As Dan Farber discussed in his recent post, David Markell 's recent paper on TSCA provides some really interesting history. John Applegate has some fascinating pieces on the history and future of TSCA as well–well worth the read also. I thought it was curious that Dan focused on cost-benefit barriers imposed by the courts as being the obstacle to effective risk regulation, though. Clearly that was a problem identified in the Corrosion Proof Fittings (CPF) case, but only one and not the most problematic one. I know I may be one of the few people outside the three CPF judges and the chemical industry to be of this view, but I think that the 5th Circuit was right in turning back the asbestos ban rule–EPA did a poor job of evaluating the substitutes to asbestos, and did not do a very good job of evaluating whether something short of a ban would have moved the market off of asbestos for the regulated uses. Not that I blame EPA–they did the best they could I suppose given the state of the science of toxicology and alternatives assessment at the time, and given the level of funding they had.

So who cares–reform is needed anyhow. For me the problem is that the reforms–certainly in California and also at the federal level–are so focused on "fixing" TSCA that they are losing the valuable, more progressive aspects of the alternatives-based approach embedded in TSCA. Clearly, we need better testing authority, and so on, but the safety standard approach in the current proposed legislation with express reliance on risk assessment is a step backward. And perhaps more than anything else, chemical reform will absolutely require a stable funding mechanism.