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Reining in the Regulators

For One Group, Making Enemies on the Hill Means Progress

By Kara Sissell

To understand how some companies get their message to Congress, it is useful to look at the inside-the-beltway world of lobbying through the eyes of those groups that operate behind the scenes, outside the sphere of industry trade associations such as ACC or NPRA. Tucked throughout the nation's capital are other, smaller groups usually hired directly by individual companies to tackle a particular issue. Their executives are little known by the general public but all too familiar to the federal agencies they harass.

One such group, the Center for Regulatory Effectiveness (Washington), has made its share of enemies. CRE is seen by many chemical companies as the one-man driving force behind the Data Quality Act (DQA), which passed in 2000 and requires that information used or disseminated by federal agencies be objective, transparent, and reproducible (CW, Aug. 4, 2004, p. 29). The DQA may on the surface seem a technicality, but environmental groups say industry can use it to delay federal environment, health, and safety laws.

The net result is that the DQA could prevent agencies from using certain studies to justify product bans or restrictions. Industry groups say they support the DQA because it will help keep regulators from basing their policies and rules on dubious scientific data.

Jim Tozzi, a CRE board member, has a long history of government service, first at the Defense Department, and then at the White House Office of Management and Budget (OMB), where he oversaw implementation of federal environmental programs. Tozzi says that experience has made him well suited to rein in regulatory overkill. He worked on passing the regulatory reform bill in the mid 1990s, a massive, industry-backed attempt to streamline regulations that he says "died under its own weight."

In 1996, Tozzi formed CRE, which he describes as a watchdog organization that works to ensure that the information officials use to develop regulations is accessible to the public, and that the data is also of the highest quality. CRE also monitors agencies' compliance with a number of "good government" statutes, including the DQA, the Paperwork Reduction Act, and the Regulatory Flexibility Act.

Tozzi set to work on the DQA, passed in 2000 as a two sentence rider to an omnibus spending bill. It has been criticized by right-to-know groups as a back door move to force the goals of the regulatory reform bill onto government agencies, an assertion Tozzi refutes.

One of the DQA's most widely publicized applications involved CRE member Syngenta, which used it to successfully discredit studies indicating that the weedkiller atrazine was causing frogs to develop male and female traits. EPA was not allowed to use the studies in its reassessment of atrazine on the grounds those studies did not conform to DQA. Syngenta eventually received a five-year permit renewal for atrazine (CW, Sept. 1, 2004, p. 29).

Tozzi says the chemical industry is the prime beneficiary of DQA, although the industry was not involved in its development. "I don't know of any industry that is more affected by the DQA," he says, "If anything is a priority for them, it should be this act." After it passed and its importance became apparent, ACC began to take notice, however.

ACC says that it supports the DQA even though it was not involved in passing it. “The first ACC knew about the act was after it had passed. But regardless of how it came to be, we think the DQA is a reasonable, good-government piece of legislation,” says ACC assistant general counsel Jamie Conrad. “But both CRE and the DQA’s critics overstate the potential of the law. It’s not going to have a huge effect on rulemaking. But it does give people a means to try and get bad information corrected—something anybody should be able to support,” Conrad says.

Tozzi says trade associations likely do not want to be too closely associated with the DQA in the minds of the public. “If ACC was strictly identified as the sponsors of the DQA and Non Governmental Organizations (NGOs) went after them like they do CRE, ACC’s members would be all over their backs,” Tozzi says. CRE can serve as a kind of front group to deflect criticism from those that benefit from the statutes, he says. “With some issues, just a lot of facts and elbow grease will work. If you want to change the system, however, it’s better to hook up with third parties and let them take the flack.”

Trade association member companies also tend to be more concerned with having access to lawmakers, something people have to be willing to sacrifice if you want to make significant changes, Tozzi says. “Most members judge trade associations by access to government versus impact on government,” he says. “Offending lawmakers makes members unhappy. I would last about three minutes in a trade association,” he adds.

DQA suffered a setback in federal court late last year, however, when a judge rejected an industry group’s petition to allow groups to sue federal agencies in federal court for not complying with the act. The judge’s ruling has been appealed. Right-to-know group OMB Watch (Washington) says the court’s ruling helps prevent industry from delaying rules even further.

CRE’s latest project is to enhance access to information that is submitted by stakeholders during a federal rulemaking’s public notice and comment period. CRE launched a Web site last week, the Interactive Public Docket (www.theipd.us), aimed at allowing stakeholders to continue debating public comments after an agency’s public comment period has closed. The site was accessed by hundreds of groups around the world first eight hours of operation, Tozzi says.

CRE’s main Web site, www.thecre.com, is the best place site for tracking DQA issues, executives say. “CRE’s Web site is the single best source of information on the DQA,” Conrad says. “Even Tozzi’s harshest critics say they use it.”