

State Toxic Precautionary Policies
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We have built a broad & diverse coalition in MA called the Alliance for a Healthy Tomorrow, which now has over 140 member organizations. It was set up to achieve fundamental change in toxic chemical policy. I will discuss today our proposed state-level alternatives program, why we chose to pursue it, how it works, and some keys to success.

How did we get here?

The development of our statewide alternatives program began in 1999 when activists from Clean Water Action, the Massachusetts Breast Cancer Coalition and the Lowell Center for Sustainable Production at UMass Lowell, started in 1999 with the goal of implementing the Precautionary Principle, and in fact named their endeavor the “Precautionary Principle Project.” From there, two things led them to a substitution approach. One was research on successful substitution policies in Europe. And the other was the State’s experience with the Massachusetts Toxics Use Reduction Program, which was established from a 1989 state law to promote safer and cleaner production in Massachusetts firms and help high volume commercial users of toxic chemicals reduce their use of toxic chemicals in the manufacturing process. While not essential, TURA was a great jumping off place for us.

From this research and experience, our team decided that the Substitution Principle was the key to implementing precaution successfully.

Stepping Stones

In late 2002 we filed a bill that is essentially a state level substitution program, called the Safer Alternatives Bill. It will require that all uses of toxic chemicals be replaced by safer alternatives whenever feasible. This is a detailed, practical program and is the coalition’s top priority. Everything that we do is building up to its passage which we hope to achieve in the 2007-2008 legislative session. It currently has 71 cosponsors in our 200-person legislature.

Meanwhile we have other legislation filed that is designed to be stepping stones to this reform. This spring we passed a bill to phase out certain products that contain mercury and replace them with safer alternatives. And we are optimistic that before our session ends in July we will pass legislation to replace toxic cleaning

products in all public buildings with safer alternatives. These and other campaigns are critical to our building a climate of support for replacing toxic chemicals with safer alternatives and ultimately for passing the Safer Alternatives Bill.

Why Substitution: working with the public and labor unions

So then let's begin talking about why we chose substitution as our strategy in Massachusetts. Some of the reasons are that it appeals to the public's common sense, it appeals to the powerful labor unions, it stands up to industry attacks, and is practical to implement. I will talk through each of these points briefly.

1) Resonates with the public and the labor unions

- a) Pushing for substitution allows us to talk about replacing toxins with safer alternatives. So rather than "taking away" the products and the conveniences that people like and are used to, we are advocating for making them safer and better.
- b) We talk about standing for progress and innovation. Green chemistry in the U.S., as many of you know, got its start in Massachusetts and we point to that often as the next generation of economic progress and innovation. We play on the idea that America does it best and that Massachusetts can be on the cutting edge of identifying and creating some of these safer alternatives, so substitution will keep us ahead of the curve.
- c) In MA we have quite a strong labor base, which is different from some of the other states working on these issues, and we need them on our side if we are going to win. We involved labor unions from the beginning of the coalition, several unions sit on our board and they play a huge role in determining the direction of our campaigns. The mainstream ones we work with, including the AFL-CIO which endorsed our bill last year, prefer not to talk about bans and phase outs, but they like the substitution concept. What we have seen happen before is that when a chemical is banned, a company will seek a alternative—substitution always happens automatically—but when the unions and the advocacy groups are not involved in the process, the result is that the alternative is not always safer. Or, the danger is just shifted from the consumer to the worker. So to address that, the program we developed works to assure that change is positive for workers, and involves the unions in decision-making on substitution so that the alternatives truly are safer.
- d) No one can pretend like jobs and the economy don't matter. Even our best allies in the Legislature won't support anything that threatens to take away jobs. So we need to always focus on how the innovation involved with

substitution will build the economy, and that we propose helping businesses transition to using safer alternatives. We developed a very business-friendly model that even the least traditionally supportive legislators find hard to argue.

2) Stands up to industry attacks

The industry in Massachusetts has found it hard to argue with the “safer alternatives” theme.

First, they lied and told their base of businesses and legislators that our bill is a “ban on chemicals” which we are easily able to diffuse.

But then many industries began telling legislators that their chemical is the safest alternative, or that no one can determine what is safer, because there are too many unknowns and trade-offs.

Here again, we turned to that 1989 law I mentioned earlier which also created a state funded, independent institute that is an international leader on alternative technologies called the Toxics Use Reduction Institute (TURI) at U-Mass Lowell. In June 2005 we fought for and won \$250,000 of state funding for TURI to conduct an alternatives analysis for 5 toxic chemicals (lead, formaldehyde, hexavalent chromium, DEHP, and perchloroethylene) and show that alternatives are available and feasible for most uses of these chemicals.

The TURI alternatives analysis will be completed by July, and it will greatly advance the Safer Alternatives bill. It will also be a very important model for how to conduct scientifically based analysis of safer alternatives and diffuse much of the opposition’s arguments.

3) Is practical to implement

As I mentioned earlier the SA bill is a practical, fully detailed program with several steps to implementation that are designed to be friendly to business and consumers. Here are some of the questions we worked through when designing the bill in order to achieve this practicality.

1) How do you decide what substitutes are feasibly and safer?

It is up to TURI to conduct an alternatives assessment for the major uses of the priority toxic chemicals to determine whether there are feasible safer alternatives. They will determine parameters of what alternatives are to be considered to be safer or safest, which alternatives are too “un-studied” to be acceptable and which

alternatives are unacceptable—toxic. Once that is done, the process can go one of two ways:

- **If there *are* feasible safer alternatives**, businesses develop their own substitution plans and can either a) certify they are using a safer alternative, b) propose a different safer alternative, (subject to review). The state DEP will be able to impose deadlines for substitution based on economic factors and feasibility factors.
- **If there are *not* feasible safer alternatives**, state agencies create research and development plans, but *do not* take regulatory action on that product or use.

2) How do you regulate this without hurting the economy?

Whether it is economically feasible for a business to switch to a safer alternative depends on a variety of factors and timing. So if at the time of initial analysis, there are costs associated with a switch to safer alternatives that make it not “feasible,” the program steps in to assist with the transition and make it economically feasible.

This is achieved through a “Business Assistance Transition Program” that aids businesses in implementing safer alternatives, which will include technical assistance, grants and loans, and research and development. This program will be funded through a fee on the use of toxic chemicals that will be collected and earmarked to set up a fund for administering the program.

3) How do you prioritize which chemicals to address first?

The bill as it is written will set up an on-going program but initially targets ten specified chemicals. We picked the ten based on their high use in MA, their hazards, their available alternatives and the breadth of their impact. Then we empowered the state to decide which chemicals should be addressed first. DEP will use the TURI safer alternatives analysis to set priorities & regulations. They will likely act first on low hanging fruit—where affordable safer alternatives readily available and set further requirements for substitution based on the health damage cause by chemicals.

Keys to Success

This is a very general outline of this substitution approach as we have proposed it in Massachusetts, and I did bring several bill factsheets with me that you can come and get afterwards if you would like more details. But there are a few keys to

success that we can recommend to other states and coalitions seeking to implement this kind of reform.

First, programs don't work if the political will is not there to implement them properly so make sure that the public is involved throughout the process. We obviously are all engaged in grassroots organizing to pass our platforms, but in this bill we also set up a Public Oversight Board and have in place measures for citizen appeals, citizen enforcement, etc. Holding the politicians accountable will aid in the implementation and is critical to the success of the program.

Second, as much as you can, design the program with the direct participation of key stakeholders. For us, that meant working directly with the AFL-CIO and other unions to ensure that we had their buy-in from the beginning. We all need buy-in from a wide range of constituencies—the AHT coalition is led by public health, faith, consumer, health affected groups, and many more. Build your broadest coalition first and have the key constituencies at the table in developing the policy proposals!

Finally, set up your stepping stones so that you can keep your base energized and prevent burnout. We knew when we introduced this bill in 2002 that it was not going to pass in a year. That is why we also filed the mercury bill, the cleaners bill, introduced an executive order and have a number of simultaneous grassroots campaigns happening. These other campaigns serve as stepping stones to passing the Safer Alternatives bill and they also help to keep our base engaged by building momentum and winning us small victories. So keep your eye on the prize, but win other victories along the way which will keep the energy moving in your direction and ensure a big victory in the future.