERV. LAW §§ 37-0701-37-0709 – http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLENV0A37T7 +&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=13064481+&TARGET=VIEW

- **Ban on Flame Retardants**

  In 2004, New York enacted a prohibition on the manufacture, processing, or distribution of products containing more than 0.1% by mass of penta-BDE or octa-BDE. The law also established a Task Force on Flame Retardant Safety.

  N.Y. ENVTL. CONSERV. LAW § 37-0111 (A10050-A/S7621) – http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$ENV37-0111$$@TXENV037-0111+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=30904134+&TARGET=VIEW

- **Pollution Prevention Program**

  In 2005, New York enacted legislation requiring the Department of Environmental Conservation to promote pollution prevention, including reduction of the use of hazardous substances. The law established the New York State Pollution Prevention Institute (NYSP2I), funded by the Department. The mission of the institute is to provide a comprehensive and integrated program designed to make the state more sustainable through, *inter alia*, reductions in toxic chemical use.

  N.Y. ENVTL. CONSERV. LAW §§ 28-0101-28-0113 – http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLENV0A28+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=30904134+&TARGET=VIEW
  Pollution Prevention Institute – http://www.nysp2i.rit.edu
New York Chemicals Avoidance List

In 2008 the Governor of New York issued Executive Order No. 4, Establishing a State Green Procurement and Agency Sustainability Program. The Order establishes the Interagency Committee on Sustainability and Green Procurement. By September 1, 2008 (and annually thereafter), the Committee must identify at least three priority categories of commodities, services, or technology, and at least 12 priority commodities, services and technologies for which the Committee will develop green procurement lists. By December 1, 2008, the Committee must develop procurement specifications for use by state agencies and public authorities.

On December 4, 2009, the Advisory Council presented to the Committee a proposed approach for the consideration of chemicals in the development of green specifications (Consideration of Chemicals in the Development of Green Specifications). Exhibit F sets forth a proposed list of such substances (Preliminary Worksheet on Chemicals for Consideration in Green Procurement). The guidance document also notes that, when developing green procurement specifications, the Committee will consider chemicals that pose potential health and environmental impacts, including substances listed on:

- EPA Waste Minimization Priority List (http://www.epa.gov/osw/hazard/wastemin/priority.htm)
- U.S. Department of Health and Human Services National Toxicology Program, current Report on Carcinogens, List of Chemicals Known and Reasonably Anticipated to be Human Carcinogens (http://ntp.niehs.nih.gov/index.cfm?objectid=32BA9724-F1F6-975E-7FCE50709CB4C932)
- TSCA Chemical Action Plans (http://www.epa.gov/oppt/existingchemicals/pubs/ecactionpln.html)

On December 29, 2010, the Committee approved the policy document.

Consideration of Chemicals in the Development of Green Specifications (Approved) – http://www.ogs.state.ny.us/EO/4/docs/chemFINAL.pdf

New York Environmental Public Health Tracking Program

New York’s Environmental Public Health Tracking Program focuses on collecting and examining environmental and health information on an ongoing basis. The state’s Department of Health, 17 other states and New York City are part of the national Environmental Public Health Tracking Network, an effort led by the Centers for Disease Control and Prevention.

In 2009, the state’s Department of Health announced that it had received a 5-year grant from the CDC to expand a laboratory biomonitoring program, in order to evaluate state and regional concerns about human exposure to environmental toxicants.

Environmental Public Health Tracking Program – http://www.health.ny.gov/environmental/public_health_tracking/program/

Toxic Chemicals in Children’s Products (Prioritization Scheme) (Proposed)

In January 2011, a bill (Senate and Assembly versions) was introduced to implement a chemical prioritization process and limit the use of certain substances in children’s products. Within 180 days of
the effective date of the law, the New York Department of Environmental Conservation must identify chemicals of high concern and list such chemicals on a publicly accessible website. The Department must identify a substance as a chemical of high concern if the substance has been identified by a state, federal, or international governmental entity as either (1) a carcinogen, reproductive/developmental toxicant, or endocrine disruptor, (2) persistent, bioaccumulative, and toxic, or (3) very persistent and very bioaccumulative.

From among the substances of high concern, the Department must select priority chemicals. The Department must publish a list of such chemicals on a publicly accessible website, within 180 days of the effective date of the law. The Department may identify a substance as a priority chemical if it meets any of the following criteria:

- The chemical or its metabolites are found through biomonitoring in human tissues or fluids.
- The chemical is found through monitoring in the household or natural environment.
- The chemical is present in certain children’s products.
- The chemical has been identified by EPA as a high production volume chemical.
- Another U.S. state has banned the sale or use of the chemical.

The bill also lists the following priority chemicals:

- Tris (2-Chloroethyl) Phosphate
- Benzene
- Lead and Compounds (Inorganic)
- Mercury and Mercury Compounds, including Methyl Mercury
- Molybdenum and Molybdenum Compounds
- Antimony and Antimony Compounds
- Arsenic and Arsenic Compounds, including Arsenic Trioxide and Dimethyl Arsenic
- Beryllium and Beryllium Compounds
- Cadmium
- Cobalt and Cobalt Compounds

Within 12 months of the listing of a substance as a priority chemical, any manufacturer of a children’s product containing that priority chemical must provide the Department with certain information about the product. The Department may require that the manufacturer conduct an assessment to identify safety alternatives to the priority chemical. Additionally, the manufacturer or distributor of a children’s product containing a priority chemical must notify persons that sell or distribute the product that it contains a priority chemical.

Two years after the effective date of the law, persons are prohibited from distributing, selling, or offering for sale children’s apparel or children’s novelty products containing a priority chemical.

The bill would also establish an interstate chemical clearinghouse.


- Extension of BPA Ban to Children’s Toys and Food and Beverage Containers (Proposed)

New York law prohibits the use of BPA in pacifiers and unfilled beverage containers intended for use by children under three years of age. On May 16, 2011, a bill was introduced to extend the ban to toys (after December 1, 2011) and food and beverage containers (starting December 1, 2012) intended for use by children three years of age and younger. If there are no available alternatives to BPA at the time the ban on BPA-containing food and beverage containers goes into effect, the Department of Environmental Conservation may extend the effective date of the ban by up to two years.

Manufacturers must replace BPA with the least toxic alternative, which may not be a known human carcinogen, a developmental toxin, an endocrine disruptor or a reproductive toxin. Prior to the
manufacture of a regulated product containing an alternative substance, the manufacturer must provide the Department information on the alternative substance, and the Department must approve the use of the alternative substance.


- **New York Safe Cosmetics Act of 2011** *(Proposed)*

The Safe Cosmetics Act of 2011 was introduced in the New York Assembly on February 11, 2011. Starting January 1, 2012, any manufacturer of cosmetic products must provide the Department with a list of its cosmetic products that are sold in the state and contain any ingredient identified as causing cancer or reproductive toxicity. The bill provides that trade secret information will be treated as such.

The Department may investigate one or more cosmetic products containing chemicals causing cancer or reproductive toxicity. To that end, the Department may require manufacturers of products subject to the investigation to submit available health effects data and studies, as well as other information. If the Department determines that an ingredient is potentially toxic, it must notify the Occupational Safety and Health Hazard Abatement Board. Within 180 days of notification, the Board must develop and present proposed occupational health standards to the Department, unless the Board determines that such a standard is not necessary.


- **New York State Public Health Protection Act** *(Proposed)*

On January 24, 2011, the New York State Public Health Protection Act was introduced in the New York Assembly. The purpose of the Act is to establish a precautionary policy for the state.

The Act establishes a duty to take anticipatory action to prevent harm based on credible evidence of a threat of harm to human health or the environment, even when the extent and nature of the harm has not yet been proven. The Act also establishes an obligation to assess alternatives and select the safest and most sustainable feasible solution.

The Act creates a Precautionary Policy Planning Council, which must provide guidance on implementation of the precautionary policy, monitor government actions to implement the policy, and report to the legislature every two years on the implementation progress.


- **Restrictions on Phthalates in Children’s Products** *(Proposed)*

On June 13, 2011, a bill was introduced to restrict the use of phthalates in children’s products. Effective January 1, 2012, the bill prohibits the manufacture, sale, or distribution of toys or child care articles containing di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP), in concentrations exceeding 0.1%. Effective January 1, 2012, the bill also prohibits the manufacture, sale, or distribution of toys or child care articles intended for use by children under three years of age, when such products can be placed in the child’s mouth and contain diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DNOP), in concentrations exceeding 0.1%. Manufacturers must use the least toxic alternative in replacing phthalates.

• **Formamide-Free Children’s Product Act (Proposed)**

On June 2, 2011, a bill was introduced to prohibit the sale or offer for sale of formamide-containing foam mats intended for use by children three years old or younger, starting December 1, 2013.


• **Ban on Cadmium in Children’s Products (Proposed)**

On January 26, 2011, a bill was introduced to prohibit the sale or offer for sale of any children’s product that contains intentionally introduced cadmium (including products having components that contain intentionally introduced cadmium). A children’s product is defined to mean a toy, children’s jewelry, or other article (except clothing) that is primarily intended for use by a child under the age of 12. The prohibition would take effect 19 days after passage of the bill.

The manufacturer, distributor, or supplier of a children’s product must furnish the purchaser with a certificate stating that the product complies with these requirements. Certificates must be provided to the Department upon request, and to members of the public. The Department must annually report on the effectiveness of these requirements.


• **Limits on Cadmium in Children’s Jewelry (Proposed)**

In June 2011, a bill was introduced to restrict the sale or distribution of children’s jewelry containing cadmium in accessible metal or plastic substrate components. When a component contains cadmium in excess of 300 ppm, it is subject to the following migration limits:

- Accessible plastic components that are small parts may not exceed 75 ppm cadmium, as determined through solubility testing.
- Accessible metal components that are small parts may not exceed 200 µg of cadmium, as determined through solubility testing.
- Accessible plastic and metal components that are not small parts may not exceed 2 µg of cadmium, as determined through saline extraction testing.

Children’s jewelry is defined as jewelry intended primarily for use by children 12 years of age or younger. The restrictions are effective within one year of passage of the bill.


• **Prohibition on BPA in Business Transaction Paper (Proposed)**

This bill would prohibit the distribution or use of paper containing BPA for the recording of any business or banking transaction. Paper manufacturers must replace BPA with the least toxic alternative, which may not be a known human carcinogen, a developmental toxin, an endocrine disruptor, or a reproductive toxin. The Department of Environmental Conservation must certify that the alternative substance meets these criteria.

The Department must identify methods for disposing and recycling paper receipts to minimize exposure to BPA. The Department must also advise the public on safe practices for handling and disposing paper receipts. The bill also establishes within the Department an Advisory Committee on Least-Toxic Alternatives to BPA.

• **Restrictions on Lead Content in Jewelry** *(Proposed)*

On January 14, 2011, a bill was introduced to impose limitations on the lead content of jewelry, children’s jewelry, and body piercing jewelry. All jewelry being sold must be accompanied by a notice stating the percentage of lead in the jewelry, and any jewelry containing more than 200 ppm lead by weight must include a specific warning statement.


• **Restrictions on Chemical Content of Nail Polish and Nail Hardener** *(Proposed)*

On January 10, 2011, a bill was introduced to prohibit the manufacture, distribution, sale and use of nail polish and nail hardener containing certain dibutyl phthalates (DBP), toluene, or formaldehyde.


• **Ban on BPA in Hot Beverage Lids** *(Proposed)*

On May 12, 2011, a bill was introduced to prohibit the manufacture, distribution, sale, or offer for sale of hot beverage lid products containing BPA. In replacing BPA, the least toxic alternative must be used, and the alternative substance may not be a carcinogen or reproductive toxicant.


• **Restrictions on BPA and Phthalates in Toys and Child Care Products** *(Proposed)*

On February 1, 2011, a bill was introduced to prohibit the manufacture, distribution, sale or offer for sale of any BPA-containing toy or child care product intended for use by children under 14 years of age. The bill also prohibits such products containing any phthalates (DEHP, DBP, BBP, DINP, DIDP, or DNOP) or combination of such phthalates in excess of 0.1 percent. Manufacturers must replace BPA or the phthalate with the least toxic alternative, which may not be a carcinogen or reproductive toxicant.


• **Restrictions on Phthalates in Toys and Child Care Products** *(Proposed)*

On February 2, 2011, a bill was introduced to prohibit the manufacture, distribution, sale or offer for sale of any toy or child care product containing di(2-ethylhexyl) phthalate, dibutyl phthalate, or butyl benzyl phthalate in excess of 0.1 percent. The bill also prohibits the manufacture, distribution, sale or offer for sale of any toy or child care product (intended for use by a child under three years of age and intended to be placed in a child’s mouth) containing di-isononyl phthalate, di-isodecyl phthalate, or di-n-octyl phthalate in excess of 0.1 percent. Manufacturers must replace the phthalate with an alternative substance that is not a carcinogen or a reproductive toxicant.