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APRIL 2000

GOVERNMENT

Regulation by Shaming



Forcing companies to disclose health and safety information can improve customer choices and industry practices -- but it can also distort perceptions of what should be changed

by Mary Graham

(The online version of this article appears in two parts. [Click here to go to part two.](#))

THE federal government phased out the use of lead in gasoline and household paint twenty years ago, but it is still present in many products. Makers of china, water

faucets, and calcium supplements have recently gone to great lengths to reduce the amount of lead they use. What is remarkable is that these efforts are not the usual attempts to avoid stiff penalties associated with new federal rules. Instead they are a response to a California law that requires companies to provide information to the public about practices that remain perfectly legal. Corporations all over the country are feeling the effects of an increasingly powerful but unheralded government policy tool: mandatory disclosure.

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More on [**politics & society**](#) in *The Atlantic Monthly* and *Atlantic Unbound*.

From the archives:

"Told You So,"
by Cullen Murphy
(September, 1999)

The writing on the wall -- and the bottle, the box, the stroller, the doe...

"The NEXT Industrial

In 1986 California voters approved by a margin of two to one a ballot initiative that required companies to give "clear and reasonable warning" whenever they exposed people to cancer-causing chemicals or substances toxic to the reproductive system in amounts above levels set by the state. The law, known as Proposition 65, prompted few such warnings. But it did inspire a flurry of efforts by nationally known companies -- faced with public humiliation if accused of failing to warn consumers -- to reduce the public's exposure to lead and other toxins. Ten china companies agreed to cut the amount of lead in their glazes by half. Fourteen major plumbing-supply manufacturers agreed to produce brass faucets that were virtually lead-free. Ten producers of calcium supplements agreed to reduce the amount of lead in their tablets to almost nothing. Pet, Inc., a major food processor, sped up its elimination of lead solder from cans of Old

Revolution," by William McDonough and Michael Braungart (October, 1998)

A new approach that aims to solve rather than alleviate the problems that industry makes.

El Paso chili gravy and Progresso tomatoes.

Other large companies also made rapid changes. Gillette removed a carcinogen, trichloroethylene, from Liquid Paper. Suppliers to Sears, Roebuck reformulated car wax and carburetor cleaner. Dow Chemical took a carcinogen out of its K2r spot remover. Kiwi Brands, a division of Sara Lee, reformulated a waterproofing spray for shoes to remove another carcinogen.

"Whatever Happened to the Cranberry Crisis?", by John F. Henahan (March, 1997)

Are we victims of crisis overkill, or are the dangers all too real? A report on the status of environmental crises, past and present.

It is not that the companies accepted the idea that their products posed risks to consumers. On the contrary, they argued that the California law in many cases unfairly emphasized risks that were negligible. They found support in W. Kip Viscusi, a professor at Harvard Law School, who studied the law closely and concluded that it probably did more harm than good, by giving people a false impression of the real risks. But the companies changed their products anyway. And because California amounts to 15 percent of the national market for many goods, they often changed them nationwide. Why did the companies make expensive -- and, they believed, unnecessary -- changes? They were bowing to a newly potent political force: regulation by shaming.

From Atlantic Unbound:

Web Citation: "Armchair Activism," (June 24, 1998)

Those too busy (or lazy) for environmental causes have no more excuses.

With both Democrats and Republicans calling for greater "transparency" in business and government and complaining that national standards are often costly and ineffective, mandatory disclosure is being

Related link:**Prop65 News**

"Your online guide to California's unique environmental statute." Updates on legal developments and conferences pertaining to Proposition 65.

seized on as one way of addressing social problems ranging from persistent pollution to medical errors. "Informational approaches are a lot less expensive than traditional regulation," Cass Sunstein, a law professor at the University of Chicago, says. "They strengthen political processes by informing citizens, and market processes by informing consumers."

Some familiar kinds of disclosure requirements create economic incentives for companies to improve their practices: nutritional labeling, for instance, aims to influence which processed foods customers buy, and on-time ranking of airlines is designed to aid travelers in making informed choices. Other requirements amount to a kind of corporate shaming. Manufacturers listed among the worst polluters or accused of running sweatshops may change their ways out of fear of customer boycotts, increased regulation, or community hostility. The company's reputation, hard to build and easy to destroy, is at stake.

Some of the nation's largest businesses are fighting back against these new tactics. Last year a coalition of chemical, oil, forest-products, and automobile companies successfully lobbied Congress to direct the Environmental Protection Agency to put various procedural hurdles in the way of information disclosure. Chemical companies invoked risks of terrorism to gain passage of a law that makes it a

criminal offense for government officials to reveal information about the potential impact of accidents on surrounding communities. At least fourteen states have enacted laws to protect food-processing companies from public criticism that is not supported by scientific evidence. One such law briefly ensnared Oprah Winfrey, when Texas cattlemen sued her for saying on television that a description of mad-cow disease "stopped me cold from eating another burger." (The suit was unsuccessful.)

From the archives:

"In the Strawberry Fields," by Eric Schlosser (November, 1995)

The management of California's strawberry industry offers a case study of both the dependence on an imported peasantry that characterizes much of American agriculture and the destructive consequences of a deliberate low-wage economy.

UNTIL recently most disclosure was fragmentary. Even after the passage of the Freedom of Information Act of 1974 the wealth of company information held by the government had to be requested piece by piece; foreknowledge of its location and substance was usually necessary. Nonetheless, enterprising activists, prosecutors, and journalists proved that corporations could be shamed into changing their ways. Cesar Chavez publicized the working conditions of grape pickers in California's San Joaquin Valley, sparking a five-year boycott by 17 million people that eventually resulted in a union contract for the workers. When television reports in 1989 revealed that many apples were sprayed with Alar, a growth regulator that contained small amounts of a carcinogen, apple sales collapsed overnight and the manufacturer withdrew Alar from the market. (It was later agreed that the risk of cancer from Alar-sprayed apples was

"The Destruction of Dolphins," by Kenneth Brower (July, 1989)

In spite of laws intended to protect them, federal indifference and cruel fishing methods once again endanger dolphins.

minimal.) Environmental groups protested that tuna-fishing practices killed dolphins, setting off a two-year tuna boycott that led processors to promise that they would buy only "dolphin-safe" tuna, a label that tuna cans still carry. The government reinforced the campaign with the Dolphin Protection Consumer Information Act of 1990, which set labeling criteria and provided penalties for false information on labels.

The nation's first electronic disclosure requirement was born almost by accident in 1986, when Congress tacked onto a Superfund re-authorization bill the requirement that manufacturing companies report annual release levels of toxic chemicals, facility by facility and chemical by chemical. It is now credited with enormous success -- reducing releases of chemicals subject to the law by more than 40 percent. The provision was part of a response to the release of methyl isocyanate at a Union Carbide pesticide-manufacturing plant in Bhopal, India, in 1984, which left more than 2,000 people dead and 100,000 injured. To most people the Toxics Release Inventory (TRI) looked like just another reporting requirement. But buried in the law was a stipulation that information about toxic emissions also had to be made available to the public and distributed "by computer telecommunications."

Continued...

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Illustration by [Alison Seiffer](#).

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