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S. HRG. 113–724

STRENGTHENING PUBLIC HEALTH PROTECTIONS BY ADDRESSING TOXIC CHEMICAL THREATS

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

JULY 31, 2013

Printed for the use of the Committee on Environment and Public Works

Available via the World Wide Web: http://www.gpo.gov/fdsys

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ONE HUNDRED THIRTEENTH CONGRESS
FIRST SESSION

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STRENGTHENING PUBLIC HEALTH PROTECTIONS BY ADDRESSING TOXIC CHEMICAL THREATS

WEDNESDAY, JULY 31, 2013

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room 406, Dirksen Senate Office Building, Hon. Barbara Boxer (chairman of the Committee) presiding.

Present: Senators Boxer, Vitter, Carper, Cardin, Udall, Gillibrand, Merkley, Inhofe, Barrasso, and Fischer.

Also present: Senator Manchin.

OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Good morning, everybody.

We have a very interesting day ahead of us today. We also have a lot of running back and forth to do. So I am going to lay down the rules.

We have two votes at 10:45, which means we can go here until 11. Then we are going to recess until 1, because the President is coming to meet with the Democratic Caucus. So all of you wonderful panelists and colleagues know there is going to be a lot of back and forthing. But we will get through this today, because this is an exceedingly important time.

I am also going to be moving this gavel. At the end of 5 minutes, I am going to go like that, even on myself, which is very difficult. But I am going to do that because of the terrible schedule that we have.

We also have colleagues who are very prominent in other committees, the chairman, ranking member, so they will be running in and out. So forgive us if we look hectic, but we are focused on this issue.

So I will start by saying good morning, everybody, and we will focus today on how to protect the American people from harmful chemicals while allowing companies who act responsibly to sell their products.

Our dear friend, the late Senator Lautenberg, and I have worked on these issues for a decade, introducing many bills together on TSCA reform. In 2005, we introduced S. 1391, in 2008, S. 3040, in 2011, S. 847, in 2013, S. 696, the Safe Chemicals Act of 2013. In May, the month after Senator Lautenberg and I introduced our

final TSCA reform bill together, S. 696, he introduced S. 1009 with Senator Vitter.

We will look at multiple bills today to reform TSCA to determine what we support and what we oppose, so we can move forward to make the American people safer. And that is the key. All the bills agree on one principle: protecting people from harmful chemicals is important. The devil is in the details, and that is why I fully support S. 696, where the details support that principle.

It is clear that TSCA is broken. In a key decision by the courts, EPA's plan to phaseout asbestos uses was overturned. Despite the court's recognition that EPA concluded that asbestos is a potential carcinogen at all levels of exposure, regardless of the type of asbestos or the size of the fiber. So now EPA, after that decision, faces terrible problems in addressing dangerous chemicals.

I very much want to reform this law so it works as intended, and it is better than current law. I want to be very clear. When respected voices from all over the Country tell us to protect the rights of the people we represent, I say yes. That means ensuring that a chemical safety bill truly protects our families in California and all across this great Nation. We have heard from a wide range of voices in opposition to S. 1009. California EPA has written to express serious concerns about the effects of S. 1009 on California's ability to protect its residents.

The Asbestos Disease Awareness Organization wrote: "Asbestos victims are outraged to see their suggested amendments from prior bills regarding asbestos stripped from S. 1009." Environmental health and justice groups, 24 of them, said S. 1009 would offer too many secrecy protections for chemical companies and could limit the ability of doctors, nurses and first responders to obtain vital information. Thirty-four legal experts said S. 1009 as drafted takes a step backward. And the American Association for Justice says S. 1009 is lacking in several areas vital to the protection of public health.

I ask to put these statements into the record, as well as letters from attorneys general from across the Nation and the National Conference of State Legislatures, expressing similar concerns with S. 1009.

[The referenced information follows:]

Sample Statements from State Officials, Legal Experts, and Health, Environmental, and Consumer Groups Opposing Impacts of S. 1009

California Attorney General

"S. 1009, as currently drafted, cripples the policy powers that California relies on to protect public health and the environment..."

- "We believe that S. 1009, as currently drafted, cripples the policy powers that California relies on to protect public health and the environment and, in addition, severely compromises California's authority to supplement and complement federal efforts to regulate the safety of chemicals."

- Many of the innovative laws that California has enacted are jeopardized by S. 1009 [including]

  - "Green Chemistry...[the state] is in the final stages of promulgating regulations that will establish a process for identifying chemicals of concern in consumer products and their potential alternatives, in order to determine how best to limit exposure or to reduce hazard levels."

  - "Proposition 65...was enacted as a ballot initiative in November 1986 by 63% of the voters.... [It] was designed to protect California citizens...from chemicals known to cause cancer, and birth defects or other reproductive harm...Using this authority, the Attorney General's Office has...[r]equired manufacturers of Mexican chili candies to reduce the high lead levels in their candies..."

- "**States Must Not Be Preempted in the Absence of Federal Regulation**...Among the bedrock powers reserved to the states under the Tenth Amendment to the U.S. Constitution is the exercise of policy powers to protect the health and safety.... To take away those historical police powers through preemption in stances where the federal government has yet to regulate or will not be regulating a chemical substance serves only to increase the risk to public health.... S.1009...creates a gaping and permanent regulatory vacuum."

- "**States Must Retain the Ability to Ban Use of a Chemical Substance In-State**...Existing law gives states authority to prohibit the use of a chemical substance in-state without having to apply to the U.S. EPA for a waiver.... S. 1009 revokes this authority...."

- "**States Play a Vital Role as Co-Enforcers of Federal Standards**...In numerous areas of environmental law, states and their political subdivisions play a vital role in enforcing federal standards...[including] the nation's solid hazardous waste law...[and in] consumer product safety, federal law provides states with the ability to enforce federal regulations and orders. Under existing [Toxic Substances Control Act or TSCA] provision, states are allowed to enact requirements that are "identical to the requirements prescribed by the [EPA].... S. 1009 provides none of the above avenues for state enforcement."

Asbestos Disease Awareness Organization

"[W]e cannot support this legislation in its current form as it compromises public health."

- "As a mesothelioma widow, I respectfully write to express my opposition to the Chemical Safety Improvement Act of 2013, S. 1009."
- "Asbestos victims are outraged to see ADAO's suggested amendments regarding asbestos stripped from S. 1009."
- "ADAO and the majority of other environmental and public health organizations find the bill's shortcomings so profound that we cannot support it as currently written."
- "[T]he Chemical Safety Improvement Act, S. 1009, poses serious limitations in its current form and we eannot support this legislation in its current form as it compromises public health."

California Department of Toxic Substances Control

"While most of DTSC's concerns center around the Act's preemption provisions, DTSC also has broader concerns regarding the functionality and effectiveness of [S. 1009]."

- S. 1009's "preemption provisions would potentially impact the ability of DTSC to implement certain regulatory responses under the Safer Consumer Products regulations, including product information for consumers, use restriction on chemicals and consumer products, product sales prohibitions, engineered safety measures or administrative controls, end-of-life management requirements, and advancement of green chemistry and green engineering."

American Association for Justice

"S. 1009 is lacking in several areas vital to the protection of public health and safety; accordingly AAJ opposes S. 1009 as it is currently drafted."

"Such severe restrictions on the ability of consumers harmed or killed by dangerous chemicals strips consumers of their constitutional rights...and permit these manufacturers to produce dangerous products and never be held publically accountable."

- "S. 1009, "The Chemical Safety Improvement Act," severely weakens safety standards, wipes out consumers' rights under state tort law, and significantly restricts evidentiary discovery tools necessary for victims to prove their claims."
- "Such severe restrictions on the ability of consumers harmed or killed by dangerous chemicals strips consumers of their constitutional rights to bring claims under state law, will harm public health and safety by allowing information about dangerous chemicals to be kept secret or go unreported, and permit these manufacturers to produce dangerous products and never be held publically accountable."

- "The bill's use of the definition of "best available science" creates a skewed and influence-prone system where the manufacturers of the chemicals that are being regulated by the EPA are the ones controlling the research and review to determine whether the products they produce are safe for public use."

- "S. 1009 contains layer upon layer of preemption. In addition to the explicit preemption of all state tort remedies, the bill tramples on state procedure by making all EPA safety determinations admissible in any state or federal court."

National Conference of State Legislatures

"[W]e write today to also express serious concerns with current TSCA reform legislation, S. 1009."

- "NCSL encourages Congress to reform and modernize TSCA…[This] includes ensuring chemical manufacturers bear the burden of proof of safety of their products and be required to provide full information on the health hazards associated with thier chemicals as well as ensuring research into chemicals and chemical processes designed to reduce or eliminate negative environmental impacts of chemicals."
- "NCSL cannot support any reform of TSCA that preempts state regulation in this area…[S. 1009's] approach appears to contradict public safety and is an inappropriate exercise of federal authority in an area where states have acted appropriately."

California Labor & Workforce Development Agency

"I am writing to express serious concerns about potential adverse effect of S. 1009 on California's current, ongoing programs to protect workers from hazardous exposures to toxic substances and prevent chemical accidents. We respectfully request that S. 1009 not be adopted unless amended to ensure these programs are not restricted or invalidated."

- "Notable examples of California laws and regulation that help ensure greater protection of workers than federal standards include the following:
  - "[Safeguards] to protect employees during the use of a carcinogen…[which helped to identify] significant overexposures to arsenic, a regulated carcinogen…";
  - "Regulation of asbestos contractors [that] has helped to prevent abuses…";
  - "Chemical-specific standards for which there are not federal counterparts…[including for] diacetyl" which can damage the lungs and respiratory function;
  - "[Safeguards for] the handling, treatment and disposal of treated wood wastes…asbestos-containing materials in public buildings, for lead containing coatings, and other hazardous substances…"; and
  - "Cal/OSHA's process safety management standard to better protect workers" at chemical facilities, including from explosions.

Natural Resources Defense Council

S. 1009 "in its current form would be in many ways as ineffective as current law and in some regards even worse

- S. 1009 "in its current form would be in many ways as ineffective as current law and in some regards even worse."

- "[T]he primary problems with the bill [include]:

  - "No deadlines or minimum requirements…S. 1009 imposes no statutory deadlines for assessing chemicals or making decisions on whether to regulate them."

  - "Preemption of state authority…The bill imposes limits on the ability of states to protect their citizens – limits that are in critical ways worse than current law."

  - "Unprotective safety standard…The bill relies on the current standard in TSCA for determining whether a chemical is safe to use as intended…[and] includes requirements for phasing out or banning chemicals that may be as onerous as the ones that made TSCA a dead letter."

California Environmental Protection Agency

"I am writing…to express serious concern about the effects of S. 1009 on California's ability to protect its residents from toxic chemicals, air pollution and threats to drinking water."

- S. 1009 "could jeopardize California's ability to control greenhouse gases and thereby meet the State's targets under AB 32..."
- "[W]e have identified dozens of California laws and regulations that may be at risk of preemption under the current provisions of S. 1009."
- "[S]everal examples are highlighted here: Global Warming Solutions Act of 2006…Reducing Ozone Pollution…[through] restrictions on the 'use' or 'distribution in commerce' of specific VOCs in products…Drinking Water Safety…Consumer product Safety…[including a] 2006 ban on certain flame retardants, bans on mercury in products ranging from thermostats to thermometers…a phase-out by 2014 of toxic substances including copper, cadmium, hexavalent chromium, lead, mercury and asbestos in automobile brake pads; and a ban on toxic chemicals in art supplies for young school children."
- [W]e are concerned that the lack of clarity of some of the preemption provisions in S. 1009 would open the door to extensive litigation."

BlueGreen Alliance, including United Steelworkers, SEIU, UAW, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Communications Workers of America, Utility Workers Union of America, Sierra Club, and National Wildlife Federation.

"The BlueGreen Alliance cannot support [S. 1009] in its current form."

- This bill's federal preemption provisions are too broad...Compounding this, the bill's requirements for receiving a preemption waiver are set too high. State authority to regulate above a floor created by federal law should be preserved."

- "[T]he Environmental Protection Agency (EPA) must be required to account for heightened health risks borne by particular populations… many groups including children, pregnant women, workers with occupational exposure to chemicals, and residents of highly contaminated "hotspot" communities should be explicitly included in a definition of 'vulnerable subpopulations.'"

- S. 1009 "suffers from a lack of express deadlines by which the EPA must complete the work of prioritizing chemicals and assessing their safety."

Center for Environmental Health

S. 1009 "represents a long, backward step for the health of American families."

- S. 1009 "would perpetuate and in some cases worsen many of TSCA's unacceptable failures."

- "A sober analysis of…[S. 1009] has forced the Center for Environmental Health to conclude that the bill would arguably provide our nation's families with the industrialized wor's most impotent regulations on toxic chemicals."

- "One of…[S. 1009's] many prominent weaknesses is its failure to forcefully preserve the right of states to protect their residents from toxic chemicals."

- S. 1009 "does little to improve the federal government's ability to protect children and families from toxic chemicals. And worse, the [bill] would cripple state efforts to fill the regulatory void it creates. The [bill] represents a long, backward step for the health of American families."

- "S. 1009 must":

    - "Establish Deadline and Schedules for EPA to Protect American Families from Individual Toxic Chemicals"

    - "Preserve the Legal Authority of States to Protect their Residents from Toxic Chemicals"

    - "Make Particular Efforts to Protect those Most Affected by Toxic Chemicals"

    - "Call for Immediate Action on the Most Dangerous Chemicals"

    - "Protect people's right to know which chemicals they are exposed to."

Thirty-Four Law Professors, Legal Scholars, and Public Interest Lawyers

S. 1009 "as currently drafted, takes a step backward in the protection of public health."

- "[W]e cannot support the bill as written, which must be strengthened to fix current law and ensure that chemicals are safe for people, particularly vulnerable populations such as children."

- The bill:
  - "Essentially preserves the same inadequate safety standard used in current law…"
  - "Retains the same obstructive standard of judicial review that appears in current law…"
  - "Contains sweeping preemption language that would prevent states from enforcing existing, and adopting new, laws designed to supplement federal law in protecting people and the environment from exposures to harmful substances…"
  - "Takes the extraordinary step of making any safety determination by EPA dispositive on the question of whether a chemical is safe in federal and state courts…[which] effectively bar[s] judges and juries from taking into account other relevant evidence regarding the safety of a chemical, particularly new evidence developed after the determination is made."
- S. 1009 "would perpetuate many of the Toxic Substances Control Act's shortcomings while preventing states from protecting public health and the environment in the absence of a robust federal law."
- S. 1009 "as currently drafted, takes a step backward in the protection of public health."

Consumer and Public Interest Organizations, including Public Citizen and National Consumers League

S. 1009 "would generally preempt state efforts to protect the public from harmful chemicals."

- "[W]e are deeply concerned about the bill's proposal to vastly expand the preemptive effect of Environmental Protection Agency (EPA) actions under TSCA."
- S. 1009 "would generally preempt state efforts to protect the public from harmful chemicals."
- "Blocking state standards for chemical safety oversight would eliminate the states as important actors in ensuring chemical safety, although they have traditionally played an important role."

13 California Public Health and Environmental Organizations, including Breast Cancer Fund, Coalition for Clean Air, and Physicians for Social Responsibility – Los Angeles

S. 1009 "contains…few safeguards for vulnerable populations such as children and pregnant women, and no minimum testing requirements for old or new chemicals."

- "We are extremely disappointed that the Chemical Safety Improvement Act fails to provide the policy framework needed to secure the needed protections and could, if enacted, stymie progress and undermine the long-term push for reform."
- "Some of our concerns with the bill include a weak safety standard, which on its face allows for 'reasonable' injuries to public health from toxic chemicals. The bill contains no clear deadlines for

EPA action on or assessment of chemicals, few safeguards for vulnerable populations such as children and pregnant women, and no minimum testing requirements for old or new chemicals. We are also troubled that CSIA does not seem to provide fast action on and special protections from persistent, bioaccumulative and toxic chemicals and does not protect workers or communities disproportionately affected by chemical exposures."

- "Furthermore, the broad language on state-level preemption could tie California's hands and prevent the state from continuing to be a leader on toxic chemical issues."

24 Environmental and Occupational Health, Environmental Justice, and Public Interest Organizations, including Breast Cancer Action and Center for Health, Environment & Justice (Lois Gibbs)

S. 1009 "would offer too many secrecy protections for chemical companies and may limit the ability of doctors, nurses, first responders and public health departments to obtain vital information…"

- "[W]e will oppose this bill as it is currently written..."
- "[W]e believe that [S. 1009] has serious limitations and would fall far short of our shared goal of safeguarding human health from the risks posed by exposure to toxic chemicals."
- "[I]f passed in its current form, [S. 1009] could undermine a number of state protections, including California's Proposition 65 law, without ensuring any real improvement in federal toxic substances controls. CSIA could have a crippling effect on every state's freedom to regulate toxic chemicals and protect its own residents."
- "We are also troubled by the fact that CSIA would not explicitly protect pregnant women and children."
- S. 1009 "would offer too many secrecy protections for chemical companies and may limit the ability of doctors, nurses, first responders and public health departments to obtain vital information about a particular substance to identify and treat people who have been injured by these so-called 'secret chemicals.'"

Over 40 Health, Environmental, and Learning Disabilities Organizations, including Alliance of Nurses for Healthy Environments, Huntington Breast Cancer Action Coalition, Learning Disabilities Association of NYS

S. 1009's "safety standard is weak and does not require EPA to protect children, pregnant women, workers who encounter toxic chemicals every day…"

- S. 1009 "will not provide even basic protections form harm, and would in fact set back public health policy on chemicals by enshrining a different, but still failed, system into law. Therefore, we must oppose [S. 1009] as currently drafted."

- "The CSIA's safety standard is weak and does not require EPA to protect children, pregnant women, workers who encounter toxic chemicals every day, those already experiencing ill health or impacted with developmental or learning disabilities, and those residing in low income and communities of color that are disproportionately impacted by multiple chemical exposures currently and from historical or 'legacy' pollution.'"

Center for Effective Government

S.1009 "fails to improve the health and safety protections missing from current law..."

- S. 1009 "fails to protect vulnerable populations that may be particularly susceptible to chemical exposures, such as children, developing fetuses, or those that might receive disproportionately high exposures, such as low-income communities living near toxic facilities."

- S. 1009 "creates strong protections for industry's confidential business information (CBI)...Any CBI claims made before the law is passed would be grandfathered in, preventing the EPA from requiring substantiation of these claims B unless the claims are for chemical identities or information that the EPA classifies as high-priority."

- S. 1009 "would...preempt local and state chemical laws, even in cases where EPA has not regulated a particular chemical..."

- S. 1009 "requires EPA to perform cost-benefit analysis when deciding whether to restrict, phase out, or ban a dangerous chemical. The Fifth Circuit Court of Appeals used this methodology to invalidate EPA's proposed ban on asbestos..."

- S. 1009 "does not address the fundamental problems built in to the original Toxic Substances Control Act. It would be a travesty of justice and history if the Lautenberg legacy were to be a compromised bill that undermines state standards, leaves vulnerable groups unprotected, and codifies the cost-benefit methodology that made the original TSCA unworkable."

State Officials, Legal Experts, and Health, Environmental, and Consumer Groups Who Have So Far Issued Statements Opposing Impacts of S. 1009

- Asbestos Disease Awareness Organization
- Breast Cancer Fund
- American Academy of Pediatrics
- National Conference of State Legislatures
- American Association for Justice (formerly "Association of Trial Lawyers of America")
- Breast Cancer Action
- Alliance for Justice
- California Attorney General
- BlueGreen Allinace, including United Steelworkers, SEIU, UAW, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Communications Workers of America, Utility Workers Union of America, Sierra Club, and National Wildlife Federation
- California Department of Toxic Substances Control
- California Department of Environmental Protection
- U.S. Public Interest Research Group (PIRG)
- Public Citizen
- Natural Resources Defense Counsel
- Learning Disabilities Association of NYS
- National Consumers League
- WE ACT for Environmental Justice
- California Communities Against Toxics
- Center for Environmental Health
- Environmental Working Group

- Alliance of Nurses for Healthy Environments
- Center for Health, Environment & Justice
- New York Lawyers for the Public Interest
- Beyond Pesticides
- Physicians for Social Responsibility Los Angeles
- Earthjustice
- Environmental Law Foundation
- Capital Region Action Against Breast Cancer (CRAAB!)
- Friends of the Earth U.S.
- Coalition for Clean Air
- Empire State Consumer Project
- Farmworker Association of Florida
- Ohio Citizen Action
- Mossville Environmental Action Now (MEAN)
- Black Women for Wellness
- Pesticide Action Network
- Center for Effective Government
- Clean and Healthy New York
- Clean Production Action
- Alaska Community Action on Toxics
- Commonweal
- Electronics TakeBack Coalition
- Environmental and Public Health Consulting
- Greenpeace

- Huntington Breast Cancer Action Coalition
- Center for Justice and Democracy
- Citizens' Environmental Coalition
- Indiana Toxics Action
- Global Community Monitor
- Glynn Environmental Coalition
- California Healthy Nail Salon Collaborative
- AllergyKids Foundation
- Healthy Child, Healthy World
- West County Toxics Coalition
- Women's Voices for the Earth
- Just Transition Alliance
- As You Sow
- Los Jardines Institute
- Story of Stuff Project
- Teens Turning Green
- Marine Environmental Research Institute
- Great Neck Breast Cancer Coalition
- Green America
- Health Care Without Harm
- Product Policy Institute
- Safeminds
- Science and Environmental Health Network
- Sciencecorps
- Texas Environmental Justice Advocacy Services (T.E.J.A.S.)

- Worksafe

- 34 law professors, legal scholars, and public interest lawyers:

  - John S. Applegate
    Walter W. Foskett Professor of Law
    Indiana University Maurer School of Law

  - Nicholas A. Ashford, Ph.D., J.D.
    Professor of Technology and Policy and Director
    MIT Technology & Law Program
    Massachusetts Institute of Technology

  - Hope Babcock
    Professor of Law and Co-Director, Institute for Public Representation
    Georgetown University Law Center

  - William W. Buzbee
    Professor of Law
    Emory Law School
    Visiting Professor of Law
    Georgetown University Law Center (Fall 2012)

  - Charles C. Caldart
    Lecturer in Environmental Law and Policy
    Massachusetts Institute of Technology
    Director of Litigation
    National Environmental Law Center

  - Alejandro E. Camacho
    Professor of Law and Director, Center for Land, Environment, & Natural Resources
    University of California, Irvine

  - Cinnamon P. Carlarne
    Associate Professor of Law
    Ohio State University Michael E. Moritz College of Law

  - David W. Case
    Associate Professor of Law
    University of Mississippi School of Law

  - Thomas Cluderay
    General Counsel
    Environmental Working Group
    Adjunct Professor of Law
    Georgetown University Law Center

  - Carl F. Cranor

Distinguished Professor of Philosophy and Faculty Member, Environmental Toxicology
University of California

- David M. Driesen
  University Professor
  Syracuse University College of Law

- Stephen Dycus
  Professor of Law
  Vermont Law School

- Angelique Townsend EagleWoman (Wambdi A. WasteWin)
  Associate Professor of Law and James E. Rogers Fellow in American Indian Law
  University of Idaho College of Law

- Adam M. Finkel, Sc.D.
  Senior Fellow and Executive Director
  Penn Program on Regulation University of Pennsylvania Law School Professor of Environmental and Occupational Health University of Medicine and Dentistry of New Jers School of Public Health

- Victor Flatt
  Tom and Elizabeth Taft Distinguished Professor of Law and Director, Center for Law, Environment, Adaptation, & Resources (CLEAR) University of North Carolina School of l Distinguished Scholar of Carbon Markets Global Energy Management Institute University Houston

- Steve C. Gold
  Associate Professor of Law
  Rutgers University School of Law - Newark Rutgers, The State University of New Jersey

- Carmen G. Gonzalez
  Professor of Law
  Seattle University School of Law

- Lisa Heinzerling
  Professor of Law
  Georgetown University Law Center

- Oliver Houck
  Professor of Law
  Tulane University School of Law

- Howard A. Latin
  Distinguished Professor of Law and Justice John J. Francis Scholar
  Rutgers University School of Law Rutgers, The State University of New Jersey

- Albert Lin
  Professor of Law

UC Davis School of Law

- Mary L. Lyndon
  Professor of Law
  St. John's University School of Law

- Thomas O. McGarity
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  University of Texas School of Law

- Joel A. Mintz
  Professor of Law
  Nova Southeastern University Law Center

- Joseph A. Page
  Professor of Law
  Georgetown University Law Center

- Rick Reibstein
  Adjunct Professor
  Boston University
  Faculty
  Harvard Extension School

- John Rumpler
  Senior Attorney
  Environment America

- Noah Sachs
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  University of Richmond School of Law

- Sidney A. Shapiro
  University Chair in Law
  Wake Forest University

- Amy Sinden
  Professor of Law
  Temple University Beasley School of Law

- William Snape
  Fellow and Practitioner in Residence
  American University Washington College of Law

- Rena Steinzor
  Professor of Law
  University of Maryland School of Law

- Robert R.M. Verchick

Gauthier-St. Martin Chair in Environmental Law
Loyola University New Orleans

- Wendy Wagner
  Joe A. Worsham Centennial Professor
  University of Texas School of Law

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

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Secretary of the Texas Senate
Staff Chair, NCSL

William Pound
Executive Director

July 24, 2013

The Honorable Barbara Boxer
Chairman
Environment and Public Works Committee
United States Senate
112 Hart Senate Office Building
Washington D.C., 20510

The Honorable David Vitter
Ranking Member
Environment and Public Works Committee
United States Senate
516 Hart Senate Office Building
Washington D.C., 20510

Re: S. 1009, "The Chemical Safety Improvement Act"

Dear Chairman Boxer and Senator Vitter:

On behalf of the National Conference of State Legislatures (NCSL), we applaud the decision by the Environment and Public Works Committee to convene a hearing aimed at understanding and examining issues surrounding the history and impact of the Toxic Substances Control Act (TSCA). While efforts such as these will serve as key components to update the statute to reflect advances in science and technology to better evaluate and regulate chemicals, we write today to also express serious concerns with current TSCA reform legislation, S.1009, "The Chemical Safety Improvement Act."

NCSL encourages Congress to reform and modernize TSCA and appreciates the attempt of this legislation to include elements outlined in NCSL's Federal Chemical Policy Reform Policy Directive. This includes ensuring chemical manufacturers bear the burden of proof of safety of their products and be required to provide full information on the health hazards associated with their chemicals as well as ensuring research into chemicals and chemical processes designed to reduce or eliminate negative environmental impacts of chemicals.

However, NCSL cannot support any reform of TSCA that preempts state regulations in this area. Section 15 of the bill entitled "Preemption" is a broad state preemption provision that adversely impacts states' abilities to protect their citizens. First, Section 15 prohibits states from enacting stricter or stronger chemical safety regulations than those provided for in the bill. Section 15 also greatly hinders states' abilities to protect their citizens by prohibiting states from continued testing and development of standards for chemical substances. This approach appears to contradict public safety and is an inappropriate exercise of federal authority in an area where states have acted appropriately.

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In the absence of federal action to address issues related to TSCA implementation, many state legislatures have enacted legislation to regulate individual chemicals. States have also begun to develop comprehensive state chemical policies that aim to establish broad and permanent frameworks to systematically prioritize chemicals of concern, close data gaps on those chemicals and restrict their uses in those states. We would encourage the federal government to engage in meaningful consultation with state legislatures before attempting to preempt such laws.

For nearly all federal environmental statutes, there are provisions to extend the reach of the federal government by delegation of program authority and/or provision of federal grants to support state implementation of environmental requirements in lieu of or in addition to the federal requirements. Any reform of TSCA should both preserve state rights to manage chemicals and provide resources for state level implementation, as NCSL supports the preservation of state authority to enforce chemical security standards that are more stringent than those established by the federal government. As such, NCSL has serious concerns with S. 1009 as it is currently structured.

NCSL welcomes the opportunity to work with the Committee as it moves forward on this legislation to ensure that state authority is maintained. Please contact NCSL staff, Melanie Condon (Melanie.condon@ncsl.org) on environmental issues and Susan Parnas Frederick (susan.frederick@ncsl.org) on issues related to preemption of state authority.

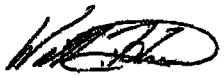
Sincerely,

Representative John McCoy, Washington
Co-Chair, NCSL Natural Resources and Infrastructure Committee

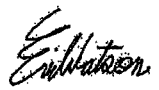
Senator Ross Tolleson, Georgia
Co-Chair, NCSL Natural Resources and Infrastructure Committee

Representative Jim Gooch Jr., Kentucky
Co-Chair, NCSL Natural Resources and Infrastructure Committee

Senator John C. Watkins, Virginia
Co-Chair, NCSL Natural Resources and Infrastructure Committee



Assemblymember William C. Horne, Nevada, Co-Chair NCSL Law and Criminal Justice Committee



Representative Eric Watson, Tennessee, Co-Chair NCSL Law and Criminal Justice Committee

Attached: NCSL Federal Chemical Policy Reform Policy Directive

NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

Federal Chemical Policy Reform Policy Directive
NCSL Environment Standing Committee

The Toxic Substances Control Act (TSCA) of 1976 provides the US EPA with authority to require reporting, record-keeping and safety testing of chemical substances and/or mixtures. TSCA also gives EPA the power to restrict the use of chemicals. Certain substances are generally excluded from TSCA, including food, drugs, cosmetics and pesticides.

Since its enactment, increasing evidence linking toxic chemicals to adverse human health effects has eroded the public's confidence in the safety of consumer products containing toxic chemicals, prompting many state legislatures to act. In the absence of Federal action, states have passed legislation to regulate individual chemicals. States have also begun to develop comprehensive state chemical policies that aim to establish broad and permanent frameworks to systematically prioritize chemicals of concern, close data gaps on those chemicals and restrict their uses in those states. Appropriate modifications to federal law will help enhance public confidence and the efforts of the state governments.

Current federal chemical policy has not kept up with modern science. The science of testing chemicals and understanding their health or environmental effects has improved considerably since TSCA was enacted. NCSL believes TSCA should be updated to reflect the advances in science and technology to better evaluate and regulate chemicals.

TSCA's failures have caused the United States to fall behind our trading partners in the quality of our public health and environmental standards, and these failures now threaten the competitiveness of our manufactured products in a world market that increasingly demands safer chemicals and products.

Modernizing TSCA can help assure that we protect the nation's interest in a strong American business of chemistry – and assure that the United States produces products that save lives, protect our children, make our economy more energy efficient, and reduce greenhouse gas emissions.

Toxic Substances Control Act (TSCA) Reform

NCSL encourages Congress to reform and modernize The Toxic Substances Control Act (TSCA) of 1976. At a minimum, NCSL believes proposed TSCA reform legislation should embody these policy elements:

Act on the Harmful Chemicals First and Promote Safer Alternatives

Persistent, bioaccumulative and toxic chemicals (PBTs) are uniquely dangerous and should be phased out of commerce except for critical uses that lack viable alternatives. Exposure to other toxic chemicals, like formaldehyde, that have already been extensively studied should be reduced to the maximum extent feasible. Research into chemicals and chemical processes designed to reduce or eliminate negative environmental impacts of chemicals should be expanded, and safer chemicals favored over those with known health hazards.

Ensure Broad Access to Mandatory Safety Data on All Chemicals

Chemical manufacturers should bear the burden of proof of safety of their products, and should be required to provide full information on the health hazards associated with their chemicals, how they are used, and the ways that the public or workers could be exposed. The public, workers, and businesses should have full access to such information.

Protect All People, and Vulnerable Groups, Using the Best Science

All chemicals should be assessed against a health standard that protects all people and the environment, especially the most vulnerable subpopulations, including children, low-income

people, racial and ethnic minorities, workers, and pregnant women. EPA should adopt the recommendations of the National Academy of Sciences for reforming risk assessment. Biomonitoring by the Centers for Disease Control and Prevention should be significantly expanded and used by EPA to assess the effects of pollution on people.

States Rights

State governments play a critical role in environmental regulation. For nearly all federal environmental statutes, there are provisions to extend the reach of the federal government by delegation of program authority and/or provision of federal grants to support state implementation of environmental requirements in lieu of or in addition to the federal requirements. Any reform of TSCA should preserve state rights to manage chemicals, and resources should be provided for state level implementation.

Toxics Release Inventory Reform

NCSL urges the EPA to continue to provide appropriate contextual materials to affected communities to accompany Toxics Release Inventory (TRI) reports to assure particularly that emergency response agencies will understand and be able to respond safely to chemical releases to protect the people who live in the vicinity of facilities required to file TRI reports.

The EPA and the reporting industries should continue working to ensure that the reported TRI data are communicated to the public in an understandable manner that includes a description of the risk of release specific chemicals posed to the public and emergency response teams, how these materials are managed to control release, and an assessment of the risk to public health and welfare in the event of regulated or accidental releases.

Senator BOXER. When people in our States vote for their specific protections from harmful toxins, their rights must not be preempted. I hope we all agree that victims who suffer harm from dangerous chemicals have a clear right to hold the industry accountable in order to prevent further injuries and death.

Let me summarize a Sunday L.A. Times story headline, "Landmark California Regulations Under Federal Fire." California officials, this is from the story, objected that S. 1009 not only would prohibit the State from imposing its own rules, but it could invalidate several other laws, including California's Global Warming Act of 2006. Attorney General Harris described the measure as a no-win that puts Californians at risk for toxic chemicals. Her office says, S. 1009 would impair the voter-approved Prop 65, which protects Californians from cancer.

I have listened to breast cancer victims, asbestos victims, advocates for infants and children, communities surrounded by industrial facilities, and our States, who want to safeguard their citizens, as well as those who fight for the rights of injured victims. I have also listened to industry and I appreciate those who look to provide consumers with greater confidence in their products.

I believe if we embrace the principle of protecting the most vulnerable through science, fairness for industry, fair respect for our States and victims, we can have a strong, bipartisan TSCA bill come right out of this Committee. Just like the EPA seal of approval can carry weight, the Energy Star certification carries weight. Everyone on this Committee knows how much I treasure bipartisanship. This Committee has been the leader in bipartisanship, whether it has been transportation with Senator Inhofe, water with Senator Vitter, formaldehyde standards, lead-free plumbing, I know we can get a good bipartisan bill out of here if we work together.

And I turn to Senator Vitter.

OPENING STATEMENT OF HON. DAVID VITTER, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator VITTER. Thank you very much, Chairman Boxer, for convening this important hearing today on Toxic Substances Control Act.

In the last few years, this Committee has extensively discussed the need for a substantive reform of TSCA, which is 37 years old, and by now antiquated at best. It is unfortunate, of course, that today is our first TSCA discussion in a very, very long time without the voice that has been the strongest advocate for meaningful reform of this law, Senator Frank Lautenberg. I again want to express my sympathies to the Lautenberg family, as well as all the citizens of New Jersey who lost a true champion for this and other important causes.

I want to thank all of our witnesses in advance. It is my hope that this hearing will be very constructive and continue in the bipartisan spirit that Frank and I began on this critically important issue. While I understand the purpose of this hearing is to discuss a number of previous reform efforts, I am very thankful to be able to say that I worked hand in hand with Frank on this, his legacy issue, and that we found the first every bipartisan compromise to

help overhaul and significantly strengthen Federal chemical regulations that would benefit every citizen in every State.

The bill we co-authored, the Chemical Safety Improvement Act, is a carefully crafted compromise that provides real opportunity to significantly overhaul a major environmental law for the first time in decades. The good news is that the bipartisan support for the Lautenberg-Vitter bill continues to grow. That legislation is supported by the editorial boards of the New York Times and the Washington Post. Both previous heads of the EPA's Chemical Regulatory Office under Presidents Bush and Obama support the bill, one of whom we are fortunate to have here today testifying before us.

So far four unions, which include the nearly 3 million workers who encompass North America's building trades union within the AFL–CIO, have endorsed the bill. People in the public health and environmental community also endorse it, including the Environmental Defense Fund and the American College of Occupational and Environmental Medicine, the Nation's largest medical society dedicated to promoting the health of workers through preventive medicine, clinical care, research and education.

Now, I fully recognize that issues have been raised, some legitimate and some not, with the Lautenberg-Vitter bill Such should be expected from efforts as complex as reforming a major environmental law. I believe these issues fall into two broad categories: misimpressions or actual distortions regarding our bill, and second, very legitimate suggestions for revisions. So let me briefly address each of these in turn.

Regarding the first category, I want to be very, very clear, as I have been. In no way, shape or form did Frank and I intend this legislation to eliminate private rights of action under State tort law, and in no way did we intend to remove the authority of any State to protect their water, air or citizens. As a matter of fact, there is clear language in the bill explicitly protecting those rights. But we are certainly open and we are working to make that even more crystal clear.

Regarding the second category, very legitimate suggestions for revision, I am excited to announce today that Senator Tom Udall and I have been meeting with all interested parties, including many folks testifying at this hearing today, and we have been meeting with Senate offices on both sides of the aisle who are fully engaged in this effort. That will be a path forward that clarifies and addresses these issues we are talking about.

Both Tom and I and our staffs have been speaking to everyone who has chosen to be engaged and serious on the issue. We are making real progress.

I am excited for today's hearing, and we both plan to use what we hear to strengthen the first real shot at updating this broken law, so we can get this done for everyone, for every citizen, certainly in Frank Lautenberg's memory and certainly for his family and kids and grandkids.

The bill Frank and I were able to introduce is the product of discussions that began over a year ago, and was the product of a lot of hard work and a lot of good faith work. I certainly urge all of

us to come together and unite around this opportunity to pass major TSCA reform.

Thank you, Madam Chair.

Senator BOXER. Thank you so much.

And now we will turn to Senator Merkley.

OPENING STATEMENT OF HON. JEFF MERKLEY, U.S. SENATOR FROM THE STATE OF OREGON

Senator MERKLEY. Thank you very much, Madam Chair. I applaud the work that has been done. This is certainly extremely close, was extremely close to Frank's heart. He spoke so many times passionately here, we can almost feel him in the room. I applaud you, Senator Vitter, for working on this, and look forward to exploring the work that you and Senator Udall are continuing to do to try to address some of the concerns that have been expressed.

I am going to be very brief, because I want to get to the panel. I look forward to this process, it is very important to the health of our Nation to be able to have a systematic way of examining the impact of chemicals that are widely dispersed.

Senator BOXER. Thank you so much, Senator Merkley.

Senator Inhofe.

OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. Thank you, Madam Chairman.

It is funny that you would say that, Senator Merkley, when you said that you can kind of feel his presence in this room. I was thinking that, I was thinking the same thing.

I must take this opportunity to talk about my friend, Frank Lautenberg, and his decades-long commitment to exploring the appropriate Federal role in chemical safety and security. I can remember when Frank and I started working on TSCA reform a decade ago, when I was chairman of this Committee. And then when I was ranking member of this Committee, we agreed that the thousands of chemicals in commerce are the backbone of the American economy, left unchecked these rules can ultimately yield in an unworkable patchwork of State regulations, neither creating needed business certainty nor providing adequate protection to the public.

In our many discussions on these issues, Frank would readily admit that TSCA was in desperate need of modernization. We agreed on that, and that any reform package needed to improve public protection while providing essential regulatory certainty for the growing chemical and manufacturing industries, a cornerstone of his State's economy.

Although we disagreed on many issues, and I am sure that Senator Vitter went through the same thing in his negotiations with him, TSCA reform was something we always agreed needed to happen. As ranking member, he and I went back and forth a number of times over the years. But we weren't ever able to broker an effective compromise.

Earlier this year, when we were on the floor, Frank told me that he and Senator Vitter were close to an agreement. While I was concerned that he might have been embellishing, as he was known to

do occasionally, today proves that we are in a different place, a historic place. I am proud to be one of the bill's strongest supporters.

I congratulate the Ranking Member for his perseverance, for working closely with Frank to come up with this bill. I don't think we can understand the magnitude of this opportunity in a time of such partisan fighting over environmental laws. Here we have a bill, if enacted, would represent the first major overhaul of any environmental law since 1990. Everyone agrees that TSCA needs to be amended. Now we have a bipartisan bill that has the support of 26 Senators, industry and others that were mentioned by Senator Vitter.

I am sad that Frank Lautenberg is no longer here with us so that he can see this bill cross the finish line. But if he were here, I think he would be pleased with this hearing. In the second panel, we are going to hear from Steve Owens and Linda Fisher, who served as the head of the Office of Chemical Safety and Pollution Prevention at the EPA under both President Obama and President Bush respectively. In those capacities, they were responsible for implementing TSCA.

Today, despite being on opposite sides of the aisle, they both agree that it is time to bring TSCA into the 21st century and believe that Frank's bill will be a significant improvement compared to current law.

I know that the Chairman of the Committee and some others may have some issue with certain aspects of the bill. But this bill is a compromise, a compromise requires flexibility. This bill is the product of everyone's flexibility. If we start trying to stretch one side or another, it is going to lose what it has right now, and that is bipartisan support that should make the bill passable.

We need to fix the dysfunctional law and use the bipartisan compromise that recognizes the decades of work Frank put into this for his legacy and the good of the Country.

Last, TSCA must be reformed because the recent boom in natural gas production, the result of hydraulic fracturing and horizontal drilling, has helped feed aggressive expansion of the U.S. manufacturing and chemical sectors. Chemical manufacturers alone have recently announced the $72 billion in new investments that will create up to 310,000 new jobs.

If we do not update TSCA, or if we take reform down a different path than the one charted by Senator Lautenberg, then this renaissance of activity in the future of our Nation's dominance of the international chemical and manufacturing sector will be at risk. So regulatory uncertainty chills innovation and this reform bill charts a steady course for the future. I am anxious and eager to see this legislation pass the Senate.

Senator BOXER. Thank you, Senator.

We turn to Senator Cardin.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Thank you, Madam Chair.

And let me just state the obvious. I think now it is agreed by every member of this Committee that the TSCA law today doesn't

work. It is broken. It is not protecting the public. And we have a responsibility to act.

I could cite the fact that there have been studies showing 212 industrial chemicals commonly found in the human body of most Americans. These are dangerous toxins that are currently in our bodies, being transmitted to babies when they are born.

So we have a responsibility to pass a framework to protect the public from these toxins.

So I come to this hearing wanting to make sure that we get this job done. And I also want to acknowledge our former colleague, Frank Lautenberg. I sat next to him on this Committee. He was passionate about our children and our grandchildren. He was passionate about public health issues. This is one area that he devoted a large part of his career to correct, a bill that was not working, in order to help public health.

Senator Vitter, I want to thank you for reaching out to Senator Lautenberg and bringing forward a bipartisan bill that sets up a framework which is certainly much preferred over the current law. And that gives us a way, I think, to move forward. So I agree with you. I am optimistic that we should be able to use that framework to move forward with legislation that cannot only pass this Committee but can pass the U.S. Senate and House, to be signed by President Obama.

The compromise that you brought forward needs further change. I am very pleased to see that you have reached out to Senator Udall and other members of this Committee to look at the legitimate concerns that have been raised in the bill that is brought forward.

Madam Chair, I am going to ask consent that a letter from the attorneys general of California, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Oregon, Vermont and Washington be made part of our record.

Senator BOXER. Without objection.

[The referenced information follows:]

STATE ATTORNEYS GENERAL

A Communication from the Chief Legal Officers of the Following States:

California · Connecticut · Delaware · Hawaii · Maryland Massachusetts · Oregon · Vermont · Washington

July 31, 2013

Dear Chairwoman Boxer and Senate Environment and Public Works Majority Committee Members:

We, the undersigned Attorneys General, write to express our deep concerns about the unduly broad preemption language proposed in S.1009, the Chemical Safety Improvement Act. S.1009 would amend the Toxic Substances Control Act (TSCA) in a manner that we believe could, in its current form, seriously jeopardize public health and safety by preventing states from acting to address potential risks of toxic substances and from exercising state enforcement powers.

Protection of its citizens' health and environment is a traditional state duty and power. States have historically been at the forefront of protecting against the harms from toxic chemicals and driving innovation in the development of safer products, often acting before the federal government. Most recently, many state legislatures have introduced or adopted comprehensive chemicals management bills, as well as phase-outs and bans on harmful chemicals, such as cadmium, in children's products. Protection of children's health from harmful chemicals has been a particular focus of the states, and many laws in this area have been enacted with strong bipartisan support. *See Exhibit A (providing examples of State laws); see also Safer States, Safer Chemicals, Healthy Families* (Nov. 2010).[1]

States recognize the need for reforms to make TSCA more effective, and indeed many states have adopted resolutions to that effect. However, reforms that come at the cost of sweeping preemption of state authority – as in S.1009 – do not advance the protection of our citizens' health and the environment. As the chief law enforcement officers of our states, we have concluded that the preemption provisions of S.1009 described below would seriously impair our ability to protect our citizens.

TSCA's current provisions recognize that Americans are better served when states work as partners with the federal government to enhance federal authority, and when states are allowed to identify emerging risks to health and the environment and drive innovations that reduce or eliminate those risks. Under existing law, the possibility of preemption does not arise until the federal government has acted to protect against a risk of injury to health or the environment. 15 U.S.C. § 2617(a)(2)(B). In contrast, S.1009 would preempt states from enforcing existing laws or from adopting new laws regulating chemicals that EPA designates as "high priority" months or even years before *any* federal regulations protecting health and the

[1] Available at www.saferchemicals.org/PDF/reports/HealthyStates.pdf.

environment become effective. S.1009, at § 15(a)(2). In addition, states would be barred from adopting and enforcing new laws regulating "low-priority" chemicals, even as the bill precludes any federal regulation of these chemicals and prohibits judicial review of the EPA's priority designation. *Id.*, at §§ 4(e)(3)(H)(ii), 4(e)(5) and 15(b)(2).

Also, under existing law, once the Administrator has acted to regulate a chemical, states still may adopt new laws or continue to enforce existing laws regarding the same chemical and addressing the same risk – without a waiver – if the state requirement fits in one of three classes. 15 U.S.C. § 2617(a)(2)(B). S.1009, however, eliminates two of these classes. First, S.1009 eliminates the ability of states to adopt requirements identical to the federal standard, and therefore enforce federal standards under state law. Second, S.1009 revokes state authority to ban any in-state use of chemicals that the Administrator has regulated; under existing law, the states may ban in-state use other than use in manufacture or processing of other substances or mixes. S.1009, at §§ 15(a)(2), 15(b)(1), and 15(b)(2). Loss of this existing authority impairs the states' ability to maximize enforcement resources and protect their citizens from dangerous chemicals.

Further, under existing law, the Administrator may grant a state's application for a waiver from preemption for state regulations that are stricter than the federal standard and that do not unduly burden interstate commerce. 15 U.S.C. § 2617(b). S.1009 replaces this provision with a waiver that is illusory. Under S.1009, waivers are temporary and in some cases expire automatically, before any federal regulation is adopted or becomes effective. In addition, S.1009 requires a state to certify "a compelling local interest" in order to obtain a waiver. S.1009, at §§ 15(d)(1)(B)(i) and 15(d)(2)(B)(ii). Although the meaning of this provision is unclear, if it is intended to require a showing of circumstances unique to a particular state, we are concerned about its potential to be interpreted to create a complete barrier to a waiver, because the risks from exposure to chemicals in the home or workplace may be seen as not varying from one state to the next.

Any argument that existing preemption provisions will lead to a multitude of conflicting state requirements is misplaced. Over nearly 40 years, dating back to before the adoption of TSCA, states have been regulating chemical safety, and America has retained its leadership in chemicals research and manufacturing. We fully support Congress amending TSCA to enhance EPA's resources and its ability to regulate chemicals, and we believe that if the existing TSCA preemption provisions are left in place, history has shown that the states will seek to harmonize state laws with federal requirements, and will enhance the effectiveness of federal law by devoting state resources to enforcement. Uniformity of regulation should not be achieved by sacrificing citizens' health and the environment.

Our citizens are better served when states are allowed to complement the federal government's efforts. Innovative state laws often result in better regulation and more safeguards, particularly for vulnerable subpopulations such as children and pregnant women. State initiatives have served as templates for national standards. Further, states have a long history of enforcement and can contribute a nationwide network of experienced enforcement staff.

We urge members of the Committee to recognize and respect the long-standing authority of the states to act alongside the federal government to protect the health, safety and welfare of their citizens. Amendments to TSCA should preserve the existing authority of the states to

enforce federal law; continue to allow states to adopt and enforce their own chemicals laws without restriction where the federal government has not acted or will not be acting; and protect the ability of the states to obtain a waiver to enact stricter standards.

Very truly yours,

Kamala D. Harris
California Attorney General

George Jepsen
Connecticut Attorney General

Joseph R. Biden, III
Delaware Attorney General

David M. Louie
Hawaii Attorney General

Martha Coakley
Massachusetts Attorney General

Douglas F. Gansler
Maryland Attorney General

Ellen F. Rosenblum
Oregon Attorney General

William H. Sorrell
Vermont Attorney General

Bob Ferguson
Washington State Attorney General

EXHIBIT A

EXAMPLES OF EXISTING STATE REGULATION OF CHEMICAL SUBSTANCES BY STATE

CALIFORNIA

1) State-wide ban on certain flame retardants (California Health and Safety Code section 108922);
2) Limits on the use of volatile organic compounds (VOCs) in consumer products – a significant cause of ozone pollution, which contributes to high rates of asthma in California (California Code of Regulations, title 17, section 94509);
3) The state's Safe Cosmetics Act, enforcement of which has led to a drastic reduction in the levels of formaldehyde gas in certain hair care products (Health and Safety Code sections 111791 *et seq.*);
4) Proposition 65, a "right to know" law, which has led many manufacturers to reformulate their products to reduce levels of toxic chemicals, including the reduction of lead in children's bounce houses, playground structures and play and costume jewelry; and
5) The state's Green Chemistry Program, a new and innovative set of laws designed to encourage companies to find safer alternatives for the toxic chemicals currently in their products (Hazardous Materials and Toxic Substances Evaluation and Regulation, Statutes 2008, chapter 559 (A.B. 1879); Toxic Information Clearinghouse, Statutes 2008, chapter 560 (S.B. 509)).

MARYLAND

1) Regulation of products with brominated flame retardants (Md. Code Ann., Envir. § 6-1202);
2) Ban on manufacture and sale of lead-containing children's products (Md. Code Ann., Envir. § 6-1303); and
3) Regulation of cadmium in children's jewelry (Md. Code Ann., Envir. § 6-1402).

MASSACHUSETTS

1) Ban under the MA Mercury Management Act (Ch. 190 of the Acts of 2006, amending MA General Laws ch. 21H), on the sale of certain mercury-added products, such as, without limitation and subject to certain exemptions: thermostats; barometers; flow meters; hydrometers; mercury switches; and mercury relays (310 C.M.R. 75.00);
2) Regulation of certain lacquer sealers, flammable floor finishing products, including clear lacquer sanding sealers (MA General Laws ch. 94, § 329);
3) The state's comprehensive chemicals management scheme that requires companies that use large quantities of particular toxic chemicals to evaluate and plan for pollution

prevention, implement management plans if practical, and annually measure and report the results (MA General Laws ch. 211); and

4) MA General Laws ch. 94B Hazardous Substances Act, providing for ban of any toy, or other article intended for use by children, which contains a hazardous substance accessible to a child, or any hazardous substance intended or packaged in a form suitable for use in households (105 C.M.R. 650.000).

OREGON

1) Ban on any product containing more than one-tenth of one percent by mass of pentabrominated diphenyl ether, octabrominated diphenyl ether and decabrominated diphenyl ether, flame retardant chemicals (ORS 453.085(16));

2) Ban on art and craft supplies containing more than one percent of any toxic substance, as identified on a list of hazardous substances promulgated by rule (ORS 453.205 to 453.275);

3) The Oregon Health Authority may ban from commerce products that contain hazardous substances that OHA concludes are unsafe, even with a cautionary label, and can ban toys or other articles intended for use by children that make a hazardous substance susceptible to access by a child (ORS 453.055); and

4) Ban on mercury use in fever thermometers, novelty items, certain light fixtures, and commercial and residential buildings (exceptions not referenced; ORS 646.608, 646A.080, 646A.081, and 455.355).

VERMONT

1) Ban on lead in consumer products (9 Vt. Stat. Ann. § 2470e-l [the last character is the letter "l," not the number "1."]);

2) Ban on brominated and chlorinated flame retardants (9 Vt. Stat. Ann. §§ 2972-2980);

3) Ban on phthalates (18 Vt. Stat. Ann. § 1511); and

4) Ban on bisphenol A (9 Vt. Stat. Ann. § 1512).

WASHINGTON

1) Ban on the manufacture, distribution or sale of certain products containing polybrominated diphenyl ethers (Wash. Rev. Code 70.76);

2) Ban on the sale or distribution of sports bottles, or children's bottles, cups, or containers that contain bisphenol A (Wash. Rev. Code 70.280); and

3) Ban on the distribution or sale of children's products containing lead, cadmium, and phthalates above certain concentrations (Wash. Rev. Code 70.240).

Senator CARDIN. Doug Gansler, the Attorney General from Maryland, joined this letter, saying that they have deep concerns about the unduly broad preemption language in S. 1009. I could cite many examples of concerns that we have, and we could talk about BPA in plastics and baby bottles that has been brought to national attention, and many of our States have acted to protect the public health of their citizens. That is federalism, that is how we get to know what we can do nationally by how our States act, whether it works or not and then use that as a way to strengthen our national laws.

The Attorney General of Maryland points out that the compromise bill could affect the health quality of Marylanders by preempting in areas where Maryland has acted on flame retardant products, on the sale of lead-containing children's products. Maryland has been one of the leaders, because we have had a serious problem of lead poisoning in our State. So we are acting in that area. Or children's jewelry, Maryland has acted. I would not want to see us pass legislation that would prevent our State from protecting our citizens, but also recognizing that there would be other challenges that come out in the future, and we want our States to be aggressive and moving forward on that.

Let me mention one other area that I hope we will look at very carefully. That deals with the standard that is used, and the burden of proof. The standard, as I understand it, that is used in the bill refers to unreasonable risk, which is standard I think has been somewhat outdated. In our Food Quality Act, we use reasonable certainty of no harm, which I think is safer standard for us to use when it comes to public health concerns.

So I would hope that we would have some discussion as to what the appropriate standard should be and who has the burden of proof.

These are some issues that I hope our Committee will have an opportunity to review. I hope the witnesses today will help us in sorting through how we should act. Senator Vitter, as you pointed out, it has been 37 years since we have last passed a bill that regulates these chemicals. Let's make sure we get it right this time, because it may be 37 years before we get back to it again.

[Laughter.]

Senator CARDIN. With that, I look forward to hearing the witnesses and our hearing.

Senator BOXER. Thank you, so much, Senator.

Senator Fischer, followed by Senator Udall.

OPENING STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator FISCHER. Thank you, Madam Chair, and thank you, Ranking Member, for holding the hearing today. I would like to thank all the witnesses that are going to be coming forward and answering questions and having a discussion on this very important topic.

Like many of my colleagues, I am very encouraged by the bipartisan process on the Chemical Safety Improvement Act. I sincerely appreciate the efforts of the late Senator Lautenberg, Senator Vitter and their staffs in finding the common ground needed to ad-

vance our chemical safety laws. This common ground has eluded Congress for far too long. The bipartisan solution is both remarkable and it is refreshing.

With that, Madam Chair, I would ask that my complete opening statement be included in the record and we move on in the interest of time. Thank you.

[The prepared statement of Senator Fischer follows:]

STATEMENT OF HON. DEB FISCHER,
U.S. SENATOR FROM THE STATE OF NEBRASKA

Chairman Boxer and Ranking Member Vitter, thank you for holding this hearing today to discuss the importance of updating our Nation's chemical safety laws. I would also like to thank our witnesses for being here. I appreciate their willingness to share their time and expertise with our Committee.

In Nebraska, where we utilize more than 90 percent of our land for farming and ranching, we are keenly focused on finding solutions to feed and sustain a growing and hungry world. As a result, we have a strong appreciation for the role chemicals play in enhancing our productivity and efficiency. Innovation in chemical products will continue to facilitate a healthier and more sustainable future, improving lives across the globe.

Nebraskans also understand the risks that chemicals can pose to our health and environment. Effectively managing these risks to ensure safe use of chemicals and protection of health and safety is essential. That is why we need a strong, effective, and balanced approach to chemical regulation.

Like many of my colleagues, I am very encouraged by the bipartisan progress on the Chemical Safety Improvement Act. I sincerely appreciate the efforts of the late Senator Lautenberg, Senator Vitter, and their staffs in finding the common ground needed to advance our chemical safety laws. This common ground has eluded Congress for far too long, and their bipartisan solution is both remarkable and refreshing.

They have sought to strike the right balance between enhancing chemical safety and promoting chemical innovation and economic growth, and this is what we need. Our regulatory system must be predictable and manageable for industry, while increasing consumers' confidence that the chemicals used to make products are safe.

I am also encouraged by the support of so many groups, from environmental and public health advocacy organizations to industry trade associations. I look forward to hearing more from these stakeholders today and working with my colleagues to pass the Chemical Safety Improvement Act.

Senator BOXER. Senator, thank you very much.

Senator Udall, followed by Senator Barrasso.

OPENING STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator UDALL. Thank you, Madam Chair, and thank you very much for holding this important hearing. Let me say to both the Chairman and the Ranking Member, it has been a pleasure working with both of you on constructive suggestions to improve this bill and to move forward. I look forward to doing that in the future.

Our current law on chemical safety, the Toxic Substances Control Act of 1976, is broken. And it is a weak statute that desperately needs fixing to protect our families. It gives us no confidence that our everyday products are safe and clearly, we must improve it.

I am particularly interested to hear from our witnesses today and I want to make sure they hear from me as well. A lot of focus, attention and concern has been given to the compromise Lautenberg-Vitter legislation in the last month or so. I think the surprise of a compromise, bipartisan bill on such a controversial topic added a lot to the urgency many felt to make comments.

I know that at times, Senator Lautenberg had nearly given up hope for a bipartisan agreement. But he was a fighter, and he never stopped trying. We will all be lucky if we have a fraction of the perseverance he had.

I know his widow, Bonnie Engelbart-Lautenberg, has a statement. I just want to read a small portion of that, because it shows the passion that Frank put into this compromise legislation. Bonnie said, "In the last few months of his life, Frank did something that has become all too rare in Washington. He negotiated bipartisan legislation to solve a major problem facing our Country. Frank worked with Senator Vitter to develop the Chemical Safety Improvement Act, a bill that would for the first time require testing of tens of thousands of chemicals that are used in everyday products. Frank was proud of his work on this new bill. In fact, after a meeting with Senator Vitter, Frank told me that this bill would be bigger and save more lives than his law to ban smoking on airplanes."

Madam Chair, I would ask that her full statement be inserted into the record.

Senator BOXER. Without objection.

[The referenced information follows:]

STATEMENT OF BONNIE ENGLEBARDT LAUTENBERG

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
HEARING ON "STRENGTHENING PUBLIC HEALTH PROTECTIONS BY ADDRESSING TOXIC CHEMICAL THREATS"

JULY 31, 2013

Thank you, Chairman Boxer and Ranking Member Vitter, for holding this hearing on an issue that was a top priority for my late husband: protecting public health from toxic chemicals.

I was by Frank's side in February when he stood in front of a crowd in his hometown of Paterson, New Jersey and announced he would not run for reelection in 2014. He explained that his announcement was not the end of anything, but the beginning of a new push to reform our nation's chemical laws.

Frank had worked since 2005 to reform the Toxic Substances Control Act, a law that was passed in 1976 with the goal of protecting Americans from risks associated with toxic chemicals. Thirty-seven years later, the Environmental Protection Agency has been able to require testing of just 200 of the 85,000 chemicals on its inventory, and has regulated just five. These statistics show that the chemicals in products we use are not being adequately tested and proven safe before we bring them into our homes.

Frank's work on this issue came from a dedication to helping those who could not help themselves. He was outraged that children in our country are born with dozens of potentially hazardous chemicals already in their bodies, and he fought with all his energy to change a law that allows untested chemicals to be used in cleaning products, clothing, household goods, and even children's products.

In the last few months of his life, Frank did something that has become all too rare in Washington: he negotiated bipartisan legislation to solve a major problem facing our country. Frank worked with Senator Vitter to develop the Chemical Safety Improvement Act, a bill that would, for the first time, require testing of the tens of thousands of chemicals that are used in everyday products.

Frank was proud of his work on this new bill. In fact, after a meeting with Senator Vitter, Frank told me that this bill would be bigger and could save more lives than his law to ban smoking on airplanes.

That is why I am pleased, Chairman Boxer and Ranking Member Vitter, that you are holding this hearing today, toward the goal of working out a committee agreement on the Chemical Safety Improvement Act. Reforming our chemical laws would improve the lives of people across the country for generations to come. Protecting children and families is the legacy that Frank worked toward throughout his career. Passage of this bill would be a wonderful cap to his career and testament to his legacy.

Senator UDALL. Let me make sure that everyone hears from me as a co-sponsor of this bill. I am fully committed to working with you and everyone else to improve this bill where there are legitimate concerns. This is a very important part of the process to pass substantial legislation.

But I urge you to be constructive in your criticism, and help us improve the bill. And I would underline improve there.

When I was deciding whether or not to co-sponsor the Lautenberg-Vitter bill, I based my decision on two very important questions: is this bill better than current law, and No. 2, do we have a political opportunity to enact this as law?

On the first question, is it better than current law, I believe it is. It takes important strides toward fixing the main elements of TSCA that have kept the EPA from effectively evaluating and regulating hazardous chemicals. The Chemical Safety Improvement Act strikes the least burdensome requirement that has crippled TSCA from banning dangerous chemicals such as asbestos.

It would for the first time mandate safety reviews for all chemicals currently in commerce. It would for the first time require an affirmative finding of likely safety as a condition for market entry of new chemicals. And it would for the first time allow EPA to require testing by issuing orders, instead of having to use the time and resource-intensive rulemaking process. And it would eliminate the requirement that EPA first show likely risk to high exposure to required testing.

It would substantially increase access to chemical information by the public, State governments and medical and health professionals that currently cannot be disclosed based on confidential business information claims. Since its introduction, many experts have had the opportunity to examine and review it. As I said, this is an important part of the process, to solicit and receive feedback on legislation.

As a result, I believe there are many things we need to improve in the bill, such as more firm deadlines and timetables, and better confidence that vulnerable populations will have adequate protections.

And wanting to hear the witnesses, Madam Chair, at this point I would just ask that my whole statement be put in the record and I would yield back.

[The prepared statement of Senator Udall follows:]

STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM THE STATE OF NEW MEXICO

Thank you, Madam Chair, for scheduling this important hearing.

Our current law on chemical safety, the Toxic Substances Control Act of 1976, is a broken and weak statute that desperately needs fixing to protect our families and loved ones. It gives us no confidence that our everyday products are safe, and we desperately need to improve it.

I'm particularly interested to hear from our witnesses today and want to make sure they hear me as well.

A lot of focus, attention, and concern have been given to the compromise Lautenberg-Vitter legislation in the last month or so. I think the surprise of a compromise, bipartisan bill on such a controversial topic added a lot to the urgency many felt to make comments.

I know that at times, Senator Lautenberg had nearly given up hope for a bipartisan agreement on this topic. But he was a fighter and he never stopped trying. We will all be lucky if we have a fraction of the perseverance that he had.

Let me make sure that everyone hears me as a cosponsor of this bill—I am fully committed to working with you and everyone else to improve this bill where there are legitimate concerns. This is a very important part of the process to pass substantial legislation. But I urge you to be constructive in your criticism and help us improve this bill.

When I was deciding whether or not to cosponsor the Lautenberg-Vitter bill as it was being introduced, I based my decision on two very important questions that I asked myself:

(1) is this bill better than current law, and

(2) do we have a political opportunity to enact this as law?

Is this bill better than current law? I believe so.

It takes important strides toward fixing the main elements of TSCA that have kept the EPA from effectively evaluating and regulating hazardous chemicals.

CSIA strikes the "least burdensome" requirement that has crippled TSCA from banning dangerous chemicals, such as asbestos.

• It would for the first time mandate safety reviews for all chemicals currently in commerce.

• It would for the first time require an affirmative finding of likely safety as a condition for market entry of new chemicals.

• It would for the first time allow EPA to require testing by issuing orders instead of having to use the time- and resource-intensive rulemaking process and would eliminate the requirement that EPA first show likely risk to high exposure to require testing.

• It would substantially increase access to chemical information by the public, State governments and medical and health professionals that currently cannot be disclosed based on confidential business information claims.

Since its introduction, many experts have had the opportunity to examine and review it. As I said, this is an important part of the process—to solicit and receive feedback on legislation. As a result, I believe there are many things we need to improve in the bill, such as more firm deadlines and timetables and better confidence that "vulnerable populations" will have adequate protections.

With these types of improvements, I think we can make it that much better than current law, but also improve the answer to my second threshold question: Do we have the political opportunity to enact this as law?

On that answer . . . Yes.

I appreciate what Senator Lautenberg did to make the necessary compromises to negotiate with Senator Vitter, and I appreciate the willingness that Senator Vitter has made to engage in this process.

I was a cosponsor of the original Lautenberg chemical bill—the Safe Chemicals Act. I believe that bill was also an improvement to current law, but that bill and discussion over it stalled for too long. That bill didn't have what this one does—bipartisan acceptance. At 25 Democrat and Republican cosponsors, this bill has the most bipartisan cosponsors of any environmental bill before this Committee.

And so we need to work from the Chemical Safety Improvement Act, S. 1009. I am committed, as a cosponsor and Chairman of the Subcommittee on Toxic Substances, to an improved version of this bill.

My staff and Senator Vitter's staff have been meeting with other Senate offices and a variety of stakeholders to hear their thoughts and concerns with the legislation. We have begun the process of thinking through creative solutions to address some of these issues and are optimistic that there is a path forward.

I'm hopeful that over the coming weeks we will be able to work with, you, Madam Chair, and anyone else who is interested, to improve the bipartisan bill before us, and that when we return from our August recess we will have a version that we can move forward with.

Senator BOXER. Thank you very much.

Senator Barrasso, to be followed by Senator Gillibrand.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. Thank you, Madam Chairman.

I first would like to say that I am very grateful for the work that Ranking Member Vitter and the late Senator Lautenberg did on their Chemicals overhaul bill. I believe they have created a bill that is the foundation for major reform of our chemicals policy.

It should not be underestimated the tireless work that was put into this negotiation, and Senator Lautenberg in particular dedicated his career to modernizing TSCA. Although I am not a cosponsor of the bill and more work needs to be done, I am pleased that this work led to a historic bipartisan agreement.

Madam Chairman, I want to read to you what others have said about this important piece of bipartisan legislation. The New Star Ledger stated on June 2nd that "This is a breakthrough bill that deserves our support. Its flaws can be fixed, and it has opened up a path to reform that never existed before. As written, this compromise would be a substantial improvement over the status quo."

And then the New York Times, they stated on May 29th that the bill "deserves to be passed, because it would be a significant advance over the current law." The Washington Post stated "Its authors were right to balance a legitimate interest in maintaining an innovative and profitable chemical industry against public health demands." And that "Senators will have the option of tinkering with it on the floor, but they shouldn't let this unexpected opportunity go by."

I agree. I believe we should not let this opportunity go by. Madam Chairman, we need to protect our children, families, seniors, no matter what. I doubt that there are any in this room who would not support that goal. Children need safe drinking water, life-saving medicines and safe food to eat.

What role has the chemical industry played in providing these things? Well, chemistry using chlorine plays an important role in producing 93 percent of the top selling medications in the United States. Children benefit from some of these drugs, including those that treat epilepsy, asthma and depression. The antibiotic Vancomycin, made with chlorine chemistry, has saved the lives of patients suffering from serious, stubborn bacterial infections. Chemicals provide prosthetic devices, such as polyvinyl chloride, PVC, which is a common chlorine-containing plastic used to construct prosthetic legs and arms for children who lose limbs or have birth defects. Thanks to these devices, many of these children can lead normal lives and participate in most activities.

PVC is used to make blood bags, IV fluid bags and tubing to deliver needed care for young patients. Incubators for prematurely born infants are constructed of chlorine-based polycarbonate plastic. The chemicals industry also makes the plastics used to manufacture child car seats and safer playground equipment.

It is not to say that it is a completely rosy scenario for today's children; there are still areas of concern, such as increased rates of childhood obesity, low birthweight babies. We must be ever vigilant. We need a strong and viable regulatory framework or framework that will spur advancements to help our children, not get in the way of them. We need a framework that can provide the next series of advancements that can make the future better for all Americans.

We must not enact policies that hamstring new chemical development that would prevent those new advancements. Otherwise, the next childhood vaccine or the next bicycle helmet, the next prosthetic leg, will not be there when our families need them the most.

So Madam Chairman, I look forward to working with my colleagues on advancing the Lautenberg-Vitter bill to accomplish these things in the not too distant future markup through regular order. Let's not let this bipartisan opportunity go by the wayside. Let's not snatch defeat from the jaws of victory by starting from scratch with an entirely new product.

It is time to move forward with this important bipartisan legislation. I thank you, Madam Chairman, and look forward to the testimony.

Senator BOXER. Thank you, Senator.

Senator Gillibrand.

OPENING STATEMENT OF HON. KIRSTEN GILLIBRAND, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator GILLIBRAND. Madam Chairwoman, thank you so much for holding this hearing today on the proposal to reform our Nation's toxic chemical laws.

While the members of this Committee may support different approaches to addressing this issue, we can all agree that the Toxic Substances Control Act, TSCA, is broken, and in serious need of reform and modernization. I am pleased today that our colleagues on both sides of the aisle share this goal and that we have a historic opportunity to come together and tackle this in a very serious way.

This should not be a partisan issue, because the effects of inaction are felt by households in each and every one of our States. We are all familiar with the staggering statistics, the 84,000 chemicals in commerce, the EPA has only been able to require the testing of 200 of them, and only banned five chemicals under the current TSCA framework. This has left families across the United States vulnerable to exposure to potentially dangerous chemicals that may lead to devastating health effects, including hormone disruption, learning disabilities and various forms of cancer.

I co-sponsored both the Safe Chemicals Act and the Chemical Safety Improvement Act because I believe there are positive elements to both. The Chemical Safety Improvement Act, negotiated by Senators Lautenberg and Vitter, was a strong and encouraging start. But we need to continue to work in a bipartisan way with common purpose.

We all know that no legislation is perfect or solves any problem entirely. But that should not stop us from doing what we can when we can, and continue to find ways to improve this bill as we move legislation through Committee and on the Senate floor.

The Chemical Safety Improvement Act is no different, and while there are several issues that concern me that must be addressed in this bill as it moves forward, there are also many positive elements to the bill, including new authority for the EPA to require testing and requiring an affirmative safety determination before a chemical can be used in commerce, among others. My staff and I have met with many of the stakeholders who were involved in TSCA reform, some of whom are testifying today. They have all shared very similar concerns, such as where in the process State preemption occurs, deadlines for EPA action and ensuring that EPA actions are made solely on the basis of protecting human health and the environment.

Madam Chair, I would like to ask unanimous consent at this time to enter into the record a letter that my office received this morning from the New York State Attorney General, which outlines their analysis of both positive elements of the Chemical Safety Improvements Act as well as those elements like State preemption that must be fixed to ensure that New York State can continue to be a leader in protecting our families from potential toxic chemicals not regulated by the Federal Government.

Senator BOXER. That will be included.

[The referenced information follows:]

STATE OF NEW YORK
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120 BROADWAY
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ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

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July 31, 2013

The Honorable Kirsten E. Gillibrand
United States Senate
478 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Gillibrand and Schumer:

On the occasion of today's hearing on "Strengthening Public Health Protections by Addressing Toxic Chemical Threats," I would like to take the opportunity to contribute my thoughts regarding the proposed Chemical Safety Improvement Act (CSIA), S.1009, which would amend the Toxic Substances Control Act of 1976 (TSCA).

I would like to begin by thanking you both for your attention to this important issue. The goal of TSCA is to establish necessary and appropriate federal restrictions on the manufacture and use of chemicals that present an unreasonable risk of injury to human health or the environment. I strongly support this goal and recognize the critical contribution that TSCA could make in ensuring the adequate protection of public health and the environment from toxic chemicals. Unfortunately, in practice, TSCA has largely failed to live up to its goal. Out of the 84,000 chemicals registered for use in the United States, only a handful are regulated and over 60,000 chemicals have not even been subjected to mandated safety review.

This is why I applaud your efforts to advance TSCA reform legislation – the CSIA provides a valuable opportunity to remedy the well-recognized failures of TSCA. Moreover, the CSIA would make critically-needed improvements to TSCA. It would require the federal Environmental Protection Agency (EPA) to categorize all active TSCA chemicals as either "low priority" or "high priority" based on a range of factors including data about a chemical's risks and the extent to which human beings or the

environment will be exposed to it; make safety assessments and determinations regarding high-priority chemicals; and issue restrictions on high-priority chemicals that present an unreasonable risk to public health or the environment. It also allows safety determinations to be based "solely on considerations of risk to human health and the environment," rather than on a cost-benefit analysis; requires a decision of "likely safety" before a new chemical enters the market; and broadens the range of tools that EPA may use to require testing of a chemical. Importantly, the CSIA removes the TSCA mandate that EPA impose only the "least burdensome restriction" on regulated chemicals – which has unduly restricted EPA's efforts to regulate the manufacture and use of chemicals that it has deemed harmful to public health and/or the environment. All of these requirements are central to addressing chemicals that unreasonably threaten public or environmental health.

At the same time, I have several concerns about the CSIA – particularly with respect to its preemption of state restrictions on harmful chemicals – that I would like to bring to your attention in the spirit of assisting you and your colleagues in continuing to strengthen the legislation.

I. EPA's Control of Chemicals Under TSCA and the CSIA

As mentioned above, TSCA authorizes EPA to regulate the manufacture and use of chemicals to protect human health and the environment. The primary requirements of TSCA are:

- Under § 8(b), EPA is required to maintain an inventory of chemicals currently manufactured or processed in the United States. 15 U.S.C. § 2607(b).

- Under § 5, manufacturers must notify EPA before using a chemical that is not on the inventory or creating a new use of a chemical that is on the inventory. 15 U.S.C. § 2604.

- Under § 6(a), if EPA finds that "there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal" of a chemical "presents an unreasonable risk of injury to health or the environment," EPA shall protect against that risk using "the least burdensome requirement" with respect to the chemical's manufacture, processing, distribution, use or disposal. 15 U.S.C. § 2605(a).

It is widely recognized, however, that these requirements have largely not been met. The CSIA addresses this problem, among others, by:

- Amending § 4 of TSCA to require EPA to classify every chemical on the inventory as either low or high priority;

- Amending § 6(a)-(c) to require EPA to make a safety assessment and safety determination about every high-priority chemical;

- Amending § 6(c) to provide that, if EPA finds as a result of the safety determination that a chemical will present an unreasonable risk of injury to health or the environment under its "intended conditions of use," EPA is required to impose additional restrictions as "necessary"; and

- Further amending § 6(c) to remove the "least burdensome requirement" provision, which has acted as a barrier to regulation.

I believe these amendments represent critical improvements to TSCA.

Beyond these amendments, I believe that the CSIA could be further improved by imposing deadlines on EPA for designating chemicals as low priority or high priority, for conducting safety assessments and determinations, and for imposing additional restrictions on chemicals that are found to present an unreasonable risk to health or the environment. Currently, the American public and our environment are being exposed to potentially hazardous chemicals on an ongoing basis, even though their toxicity is not yet fully understood. It is essential that EPA increase its knowledge of these chemicals' toxicity as quickly as possible and impose appropriate restrictions on their manufacture and use as necessary to adequately protect public and environmental health.

II. Preemption of State Laws Under TSCA and the CSIA

Historically and currently, New York and other States have been leaders in protecting public health and the environment from toxic chemicals. That exercise of state "police powers" has allowed States to protect their own citizens and natural resources and serve as laboratories for nationwide solutions for threats to human health and the environment.

For example, in 1970 New York banned use of the insecticide DDT, which was devastating many bird populations, including American bald eagles, peregrine falcons, brown pelicans, and ospreys. Two years later, EPA followed New York's lead. Twenty years later, the American bald eagle was "up"-listed from an endangered species to a threatened species.

More recently, in 2009 New York banned the purchase and incineration of coal "fly ash," a waste product of burning coal to produce electricity. Fly ash is rich in mercury, a highly toxic compound that causes nervous system damage, neurological problems, birth defects, and developmental delays. In 2010, EPA issued a proposed rule on fly ash and other coal combustion waste products although it has not yet finalized the rule.

These examples underscore the importance of maintaining the complementary, symbiotic relationship between federal and state chemical regulation in any TSCA reform.

Under § 18(a)(1), TSCA currently provides that a State may regulate any chemical unless and until EPA regulates the chemical under § 6. 15 U.S.C. § 2617(a)(1). Once EPA regulates a chemical because it has found that the chemical presents an unreasonable risk, § 18(a)(2)(B) provides that a State may not enforce an existing regulation or establish a new regulation "which is designed to protect against such risk" after the effective date of that federal regulation. *Id.* § 2617(a)(2)(B).

However, § 18(a)(2)(B) exempts a state restriction on a chemical from preemption if the state restriction is: (1) identical to EPA's restriction; (2) enacted pursuant to another federal law; or (3) a complete ban on in-state use of the chemical. *Id.* In addition, § 18(b) provides that a State may seek a waiver from preemption if a state restriction: (1) would not create a violation of EPA's regulation; (2) provides a significantly higher degree of protection than EPA's regulation; and (3) would not unduly burden interstate commerce. *Id.* § 2617(b). Thus, under TSCA, a state regulation is not preempted unless and until EPA has regulated the chemical, and even then a State may seek a waiver from preemption.

The CSIA would significantly broaden the scope of preemption and would prohibit States from regulating a chemical before there is <u>any</u> EPA regulation of the chemical. This is of great concern.

The preemption provisions of the CSIA distinguish between new and existing state regulations and between low-priority and high-priority chemicals:

- Under § 18(b) as amended, States would be preempted from issuing new restrictions regarding a chemical that EPA has classified as low priority once EPA issues that classification, even though EPA is not required to take *any* further action to regulate low-priority chemicals.

- If EPA classifies a chemical as high priority, new state restrictions are preempted under § 18(b) as amended once EPA issues a schedule for conducting a safety assessment and determination regarding that chemical, even though it may take years for EPA to complete that safety assessment and determination. Even after EPA completes that process, it may take years for EPA to issue restrictions on a chemical that it has found to present an unreasonable risk to human health or the environment. During this lengthy period of time when there are *no* federal restrictions on a chemical, States are preempted from imposing any new restrictions on the chemical even if they find based on their research that the chemical presents ongoing harm to their citizens or the environment.

- Under § 18(a) as amended, States are also preempted from enforcing existing restrictions regarding a high-priority chemical once EPA has issued a safety determination regarding the chemical, even though EPA may not issue any federal restrictions regarding the chemical for years. Thus, during this period of time, a State may not protect its citizens and environment from a chemical that EPA itself has found to be harmful even though there are no federal restrictions on the chemical.

The CSIA would also significantly narrow both the current exceptions to preemption and the circumstances under which States can obtain waivers. Under § 18(c) as amended, state restrictions adopted under the authority of another federal law would continue to be exempt from preemption but state restrictions identical to restrictions issued by EPA under TSCA would no longer be exempt. Without that exemption, the only means for States to enforce EPA's restrictions would be a citizens' suit in federal court, which would deprive States of the critical tool of enforcement by state administrative agencies. In addition, the CSIA would remove the preemption exception for state bans on in-state use of chemicals.

While § 18(c) as amended would add an exception for state laws relating to air quality, water quality, or hazardous waste treatment or disposal, it would limit that exception to laws that "[do] not impose a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance." Some chemicals that cause air or water pollution can certainly be controlled before they are emitted or discharged into the environment. However, other harmful pollutants can be effectively controlled only by banning or restricting their use, and such use restrictions would not fall under this exception to preemption.

In addition, § 18(d) as amended would allow a State to obtain a waiver from preemption only if the State shows that it cannot wait for the completion of a safety assessment and determination or that an assessment or determination has been unreasonably delayed. Thus, for example, if EPA issues restrictions on a chemical that are substantially more lenient than existing state restrictions, a State would not be able to seek a waiver from preemption, as it can under the current language of § 18(b) – even if the State's restrictions long preceded the federal regulation and have been shown to significantly benefit the State's citizens or environment. Further, even to obtain a waiver in the limited circumstances under which § 18(d) as amended would allow it, States would also need to present evidence that conditions in their States justify the waiver and provide other scientific support for their restriction.

III. Impact of the CSIA on New York's Authority to Restrict Harmful Chemicals

As discussed above, the CSIA would preempt New York from issuing any new restrictions on a chemical once EPA classifies it as low priority, or classifies it as high priority and issues a schedule for conducting a safety assessment and determination. That would, for example, preempt New York from issuing any new restrictions on the use of

perchloroethylene (perc) in dry cleaning, even though exposure to perc causes many harmful health effects, perc is a likely carcinogen and, as a result of the pervasive presence of perc in soils and groundwater, New York has spent millions of dollars cleaning up hazardous waste sites contaminated by it.

The CSIA also would preempt New York from enforcing existing restrictions on a high-priority chemical once EPA has completed a safety determination on the chemical. New York's existing restrictions on the sale or use of products containing harmful chemicals include:

- A ban on bisphenol A (BPA) in child care products, including pacifiers, baby bottles and sippy cups. N.Y. Envtl. Conserv. Law § 37-0501 *et seq.* BPA leaches into liquids and foods and has been shown to mimic the behavior of estrogens in the human body, causing changes in the onset of puberty and reproductive functioning.

- A ban on flame retardant tris(2-choloroethyl) phosphate (TRIS) in child care products, including toys, car seats, nursing pillows, crib mattresses, and strollers. N.Y. Envtl. Conserv. Law § 37-0701 *et seq.* The Consumer Products Safety Commission classifies TRIS as a probable human carcinogen. Studies have shown that young children are often the group most highly exposed to TRIS, and estimate that children can ingest up to ten times as much of this chemical as adults do because of their tendency to put their hands and other objects into their mouths.

- Restrictions on the concentration of brominated flame retardants (pentabrominated and octabrominated diphenyl ethers) in products manufactured, processed or distributed in New York. N.Y. Envtl. Conserv. Law § 37-0111. PDBE has been correlated with lower birth weight in newborns. Animal studies indicate that pre- and post-natal exposures to PBDE may cause long-lasting behavioral alterations and can affect motor activity and cognitive behavior.

- Restrictions on the use of lead, cadmium, mercury, and hexavalent chromium in inks, dyes, pigments, adhesives, stabilizers, or other additives in product packaging. N.Y. Envtl. Conserv. Law § 37-0205 *et seq.* EPA has determined that lead and mercury are probable human carcinogens while cadmium and chromium are known human carcinogens. Exposure to high levels of any of these heavy metals can permanently damage the brain, kidneys, and other vital organs.

- A de facto ban on the use of n-propyl bromide in dry cleaning. *See* "Approved Alternative Solvents for Dry Cleaning" at http://www.dec.ny.gov/chemical/72273.html. N-propyl bromide has been found to cause sterility in both male and female test animals, and harms developing fetuses. It can also damage nerves, causing weakness, pain, numbness, and paralysis. As a result, New York will not

issue an Air Facility Registration to any facility proposing to use n-propyl bromide as an alternative dry cleaning solvent as it is not an approved alternative solvent. New York City also bans n-propyl bromide under its fire code because of its flammability. N.Y.C. Admin. Code §§ 27-426, 27-427.

- A ban on the import, sale, or distribution of gasoline containing methyl tertiary butyl ether (MTBE). N.Y. Agric. & Mkts. Law § 192-g. Studies of animals have shown that exposure to large amounts of MTBE had effects on their nervous systems, and people exposed to MTBE have reported headaches, nausea, dizziness, and irritation of the nose and throat. MTBE in drinking water may also adversely effect taste and odor.

- Restrictions on the phosphorus content of household cleaning products and on the sale and use of phosphorus lawn fertilizers. N.Y. Envtl. Conserv. Law §§ 17-2103, 35-0105(2)(a). Phosphorus entering New York's waters has caused reductions in the oxygen that is necessary for fish to breathe and has contributed to algae that turns water green and degrades drinking water quality.

These laws and regulations play a critical role in protecting the health and welfare of the citizens and natural resources of New York State. In reforming TSCA, the chief objective must be to protect public health and the environment from the risks of toxic substances.

* * *

In conclusion, as I believe that achieving TSCA's goal of ensuring the adequate protection of public health and the environment from toxic chemicals is as important as ever, I would like to thank you both again for your attention to TSCA and its reform. While I have significant concerns about the CSIA, I strongly support your efforts and, for this reason, offer the full assistance of my office to you and your colleagues as you continue to strengthen and advance this important legislation.

Sincerely,

Eric T. Schneiderman
Attorney General of New York

Senator GILLIBRAND. Thank you, Madam Chairwoman.

I am committed to working with you, Madam Chairwoman, as well as our Ranking Member Vitter and other members on the Committee to address the issues we hear about from our witnesses today. If we can set our politics aside and commit ourselves to fixing TSCA's fundamental flaws, our Country will be better for it, and families across the United States will have the confidence of knowing that they are protected from harmful exposure to toxic chemicals, and their children will be safe.

I know that is what Frank Lautenberg would have wanted us to do, and the best way for this Committee to honor his legacy is to build on the progress he has made by working together, both Democrats and Republicans, to find that common ground.

Madam Chairwoman, I would also like to submit Bonnie Lautenberg's statement for the record, which I think has already been submitted.

Senator BOXER. We have already put that in. Thank you.

Senator GILLIBRAND. And again, thank you for your leadership and your determination on such a vital issue for our States and for the whole Country.

Senator BOXER. Thank you, Senator.

I am going to ask unanimous consent to place into the record a letter that just came to my attention from the National Caucus of Environmental Legislators, who wrote to convey their deep concerns with S. 1009 as it is currently written. It is a letter sent to myself and Senator Vitter. And among others, we have legislators from Alaska, California, Connecticut, Delaware, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Virginia, Washington State. We will place that into the record.

[The referenced information was not received at time of print.]

Senator BOXER. And anybody, any other colleagues that have anything to add to the record, on either side of this, or on all sides of it, that would be fine. So you let me know about that.

So now we are going to turn to our esteemed panel. We have here Mr. Michael Troncoso, Senior Counsel, Office of the Attorney General of California. I am very proud that you are here, and I am proud of Kamala Harris. She was the first one to point out the preemption in this bill so we can take a look at it. And colleagues on both sides seem ready to fix that problem. I credit Kamala for really being the first one to get out there with it, and the L.A. Times for making sure we all understood it.

Mr. Michael Dorsey, Chief of Homeland Security and Emergency Response, West Virginia Department of EPA, sir, welcome. And Mr. Ken Zarker, Manager, Pollution Prevention and Regulatory Assistance Section, Washington State Department of Ecology.

Welcome to you all. Why don't we start with you, Mr. Troncoso?

STATEMENT OF MICHAEL A. TRONCOSO, SENIOR COUNSEL, OFFICE OF THE ATTORNEY GENERAL, CALIFORNIA

Mr. TRONCOSO. Madam Chair and Ranking Member Vitter, distinguished members of the Committee, thank you so much for the opportunity to be here today.

My name is Michael Troncoso. I serve as Senior Counsel to the Attorney General in the State of California, Kamala Harris. The Attorney General asked me to testify today to speak with the Committee about the potentially crippling effects, I would say, that the preemption provisions in particular of the current draft of the bill face to California law, and we believe, to laws across the States that are with respect to creating protections against the harmful effects of toxic chemicals.

We believe as it is currently written, the bill will not create additional protections, but may, to the contrary, really roll back the authority and the role of the States in protecting our environment and the health and welfare of our citizens and vulnerable populations in particular. My comments today, as I noted, will focus on the preemption provisions.

We believe that these provisions threaten to strip away the States' ability in significant ways to regulate toxic chemicals. For example, the States have long enjoyed the authority to adopt protections to where the Federal Government has adopted none. We have enforced within our own borders State toxic requirements that are identical to Federal provisions. And we have banned the in-State use of dangerous chemicals.

Preempting the States from these traditional activities and exercises of our police powers in the absence of any enforceable Federal rule, as this draft would do, we believe, creates a regulatory vacuum that endangers public health and public safety. Some have argued that the bill's waiver of preemption provisions cures this problem. But the bill's waiver provision, in our view, is sufficiently onerous as to be illusory.

It does not allow the States to adopt and enforce the stricter standard than the Federal Government in important instances. The waiver provision also requires a high showing of "compelling State or local interest" that would justify a waiver to allow the State to regulate.

All of this will likely lead to needless litigation, as we have experienced in many contexts at the State level, and in our view, imperil the application of well-established State law.

I would like to illustrate very briefly for the Committee, if I may, how this preemption provision might impact California, in particular, and our ongoing efforts to regulate dangerous chemicals. In 2003, California passed a statewide ban on certain flame retardants known as polybrominated diphenyl ethers, or PBDEs. PBDEs are found in foams, in furniture, upholstery and carpeting and electronic circuit boards.

PBDEs accumulate in the body over time. The cutting edge science and recent studies which are in my written testimony describe potential disruptions to thyroid hormones, potential harm to developing fetuses, and even potential of causing cancer.

This is an example of a State ban of a certain chemical known to be a toxic. Under Senate Bill 1009, if PDBEs are identified as a high priority chemical, our State would lose its ability to "establish" any restrictions concerning their use, including their in-State use within California. This could occur significantly before any enforceable Federal action is taken, thus creating the regulatory vacuum that I described.

I have another example which involve California's strong laws against volatile organic compounds, or VOCs. VOCs are a critical ingredient for the creation of ozone, which is related to the development of asthma and other respiratory illnesses, which we have experienced this very significant problem with in California, as Madam Chair knows.

Consumer products such as cleaning products contribute a significant amount of these VOCs to the ambient environment. So California enacted regulations limiting the use of VOCs in consumer products. Our Department of Public Health in California estimates that this will result in a 48 percent decrease in VOC emissions from such products.

The bill, however, we believe, would preempt application of these regulations at a very preliminary stage of the assessment that would be conducted by the EPA, putting people across our State potentially at risk for additional respiratory illness.

Finally, I want to talk briefly about California's Proposition 65. It was enacted by California voters directly in 1986 and requires that businesses warn a consumer before selling a product that exposes them to a carcinogen. Prop 65 in practice has led to the reformulation of many products that were later, and at the time, proven to be dangerous. In exercising our authority, as borne out by my written testimony, we have eliminated products from the market that included lead-covered bounce houses for children. As the father of a 17-month-old and a 4-year-old, I will tell you, this is an important role for the States. We urge the Committee not to roll back those protections.

And we appreciate your time.

[The prepared statement of Mr. Troncoso follows:]

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
MICHAEL A. TRONCOSO
SENIOR COUNSEL TO THE ATTORNEY GENERAL

Testimony of Michael A. Troncoso
Senior Counsel to the Attorney General of California, Kamala D. Harris
Before the United States Senate Committee on Environment and Public Works
July 31, 2013

Chairman Boxer, Ranking Member Vitter, and distinguished members of the Committee, my name is Michael Troncoso, and I serve as Senior Counsel to California Attorney General Kamala D. Harris. Thank you for the opportunity to appear before you today.

Attorney General Harris has asked me to testify to ensure that the Committee is aware of the very serious consequences that will result if the Chemical Safety Improvement Act – S. 1009 – is enacted in its current form.

As currently written, S. 1009 will not give us more protection. To the contrary, it would cripple the states' power to protect our environment and the health and welfare of our citizens. If the law is adopted in its current form, it will set aside decades of California laws in the areas of consumer and environmental protection, and mark the end of the federal government's long partnership with state regulators and state Attorneys General in guarding against the harmful effects of toxic chemicals.

The preemption provisions of S. 1009 threaten to strip the states' long-standing ability to protect their citizens from dangerous chemicals by, for example, adopting protections where the federal government has adopted none, enforcing within their borders state toxic requirements that are identical to federal requirements, and banning in-state use of dangerous chemicals.

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Preempting states in the absence of any enforceable federal rule – as S. 1009 would do – creates a regulatory vacuum that endangers public health and safety. While some may argue that states can always obtain a waiver of preemption, the bill's waiver provision is illusory. It does not allow the states to adopt and enforce a stricter standard than the federal government, and it requires a showing of a "compelling local interest" that most state chemical laws today could not meet.

To illustrate what is at stake if state laws are preempted, let me outline some of the successes that California has had under its laws. These types of laws could be stopped in their tracks if S. 1009 is not substantially overhauled.

In 2003, California passed a statewide ban on certain flame retardants,[1] known as polybrominated diphenyl ethers or "PBDEs." PBDEs are found everywhere – in foams in furniture and automobiles, in electronic printed circuit boards, in carpet backing, and in upholstery. PBDEs do not stay in these products, though. They end up in our environment and in our bodies. PBDEs may disrupt thyroid hormones, harm the developing fetus, and cause cancer. A recent study, funded in part by the National Institute of Environmental Health Sciences, reported that median levels of certain PBDEs in California pregnant women were the highest reported to date among pregnant women worldwide.[2] In California, we are taking action to reduce these harms. S. 1009 threatens to undo this progress.

California has also enacted strong laws to reduce exposure to toxic chemicals in the environment. Ozone, a component of smog, is a powerful reactive chemical that can damage respiratory tissues. High levels of ozone increase the risk of serious respiratory disease,

[1] California Health and Safety Code section 108922.
[2] Pham, *Highest Levels of Flame Retardant Chemicals Reported in California Pregnant Women*, NIEHS Environmental Factor (Sept. 2011) http://www.niehs.nih.gov/news/newsletter/2011/september/science-chemicals/ (as of July 23, 2013).

including asthma. The top five metropolitan areas nationwide with the worst ozone problems are in California.[3] About one in eight people in California have been diagnosed with asthma, and it is particularly acute in California's African American population, whose members have a 40 percent higher asthma rate and are twice as likely to die from asthma.[4]

We take the ozone problem seriously in California. Ozone is created in part by chemicals known as volatile organic compounds or "VOCs." Consumer products such as deodorant, hair spray, and cleaning products contribute a significant amount of VOCs to the environment. California has enacted regulations limiting the use of VOCs in consumer products,[5] resulting in an anticipated 48 percent decrease in VOC emissions from such products.[6] S. 1009 could override these regulations, putting millions of people across the state at increased risk of respiratory disease, as well as substantially increasing health care costs.

The California Safe Cosmetics Act[7] was the first state cosmetics regulatory program in the country. It requires manufacturers of cosmetics and body-care products to disclose added ingredients that are carcinogens or reproductive toxicants. As of 2011, 700 different companies reported some 17,060 different cosmetic and body-care products that contain chemicals known or suspected to be carcinogens or reproductive toxins.[8] Many consumers have no idea that the products that they put onto their own and their children's bodies contain these harmful chemicals.

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[3] http://www.stateoftheair.org/2013/city-rankings/most-polluted-cities.html (as of July 24, 2013).
[4] Milet et al., *Asthma in California: A Surveillance Report* (May 2013), California Department of Public Health http://californiabreathing.org/asthma-data/burden-report (as of July 23, 2013) (hereafter "*Asthma in California*").
[5] California Code of Regulations, title 17, section 94509.
[6] *Asthma in California, supra.*
[7] California Health and Safety Code sections 111791 *et seq.*
[8] Examining the Current State of Cosmetics, Hearing before House Comm. on Energy and Commerce, Subcomm. on Health (March 27, 2012), written testimony of Dr. Michael DiBartolomeis, Chief, Safe Cosmetics Program, California Department of Public Health http://www.cdph.ca.gov/programs/cosmetics/Documents/Testimony.pdf (as of July 23, 2013).

The first lawsuit brought under the Safe Cosmetics Act was against the manufacturers of a popular hair straightener that, it turned out, contained high levels of formaldehyde. Formaldehyde – the same chemical used in embalming – is a known human carcinogen that can cause severe respiratory problems and even death.

The stylists who applied this product did not know it was causing exposure to a dangerous gas because it was labeled "formaldehyde-free." The product sickened stylists and the women who came in for hair straightening. Customers and stylists complained of burning eyes, nose, and throat; asthma episodes; and skin blisters. California's lawsuit was the first government enforcement action in the United States to address the exposure to formaldehyde gas from this product. As a result of the state's action, the company reformulated the product to substantially reduce the formaldehyde level, stopped falsely advertising the product as formaldehyde-free, and provided warnings on the material safety data sheets provided to stylists. The lawsuit was a major step forward in protecting stylists and consumers from immediate and longer-term injuries from this product. S. 1009, however, threatens to undo the Safe Cosmetics Act's protection.

Proposition 65 – a "right to know" law – was enacted by California voters in 1986.[9] It requires that businesses warn consumers if the products they sell expose individuals to carcinogens or reproductive toxins. Consumers can then make a choice about whether to continue to use the product. Proposition 65 does not mandate that a manufacturer change a product. But, in practice, many manufacturers reformulate their products to eliminate the toxic chemical and eliminate the need to warn.

In exercising the Attorney General's enforcement authority under Proposition 65, our office is especially concerned about chemical exposures to children. Children are particularly

[9] California Health and Safety Code sections 25949.5 *et seq.*

sensitive to a range of toxins, and, because of their habits and activities, are more likely to be exposed to chemicals in products and in the environment. Accordingly, the Attorney General has enforced Proposition 65 to target products that put the most vulnerable among us at risk. I will provide a few examples.

- We discovered that vinyl "bounce houses" were causing lead exposures to children. Bounce houses are those colorful blow-up structures our children and grandchildren play inside at birthday parties and in amusement parks. Previously, bounce houses in California were made with lead-containing vinyl. Children touching the vinyl surfaces and breathing the dust created by the aging vinyl were exposed to significant levels of lead, which is a carcinogen, a reproductive toxin, and a potent neurotoxin. Because of Proposition 65, manufacturers of bounce houses started using low-lead vinyl, thereby protecting our children from a significant and completely unnecessary lead exposure.
- In a similar example, manufacturers previously used wood treated with chromated copper arsenate in children's playground structures. The treated wood created a strong and durable structure, but inorganic arsenic – a carcinogen and potent poison – leached out of the wood as it aged. Children touching and climbing on the structures and breathing the dust from the ground were exposed to significant levels of inorganic arsenic. Again, faced with our Proposition 65 suit, manufacturers were able to switch to non-arsenic wood preservatives and to build safe and durable play structures without exposing our children to arsenic.
- The Attorney General was disturbed to learn that children's jewelry contained lead in the painted surfaces or in the metal and plastic materials used to make the jewelry. In many cases, the jewelry was sold with labeling indicating that the jewelry was "lead-free," but

testing by the California Department of Toxic Substances Control confirmed that the jewelry contained high levels of lead. Because children often handle their jewelry throughout the day and put it in their mouths, leaded children's jewelry was particularly problematic. As a result of our Proposition 65 enforcement, manufacturers have switched to low-lead materials, and they must use better manufacturing practices to protect consumers from unnecessary lead exposure.

I will close with one final example, one that shows significant promise for changing the entire way we deal with toxics. California has created a Green Chemistry Program and is in the beginning stages of implementing it through regulations.[10] Green chemistry is an innovative new approach to environmental and consumer protection. It fundamentally changes the way we deal with toxic chemicals by encouraging companies to find safer alternatives for toxic chemicals in their products. It will allow us to move away from a system where we are constantly reacting to problems, to one where government and industry work together to avoid problems in the first place.

Many California companies have shown a voluntary commitment to implementing green chemistry principles. For example, one California company reformulated its body-care products to eliminate toxic chemicals and petroleum based ingredients. A second company has removed over 24 million pounds of hazardous chemicals and more than 10 million pounds of ozone-causing chemicals from its processing since 2001, and continues to remove more than 2.6 million more pounds each year.[11] In anticipation of the state's green chemistry regulations, many more

[10] See Hazardous Materials and Toxic Substances Evaluation and Regulation, Statutes 2008, chapter 559 (A.B. 1879); Toxic Information Clearinghouse, Statutes 2008, chapter 560 (S.B. 509); see also California Green Chemistry Initiative, Frequently Asked Questions (Dec. 2008), Department of Toxic Substances Control http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/upload/ FAQs_greenchem.pdf (as of July 23, 2013).
[11] *Id.*

companies are seeing the value of green chemistry and changing their practices. S. 1009 will, however, jeopardize this innovative program.

These are only a few examples of the California laws that S. 1009 threatens. A more detailed discussion is contained in the letters from Attorney General Harris, from the Secretary of the California Environmental Protection Agency, from the Deputy Director for Legislation of the California Department of Toxic Substances Control, and from the Secretary for the Labor and Workforce Development Agency, which I have attached. These are not just the concerns of California; they are shared by other states as well. Also attached is a joint letter from the Attorneys General of Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Oregon, Vermont, and Washington, who, along with California, set forth their concerns with the preemption provisions of S. 1009 and urge Congress not to undermine the traditional role of the states in protecting their citizens from toxic chemicals.

California shares the goal that is behind the effort to reform the Toxic Substances Control Act. The federal government must regulate chemical safety so that there is a minimum level of protection across the nation. At the same time, we urge the Committee to recognize and honor the long-standing authority of the states to act alongside the federal government to protect the health, safety and welfare of their citizens – to act as laboratories of innovation in the area of toxics regulation, and to tackle the problem of dangerous chemicals as a partner with the federal government. We urge you reject any amendment to the law that would undermine that authority and undermine our existing state and federal partnership.

On behalf of Attorney General Harris, I thank you for the opportunity to testify before this Committee.

KAMALA D. HARRIS
Attorney General

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June 11, 2013

The Honorable Barbara Boxer
Chairwoman, Senate Environment
and Public Works Committee
112 Hart Senate Office Building
Washington, D.C. 20510

RE: Concerns with Preemption Language in Chemical Safety Improvement Act, S.1009

Dear Senator Boxer:

I write to convey the concerns of the California Attorney General regarding the proposed Chemical Safety Improvement Act, S.1009. Although we recognize that the Toxic Substances Control Act (TSCA) is in need of substantial reform, we believe that S.1009, as currently drafted, cripples the police powers that California relies on to protect public health and the environment and, in addition, severely compromises California's authority to supplement and complement federal efforts to regulate the safety of chemicals. As a leader in chemical safety and consumer protection, California has a direct stake in the outcome of any reform of TSCA. We respectfully request that S.1009 be amended to address the problems outlined below.

California's Role in Protecting Public Health

California has been a leader in enacting laws that protect public health and the environment, and has served as a laboratory for innovation for other states and the federal government. Many of the innovative laws that California has enacted are jeopardized by S. 1009.

Green Chemistry

Over the past several years, California has undertaken to implement ground-breaking "green chemistry" programs, reflecting an approach to environmental and public health protection that focuses on reducing or eliminating the use and generation of hazardous substances. Green chemistry marks a sharp departure from managing hazardous substances after they already have entered consumer products and our environment. In 2005, the State enacted the California Safe Cosmetics Act, becoming the first state in the nation to regulate toxic ingredients in cosmetics. The next year, California established the California Environmental Contaminant Biomonitoring Program to identify toxics accumulating in California residents and, in 2007, banned plasticizers called phthalates in children's products. In 2008, California enacted

two bills that together created the State's comprehensive Green Chemistry Program. Under that program, the Department of Toxic Substances Control (DTSC) is in the final stages of promulgating regulations that will establish a process for identifying chemicals of concern in consumer products and their potential alternatives, in order to determine how best to limit exposure or to reduce hazard levels.

Proposition 65

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), was enacted as a ballot initiative in November 1986 by 63% of the voters. Proposition 65 was designed to protect California citizens and drinking water sources from chemicals known to cause cancer, and birth defects or other reproductive harm. Proposition 65 requires the Governor to publish, at least annually, a list of chemicals known to the State to cause cancer or reproductive toxicity. Businesses may not discharge these chemicals to sources of drinking water and must warn individuals about exposures to the listed chemicals. The Attorney General is the only official with statewide authority to enforce Proposition 65, and actions by the Attorney General in the name of the People are brought under the sovereign authority of the State.

Using this authority, the Attorney General's Office has taken a number of steps over the years to protect public health, including:

- Required manufacturers to reformulate the "Brazilian Blowout" hair straightener which contained high levels of formaldehyde that sickened hair stylists and their customers, and to provide warnings and accurate labeling of such products.

- Required manufacturers, sellers, and distributors of vinyl "jump houses" for children, to lower the levels of lead in the vinyl. Children playing in the jump houses were previously exposed to significant levels of lead from the vinyl.

- Required terminal operators at the Los Angeles and Long Beach Ports to provide a strong warning program about diesel fumes emitted into surrounding neighborhoods, and to implement a Clean Trucks Program to reduce diesel emissions from Port operations.

- Required manufacturers to reduce the lead in calcium supplements, multi-vitamins, and other nutritional supplements, including prenatal supplements, supplements for women of childbearing age, and supplements for children to levels below where Proposition 65 requires point-of-sale warnings, an area in which the Federal government has not taken regulatory action.

- Required manufacturers of wooden playground structures to stop using wood treated with chromated copper arsenate, which exposed children to high levels of arsenic.

- Required manufacturers of Mexican chili candies to reduce the high lead levels in their candies by improving their manufacturing processes, including washing the chilies before manufacture. The candies are eaten extensively by children in the Mexican-American community in California.

California's Programs are Threatened by S.1009's Overreaching Preemption Provisions

States Must Not Be Preempted in the Absence of Federal Regulation

Among the bedrock powers reserved to the states under the Tenth Amendment to the U.S. Constitution is the exercise of police powers to protect the health and safety. The courts have long recognized that regulation of health and safety matters is historically a matter of significant state concern, and the federal government has traditionally granted the states great latitude to protect the health and welfare of their citizens. To take away those historical police powers through preemption in instances where the federal government has yet to regulate or will not be regulating a chemical substance serves only to increase the risk to public health. Under S.1009:

- States are prohibited from enforcing existing state laws or from adopting new laws regulating chemical substances determined by U.S. EPA to be "high priority" even before federal regulations or orders become effective, creating a period of months or potentially years where such chemical substances are unregulated. See S.1009, § 15(a)(2).

- States are barred from adopting and enforcing new laws regulating "low priority" chemical substances – of which there will be tens of thousands – even though the U.S. EPA Administrator is also expressly prohibited from regulating those substances and has made only a preliminary safety assessment that is immune from judicial review. This creates a gaping and permanent regulatory vacuum. See S.1009, §§ 4(e)(3)(H)(ii), 4(e)(5) and 15(b)(2).

States Must Retain the Ability to Ban Use of a Chemical Substance In-State

Even where the federal government has acted to regulate a chemical substance, states must retain the ability to ban the use of that chemical substance in-state, in order to protect its residents' health and safety. In-state use bans – which do not prohibit the manufacture or processing of the chemical substance for export – do not unduly burden interstate commerce.

- Existing law gives states authority to prohibit the use of a chemical substance in-state without having to apply to the U.S. EPA for a waiver. See 15 U.S.C. § 2617(a)(2)(B)(iii). S.1009 revokes this authority by preempting state prohibitions or restrictions on the use of a chemical substance. See S.1009, §§ 15(a)(2), 15(b)(1) and 15(b)(2).

States Play a Vital Role as Co-Enforcers of Federal Standards

In numerous areas of environmental law, states and their political subdivisions play a vital role in enforcing federal standards. For example, under the nation's solid hazardous waste law – the Resource Conservation and Recovery Act (RCRA) – once state programs are certified by the federal government, states assume primary responsibility for enforcement. With respect to consumer product safety, federal law provides states with the ability to enforce federal regulations and orders. Under existing TSCA provisions, states are allowed to enact requirements that are "identical to the requirement prescribed by the Administrator," gaining the ability to enforce that requirement without having to apply for a waiver.

- S.1009 provides none of the above avenues for state enforcement. Rather, enforcement of all new prohibitions or restrictions on chemical substances is wholly dependent on the resources, priorities, and discretion of the U.S. EPA and the U.S. Department of Justice.

States Should Have a Reasonable Opportunity to Obtain a Waiver to Enforce a Higher Degree of Protection Within Their Borders

Under the existing provisions of TSCA, where the Administrator has adopted a rule with respect to a chemical substance, states are allowed to apply for an exemption to provide a higher degree of protection, so long as state requirements do not make it impossible to also comply with federal law (i.e., create a conflict) or unduly burden interstate commerce. See, e.g., 15 U.S.C. 2617(b).

- S.1009 has no directly analogous provision. The bill allows states to apply for a waiver to enforce a prohibition or restriction, if the application is filed prior to the Administrator's completion of a safety assessment/safety determination. But, depending on the timing of the state's application, the waiver either terminates automatically after completion of the safety assessment/safety determination or terminates if it "conflicts" with the Administrator's safety assessment/safety determination (which itself is not a restriction or prohibition). See S.1009, § 15(c)(6).

- Even then, S.1009 sets up an unrealistic test if a state seeks to obtain a waiver to adopt and enforce its requirements. Specifically, a state must certify that "the State has a compelling local interest to protect human health or the environment." See S. 1009, §§ 15(d)(1)(B)(i) and 15(d)(2)(B)(ii). It is unclear what is meant by "local interests" or what showing would be required. It is likely not possible to show unique circumstances that differentiate health risks by geography, since dangerous chemicals don't act differently in different locations. Risks from exposure to chemicals in the home, at the office or at retail establishments do not vary from one state to the next. Under this standard, it is unclear whether a waiver could ever be granted.

Thank you for your consideration of our comments. Please feel free to contact me if you have any questions or need further information.

Sincerely,

Brian Nelson (SM)

BRIAN NELSON
Special Assistant Attorney General

For KAMALA D. HARRIS
Attorney General

cc: The Honorable Diane Feinstein

CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

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EDMUND G. BROWN JR.
GOVERNOR

June 25, 2013

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Kirsten Gillibrand
United States Senate
478 Russell Senate Office Building
Washington, D.C. 20510

RE: S. 1009, Chemical Safety Improvement Act (CSIA) – Concern with Preemption Language

Dear Senators Feinstein, Boxer, and Gillibrand:

I am writing on behalf of the California Environmental Protection Agency (Cal/EPA) to express serious concern about the effects of S. 1009 on California's ability to protect its residents from toxic chemicals, air pollution, and threats to drinking water. You have previously received letters from the California Department of Toxic Substance Control and the California Attorney General's Office expressing reservations about this proposed legislation. (See attached letters of May 31 and June 11, 2013.) We agree with the concerns stated in these letters and write separately to note that as currently written, S. 1009 also could jeopardize California's ability to control greenhouse gases and thereby meet the State's targets under AB 32, the California Global Warming Solutions Act of 2006. Although the Toxic Substances Control Act (TSCA) is clearly in need of reform, we respectfully request that S. 1009 should not be adopted unless amended prior to moving forward in the Senate to address major concerns with the legislation, including the provisions governing preemption of state laws.

The existing and more reasonable preemption provisions currently in TSCA have allowed California to take necessary action over the past three decades to reduce toxic chemicals and protect public health and the environment. Many of our regulatory actions have resulted in beneficial changes in product composition and chemical use that extend far beyond the borders of our state. As an example, California's Safe Drinking Water and Toxic Enforcement

Act (Proposition 65) stimulated nationwide reformulation of numerous products to remove chemicals known to the State of California to cause cancer or reproductive harm. Successes under this law include removing lead from water faucets, eliminating trichloroethylene (TCE) from liquid correction fluid, and more recently removing flame retardants from infant nap mats.

California laws or regulations have also provided a model that is followed in other states or nationally. For instance, California legislation, adopted in 2007 to ban certain phthalates in toys and children's products [Cal. Health & Saf. Code, §§ 108935-108939, Stats. 2007, c. 672, A.B. 1108], was the inspiration for Senator Feinstein's legislation, S. 2663, banning these same chemicals nationally in the Consumer Product Safety Improvement Act of 2008.

After consulting with scientific and legal experts who work for the boards and departments within Cal/EPA, we have identified dozens of California laws and regulations that may be at risk of preemption under the current provisions of S. 1009. Information concerning each of these laws and regulations could be provided at your request, and several examples are highlighted here:

- Global Warming Solutions Act of 2006 (AB 32): Some very potent greenhouse gases, such as sulfur hexafluoride and methane, are of relatively low toxicity. If the EPA Administrator designates any of these chemicals as "Low Priority" under S. 1109, states will be barred from any "prohibition or restriction on the manufacture, processing, distribution . . . or use" of these chemicals. This provision could bar state actions to regulate or control potent greenhouse gases and could undermine California's efforts to achieve our reduction targets under AB 32.

- Reducing Ozone Pollution: California contains major geographic areas in "Extreme" ozone non-attainment. Ozone is a Criteria Air Pollutant that causes or contributes to respiratory disease, asthma, emergency room visits, hospitalizations, and premature death. Nonattainment areas are required to take aggressive action to reduce ozone pollution, including reducing the emissions of ozone precursors such as volatile organic compounds (VOCs). S. 1009 sec. 15, subsection (c) states that the preemption does not apply to a state regulation that is "... adopted under a law of the State . . . related to . . . air quality . . . that (A) does not impose a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance." The California Air Resources Board, however, has a number of regulations that would not be able to take advantage of the exception in subsection (c) because they impose restrictions on the "use" or "distribution in commerce" of specific VOCs in products. This could significantly impair California's efforts to come into attainment with the Clean Air Act and could put millions of people in the Los Angeles area and San Joaquin Valley of California at increased risk of respiratory disease.

- Drinking Water Safety: More than 60 California water systems contain hexavalent chromium or perchlorate. It is reasonably likely that these will be designated as "High Priority" chemicals under S. 1009, thereby immediately preempting all future state actions, and retroactively preempting existing state laws and regulations once U.S. EPA has acted. This puts future California activities to protect sources of drinking water in immediate jeopardy, and also may endanger historic regulations, including our 1989 ban on the use of hexavalent chromium in cooling towers; our 2007 strict performance and emissions requirements for the chrome plating industry; and the Perchlorate Best Management Practices regulations of 2006.

- Consumer Product Safety: Numerous California laws and regulations have collectively worked to increase the safety of consumer goods and reduce the use of toxic chemicals in products. Specific examples include the 2006 ban on certain flame retardants, which has been replicated or expanded in at least a dozen states; bans on mercury in products ranging from thermostats to thermometers, which are now in place in more than 20 states; a phase-out by 2014 of toxic substances including copper, cadmium, hexavalent chromium, lead, mercury and asbestos in automobile brake pads; and a ban on toxic chemicals in art supplies for young school children. The California Safer Consumer Products regulations, slated for release next month, will constitute the most ambitious effort to date to systematically address the issue of toxic chemicals in consumer products by promoting innovation in safer alternatives and green chemistry. Depending on the scope and interpretation of S. 1009 and the resulting actions of the EPA Administrator, components of the above laws and regulations will be put at risk.

In addition to the above issues, we are concerned that the lack of clarity of some of the preemption provisions in S. 1009 would open the door to extensive litigation. For example, the preemption of state actions that prohibit or restrict "the manufacture, processing, distribution in commerce or use of a chemical substance" in §15(a) and (b) should not be understood to limit states from requiring that information be provided to the public; however we recognize that the ambiguity of the language could cause others to claim that a label or warning to consumers is an indirect "restriction on the . . . distribution . . . or use". This issue requires clarification.

I am confident that this legislation is not intended to invalidate or undermine existing California laws and regulations governing public health and the environment, nor is it the intent to block future innovation and health protection at the state level. Accordingly, we respectfully request that you reconsider the provisions of S. 1009 to ensure that it is written in a manner that will be successful in protecting the public from toxic chemicals, in a reasonably expeditious manner, without unintentionally restricting the ability of states to protect consumers, health, and the environment.

Sincerely,

Matthew Rodriquez
Secretary for Environmental Protection

Attachments

cc: See next page.

cc: Ms. Katie Wheeler Mathews
Deputy Director
Washington D.C. Office of California Governor Edmund G Brown, Jr.

Mr. Cliff Rechtschaffen
Senior Advisor
Office of California Governor Edmund G. Brown Jr.

Brian Nelson
Special Assistant Attorney General
California Department of Justice

Sally Magnani
Senior Assistant Attorney General
California Department of Justice

Ms. Debbie Raphael, Director
California Department of Toxic Substances Control

Mr. Richard Corey
Executive Officer
California Air Resources Board

Mr. George Alexeeff, Director
California Office of Environmental Health Hazard Assessment

Department of Toxic Substances Control

Matthew Rodriquez
Secretary for
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Deborah O. Raphael, Director
1001 "I" Street
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Sacramento, California 95812-0806

Edmund G. Brown Jr.
Governor

May 31, 2013

Felix S. Yeung, Esq.
Legislative Assistant
Office of Senator Dianne Feinstein
Felix_Yeung@feinstein.senate.gov

Dear Mr. Yeung:

I am writing to you to convey initial comments from the California Department of Toxic Substances Control (DTSC) regarding the proposed Chemical Safety Improvement Act ("the Act"). DTSC is extremely concerned about this bill. DTSC recognizes that the Act includes some positive reforms to the Toxic Substances Control Act ("TSCA"), but at this point, the areas of concern overshadow these improvements. While most of DTSC's concerns center around the Act's preemption provisions, DTSC also has broader concerns regarding the functionality and effectiveness of the Act.

Areas of concern:

- **The expansion of the preemptive effect of EPA action under TSCA.**
    - The Act would broaden vastly the scope and conditions of preemption by TSCA of state and local chemical regulations.
    - There is a need for clarification regarding what constitutes a "prohibition or restriction on the manufacture, processing, or distribution in commerce or use of a chemical substance," in order to clearly define what types of state actions are intended to be preempted under the Act.
        - Industry may argue that a labeling requirement could be considered a restriction on the use of a chemical substance, which is far too broad an interpretation of this phrase.
    - States would be barred from enforcing existing chemical regulations after issuance of a safety determination by US EPA, even when state regulations are consistent with the findings of US EPA's safety determinations.
        - States should be allowed to continue to enforce their regulations until the Administrator for US EPA promulgates a rule establishing necessary restrictions after making a determination.
    - States would be barred from imposing new prohibitions or restrictions on chemical substances that are identified as "high-priority" as of the time the

Administrator of US EPA publishes a schedule for conducting a safety assessment, not as of the time that such a determination is actually made.

- States should not be barred from imposing regulations on chemical substances for which they have already evaluated the safety and determined that prohibitions or restrictions are necessary to protect public health or the environment merely because the Administrator has released a schedule by which US EPA will conduct its own assessment.

- The criteria for a state waiver are nearly impossible to meet.
  - The requirement that "compelling State or local conditions" warrant the waiver is unreasonable, as the risks presented by exposure to chemical substances are unlikely to present localized risks.

- **The safety standard to be used in making safety determinations**
  - There is a need for clarification of the definition of "unreasonable risk of harm to human health or the environment," which is central to the regulatory standard of US EPA's safety determination.

- **The lack of deadlines for US EPA actions both in making the initial determinations of high-priority and low-priority chemicals, and in acting upon unreasonable risks that are identified**
  - Proposed language only says that the US EPA Administrator "shall make every effort to complete the prioritization of all active substances in a timely manner."
    - There is conflicting language in Section 4, subparagraph (e)(3)(E)(i) and (ii) under "Identification of High-Priority Substances." These provisions state that the Administrator both "shall" and "may" identify a chemical substance that has the potential for high hazard or exposure as a high-priority substance.
  - Deferring safety determinations until after receipt of additional test data and information may allow the chemical industry to actively stall the assessment process if no deadline is included.
  - There is no proposed deadline by which the US EPA Administrator must promulgate a rule establishing necessary restrictions after making a determination that a chemical substance does not meet the safety standard under current intended conditions of use.

Background:
The Act first requires US EPA to identify all active chemicals, which are those in use in non-exempted products in the last 5 years. These chemicals will represent US EPA's initial list of chemicals, and EPA will then consider existing information, and where more is needed, will solicit this information from the public. EPA is then charged with conducting a prioritization screening of these chemicals. This screening designates chemicals as either low-priority, when they are "likely to meet the safety standard," or high-priority, indicating that they present a high hazard and exposure or high hazard or high exposure. EPA can also prioritize chemicals that lack sufficient information as high-priority.

Once prioritized, the Administrator of US EPA will publish a schedule for the completion of a safety assessment of high-priority chemicals on a chemical-by-chemical basis. The assessments will result in a safety determination by the Administrator as to whether a chemical substance meets the safety standard under the intended conditions of use. The safety standard is defined as "a standard that ensures that no unreasonable risk of harm to human health or the environment will result from exposure to a chemical substance." If there is a determination that there is insufficient information to make this determination, the Administrator may obtain new data by request, rule, testing consent agreement, or order.

If a chemical does not meet the safety standard under current intended conditions of use, the Administrator may impose, by rule, necessary restrictions or prohibitions on use of the chemical, or a ban or phase-out of the chemical. The latter must be based on a cost-benefit analysis.

The Act significantly changes the preemption provisions in TSCA (currently found in section 18). Under TSCA, a state may apply to the Administrator for an exemption from preemption for a state requirement

> "designed to protect against a risk of injury to health or the environment associated with a chemical substance, mixture, or article containing a chemical substance or mixture if (1) compliance with the requirement would not cause the manufacturing, processing, distribution in commerce, or use of the substance, mixture, or article to be in violation of the applicable requirement under [TSCA], and (2) the State or political subdivision requirement (A) provides a significantly higher degree of protection from such risk than the requirement under [TSCA] and (B) does not, through difficulties in marketing, distribution, or other factors, unduly burden interstate commerce."

Under the proposed Act, however, States are preempted from enforcing existing requirements, or establishing new requirements, once the Administrator has issued a completed safety determination for a chemical substance, or published a schedule for conducting a safety assessment of a chemical identified as high-priority, respectively. The preemption provision would apply to State requirements that represent "a prohibition or restriction on the manufacture, processing, or distribution in commerce or use of a chemical substance...", as well as certain requirements for the development or test data or information that would produce information similar to that required under section 4, 5, or 6 of the Act.

The Act does include a section on state waivers from the preemption provisions, but the criteria to qualify for such a waiver make obtaining one nearly impossible. The Act provides that if the State "determines in cannot wait until the end of the period specified in the established schedule and deadline for the completion of a full safety assessment and determination," the Administrator may provide a waiver from the preemption provisions upon a determination that:

> "(i) compelling State or local conditions warrant granting the waiver to protect human health or the environment;
> (ii) compliance with the proposed requirement of the State or political subdivision of the State does not unduly burden interstate and foreign commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;
> (iii) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

(iv) the proposed requirement of the State or political subdivision of the State is based on the best available science and is supported by the weight of the evidence; or

(2)(A) the Administrator finds a safety assessment or determination has been unreasonably delayed; and

(B) the State certifies that—

(i) the State has a compelling local interest to protect human health or the environment;

(ii) compliance with the proposed requirement of the State does not unduly burden interstate and foreign commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

(iii) compliance with the proposed requirement would not cause a violation of any applicable Federal law, rule, or order; and

(iv) the proposed requirement is grounded in reasonable scientific concern."

DTSC is very concerned that the bar has been set too high for obtaining state waivers from the expanded preemption provisions in the Act. The preemption provisions would potentially impact the ability of DTSC to implement certain regulatory responses under the Safer Consumer Products regulations, including product information for consumers, use restrictions on chemicals and consumer products, product sales prohibitions, engineered safety measures or administrative controls, end-of-life management requirements, and advancement of green chemistry and green engineering.

Thank you very much for reaching out to DTSC and allowing us the opportunity to provide input on these important issues.

If you have any questions, please feel free to contact me at (916) 324-7663 or Joshua.Tooker@dtsc.ca.gov

Sincerely,

Josh Tooker
Deputy Director for Legislation
Department of Toxic Substances Control

STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Edmund G. Brown Jr. • SECRETARY Marty Morgenstern

Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board
California Workforce Investment Board • Department of Industrial Relations
Employment Development Department • Employment Training Panel

July 23, 2013

Re: S. 1009, Chemical Safety Improvement Act – Preemption Language

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feinstein:

On behalf of the California Labor and Workforce Development Agency (LWDA), I am writing to express serious concern about potential adverse effects of S. 1009 on California's current, ongoing programs to protect workers from hazardous exposures to toxic substances and prevent chemical accidents. We respectfully request that S. 1009 not be adopted unless amended to ensure these programs are not restricted or invalidated.

The Federal Occupational Safety and Health Act of 1970 allows any state to submit a plan and request approval to assume responsibility for development and enforcement of occupational safety and health standards. A state plan may be approved if it provides for the development and enforcement of safety and health standards that are at least as effective as Federal OSHA standards governing the same issues (29 USC § 667(c)(2)). In addition, the OSH Act explicitly allows adoption of standards concerning occupational safety and health issues for which no Federal OSHA standard has been promulgated (29 USC § 667(a)). In other words, not only does the OSH Act not preempt state standards, it explicitly allows states to promulgate standards that are more effective or broader in scope than federal standards.

Federal OSHA approved California's state plan in 1973. Within the LWDA, the California Department of Industrial Relations (DIR), through the Division of Occupational Safety and Health (also known as Cal/OSHA), operates California's state plan.

The OSH Act has allowed California to develop comprehensive occupational safety and health laws and regulations that go beyond federal standards. In some cases, our standards have served as a model for consideration by other states and Federal OSHA. The attached fact sheet, published in 2011, lists areas in which Cal/OSHA standards are more protective than related federal standards, issues covered by Cal/OSHA standards that are not addressed by federal standards, and other innovations.

Notable examples of California laws and regulations that help ensure greater protection of workers than federal standards include the following:

- The California Occupational Carcinogen Control Act of 1976 established a legal framework to protect employees during the use of a carcinogen. Among its provisions are requirements that employers report use of a carcinogen to Cal/OSHA, a requirement that does not exist in federal regulation. Due to this requirement to report use, Cal/OSHA can locate places of employment that use the specific carcinogens, and ensure that protective measures are in place.

  - For example, after an inspection of an establishment that manufactured gallium arsenide wafers for use in the semi-conductor industry found significant overexposures to arsenic, a regulated carcinogen, Cal/OSHA was able to use the carcinogen registrations to prepare a list of similar establishments. Programmed inspections were then conducted at ten facilities. While most were found in compliance, at other facilities significant problems were also found. In this way, we were able to protect this group of California workers from an increased risk of respiratory cancers.

- California's fee-funded regulation of asbestos contractors has helped to prevent abuses such as the use by unregistered contractors of untrained workers, often informal day laborers to remove asbestos. In addition to protecting workers, this program has prevented the contamination of homes, schools and other buildings due to incompetent work practices.

- California has a number of chemical-specific standards for which there are no federal counterparts. For example, in response to two cases of serious, and potentially fatal, lung disease in flavoring manufacturing workers, Cal/OSHA and the California Department of Public Health (CDPH) investigated exposures, control measures, and disease involving the use of diacetyl. As a result of this research, which uncovered many more instances of impaired respiratory function and lung damage, Cal/OSHA proposed a standard regulating exposure to diacetyl in flavoring manufacturing and food processing, which was adopted in 2010. Among the requirements of this standard are control measures to reduce exposure, training and labeling, and the reporting of use to Cal/OSHA. Other substances comprehensively regulated in California, but not under federal regulations, include the carcinogens ethylene dibromide (EDB) and 4,4'-methylenebis(2-chloroaniline) (MBOCA).

Our concern regarding preemption of occupational safety and health regulations is not speculative. California enacted the first "right-to-know" law concerning chemical hazards when the California Legislature passed the Hazardous Substances Information and Training Act in 1980. California's hazard communication standard was adopted to implement the Act. In 1986, California voters adopted Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, which included a requirement to notify employees who were exposed to chemicals known to the State of California to cause cancer or reproductive toxicity.

In 1991, a new subsection was added to our hazard communication standard creating enforcement authority within Cal/OSHA over certain requirements of Proposition 65 as applied to employees. California was then sued over the issue of federal preemption under the OSH Act. Various cases, over a period of several years, were finally concluded when Federal OSHA, in 1997, published a supplemental approval of California's state plan as it incorporated Proposition 65. The US Court of Appeals ruled that Federal OSHA approval of these state plan provisions settled the issue of preemption under the OSH Act. We are seriously concerned that the broader preemption provisions of the S. 1009 may generate litigation over preemption of our programs generally.

Protection of California's workers is also potentially threatened by preemption of state and local environmental regulations and actions, because the application of several Cal/OSHA standards relies upon an action by a local or state environmental agency. For example, the application of California's hazardous waste and emergency response (Hazwoper) regulation to a hazardous waste site relies upon the site being so designated by the US Environmental Protection Agency or by a state or local agency acting under California's Health and Safety Code.

Similarly, the California's tiered permitting system for hazardous waste treatment facilities allows Cal/OSHA to ensure that workers in those operations are trained and protected. Several years ago, California adopted laws and regulations regarding the handling, treatment and disposal of treated wood wastes. These regulations provide additional protection to workers in those operations. Other laws requiring surveys for asbestos-containing materials in public buildings, for lead containing coatings, and other hazardous substances also make California a safer place for its workers.

Finally, we note that as a result of a recent investigation and interim report issued by the US Chemical Safety and Hazard Investigation Board concerning the August 2012 toxic chemicals release and fire at the Chevron refinery in Richmond, California, which sent 15,000 local residents to nearby hospitals, California may improve Cal/OSHA's process safety management standard to better protect workers and may make similar improvements to environmental regulations to better protect public health and the environment. These improvements may not be allowed under the current preemption language of S. 1009.

We recognize that the Toxic Substances Control Act of 1976 needs to be clarified and strengthened, as S. 1009 intends, and that it is important that state regulation of toxic substances not contradict related federal programs. On the other hand, we believe it is also important not to quash state-level innovation that can serve as model for the rest of the country. I respectfully request that S. 1009 be amended to allow states to continue operating existing programs and to develop new programs that are not inconsistent with, and may even be more protective than, federal regulations promulgated under the new law.

Sincerely,

Marty Morgenstern
Secretary

cc: Christine Baker, Director, Department of Industrial Relations, DIR
Ellen Widess, Chief Division of Occupational Safety and Health, DIR
Ralph Lightstone, Director of Legislation, LWDA

Attachment: Fact Sheet Comparison of Cal/OSHA and Federal OSHA programs

California Department of Industrial Relations

FACT SHEET

Comparison of Cal/OSHA and Federal OSHA programs

GREATER LEVELS OF PROTECTION UNDER CAL/OSHA

Permissible Exposure Limits (air contaminants) – Federal OSHA is still using their original 1970 permissible exposure limits (PEL). Cal/OSHA reviews PELs continuously to determine if they should be updated. Since the original federal OSHA PELs from the 1970s, Cal/OSHA has added to or revised its PELs more than 20 times.

Examples include:

- Acetone (a widely used solvent)
  – California's PEL @ 500 ppm, federal PEL @ 1000ppm
- Aniline (used to produce the chemical MDI, and used in rubber processing, herbicides, and dyes and pigments)
  – California's PEL @ 2.0 ppm, federal PEL @ 5.0 ppm
- Manganese (used in steelmaking, and production of stainless steel and aluminum)
  – California's PEL @ 0.2 mg/m3, federal PEL @ 5.0 mg/m3

Cal/OSHA standards (non-PEL) more protective than Federal OSHA

- Control of Employee Exposure to Concrete and Masonry Dust (including silica)
- Washing Facilities at Construction Jobsites
- Notification to the Division of Lead-Related Work
- Hand Weeding, Hand Thinning, and Hand Hot Capping Operations in Agriculture
- Ventilation Requirements for Laboratory-Type Hood Operations
- Confined Spaces
- Bloodborne Pathogen amendments
- Hazard Communication amendments
- Aerosol Transmissible Disease/Zoonotics

High Rise Window Cleaning – Cal/OSHA has a very active program – one of only two programs in the country. Cal/OSHA's serves as a model for the country and has prompted changes in American National Standards Institute standards that govern window cleaning equipment.

Ergonomic Standard – California's has had an ergonomic standard since the late 1990s

Process Safety Management – Cal/OSHA has two offices focused solely on PSM with dedicated staff. The Feds inspect under a National Emphasis Program which only provides a 'snapshot' of operations at the time of the inspection. Cal/OSHA makes regular visits to facilities, to conduct Program Quality Verification reviews, respond to complaints, conduct fatality investigations, evaluate chemical releases and fires, and investigate explosions. The unit is very active in outreach, participating in quarterly safety summits and seminars, and working closely with other agencies.

Mining and Tunneling Unit – Cal/OSHA has regulatory authority over mining, milling and finishing operations whereas the federal Mine Safety and Health Administration only covers mining and milling. Critical standards applicable to these operations are better defined and more stringent in California with regard to guardrails, ladder way openings, fall protection and crane operator certifications. In tunnel safety, Cal/OSHA has higher standards than Fed/OSHA in that we require all tunnel construction jobs to have a State-certified safety

California
Department of
Industrial Relations

representative and gas tester on site. We also require a pre-construction meeting and the Labor Code mandates compliance inspections every 2 months when a tunnel is under construction.

CAL/OSHA COVERAGE WHERE THERE IS NO FEDERAL COUNTERPART

Diacetyl – Cal/OSHA adopted a standard in 2010 that regulates employee exposure to this food flavoring used extensively to flavor microwave popcorn and other food products. Acute exposure to diacetyl can lead to pulmonary problems, including bronchiolitis obliterans, a permanent and irreversible lung condition. Federal OSHA has no comparable standard.

High-rise Window Cleaning – Cal/OSHA has one of only two programs in the United States and is considered a national model. Our work in this area has resulted in changes to the American National Standards Institute standards used throughout the United States. Our standard requires an annual inspection of equipment on buildings which support window cleaning by a third-party inspector approved by the Division. Federal OSHA has no comparable program.

Injury and Illness Prevention Program (IIPP) – Implemented in the early 1990's, the California program has served as a model that Federal OSHA is now evaluating for possible adoption at the national level. This program requires every employer to have a safety and health program tailored to their specific workplace. California employers have found that the benefits of these programs include improved workplace safety and health, better morale, increased productivity and reduced costs of doing business.

Ergonomics – California adopted a Repetitive Motion Injury (RMI) standard in the late 1990's. The standard applies to a job, process, or operation where a RMI has occurred to more than one employee under certain conditions. Every employer subject to this section must have a program that includes worksite evaluation, control of exposures and training of employees. Federal OSHA has no comparable standard.

Economic and Employment Enforcement Coalition (EEEC) – In 2005, California launched an effort to suppress the underground economy by conducting enforcement "sweeps" in targeted industries employing low-wage workers such as agriculture, car washes, pallet operations, and the garment industry. Citing and penalizing unscrupulous employers is perceived as a way to reduce the profile of these operations thereby benefiting law abiding employers. Cal/OSHA has eleven staff members assigned to the EEEC. There is no permanent U.S. Department of Labor counterpart.

Heat Illness Prevention Program – In 2006, Cal/OSHA promulgated an emergency standard to protect outdoor workers from the hazards of working in high heat environments. Since that time, thousands of inspections have been conducted as well as thousands of outreach, training and education sessions all intended to raise the awareness of the employer community and employees to how they can protect themselves. An encouraging trend has been noted since 2006 in that the rate of in-compliance inspections has been increasing. From a high of twelve heat related fatalities to one last year, it has become apparent that an experiment such as this underscores the value of a concentrated effort with equal areas of emphasis in enforcement and voluntary compliance. Federal OSHA has no comparable program.

Aerosol Transmissible Disease – In 2009, California adopted the nation's first standard to safeguard workers from the spread of airborne diseases. The standard is designed to protect workers in healthcare and related industries from the spread of diseases such as tuberculosis, measles, influenza and other pathogens by coughing and sneezing. It focuses on healthcare and related workplaces that typically treat, diagnose, or house individuals who may be ill such as hospitals, clinics, nursing care facilities, correctional facilities, and homeless shelters. It also covers emergency responders. The ATD standard requires healthcare employers and others at increased risk to develop exposure control procedures and train employees to follow them. Federal OSHA has no comparable standard.

California
Department of
Industrial Relations

INNOVATIONS

Special Advisory Committees – Cal/OSHA has a long history of reaching out to a range of stakeholders through the Cal/OSHA Advisory Committee. Additionally, special advisory committees are convened to address specific emerging issues such as re-evaluating PELs (Health Expert Advisory Committee), Aerosol Transmissible Disease, Heat Illness Prevention, and others.

Partnerships – California has enjoyed great success through partnership programs. The Division pioneered the partnership excellence process now called the Voluntary Protection Program by OSHA. Through a partnership agreement with the California Department of Transportation, several heavy bridge projects were successfully managed with no fatalities. Recently, a 7,000 ton section of the San Francisco-Oakland Bay Bridge was replaced over the Labor Day weekend with no fatalities and no serious injuries. An additional success story is the San Diego Ship Repair Association Shipyard partnership. We conduct annual audit inspections of each of the four shipyards. Injury and Illness rates have shown substantial declines for the four participating yards.

Permit requirements – Cal/OSHA requires affected employers to obtain permits in the following areas:

- **Construction** – permits must be obtained for all trenches and excavations five feet or deeper where employee entry is required; for the construction/demolition of any building, structure, scaffolding or falsework more than three stories high or equivalent to 36" high; and erection/dismantling of vertical shoring systems more than three stories or equivalent to 36'.
- **Tower Cranes** – permits are required for fixed and mobile cranes
- **Tunneling or Underground Mining** – the use of diesel engines in mines and tunnels requires a permit
- **Pressure Vessels** – permits are required for air tanks, LPG propane storage tanks over 125 gallons, and high pressure boilers over 15 psig steam

Registration Requirements – Affected employers must register with Cal/OSHA for operations in the following areas:

- **Asbestos Abatement Contractors** – employers or contractors engaged in asbestos-related work by disturbing more than 100 square feet of asbestos-containing material (greater than 0.1 percent asbestos by weight).
- **Carcinogen Users** – under certain circumstances, employers using a regulated carcinogen must file a report of use

Certifications – Cal/OSHA requires certification for the following equipment, operations, and personnel:

- **Cranes** – certification is required for operating cranes with a rated capacity of over three tons
- **Mining and Tunneling** – all underground mining and tunneling operations require certification of safety representatives and/or gas testers
- **Asbestos Consultants and Technicians** – any person who contracts to provide consulting activities relating to asbestos-containing construction material greater than 100 square feet must be certified

Notifications – Employers involved in certain operations or when certain events occur, must notify Cal/OSHA as follows:

- **Asbestos Abatement** – employers or contractors must send notification at least 24 hours prior to each asbestos job, regardless of the amount of material to be moved
- **Lead Work Pre-job Notification** – under certain circumstances, employers or contractors involved in lead work must send notification prior to the start of the job

California
Department of
Industrial Relations

- **Annual Permit-holder** – prior to beginning the construction activity, each annual permit holder shall complete a notification form and submit to Cal/OSHA
- **Serious or Fatal Accident** – employers must report work-related or suspected work-related fatalities, catastrophes, and serious injuries or illnesses immediately to the nearest District office
- **Mine Notification** – the owner, operator, or person in charge of any mine shall notify the Mining and Tunneling Unit before commencing operations
- **Underground Mine and Tunnel Notifications** – responsible management officials must notify the Mining and Tunneling Unit immediately in instances of fire, hoisting mishaps, sudden inflows of dangerous gases or water, and ground instability whether or not persons are injured; and, tunnel operators must notify the Mining and Tunneling Unit if a fire breaks out and injures employees within 24 hours

Heat Illness Prevention Network Calls – convened during the hot weather months in California, these monthly calls are designed to provide all stakeholders with an opportunity to speak with the Designee, Chief of Cal/OSHA and the Deputy Chief for Enforcement. After short updates by these three individuals, the call is open for any questions or issues related to the Heat Illness Prevention standard. Over 200 callers were on the line during the August HIP Network call.

PUBLIC SAFETY

Permit requirements – Cal/OSHA requires affected employers to obtain permits in the following areas:

- **Elevators** – the new installation and operation of passenger/freight elevators and other passenger lifts and conveyances requires a permit and annual renewal
- **Portable Amusement Rides and Bungee Jumping** – the operation of all amusement rides including bungee jumping requires a permit
- **Aerial Passenger Tramway** – an operating permit is required

Certifications – Cal/OSHA requires certification for the following equipment, operations, and personnel:

- **Permanent Amusement Rides (Qualified Safety Inspector):** no person shall perform the services of a QSI for permanent amusement rides unless they hold a valid QSI certificate issued by Cal/OSHA

EXHIBIT A

EXAMPLES OF EXISTING STATE REGULATION OF CHEMICAL SUBSTANCES BY STATE

CALIFORNIA

1) State-wide ban on certain flame retardants (California Health and Safety Code section 108922);
2) Limits on the use of volatile organic compounds (VOCs) in consumer products – a significant cause of ozone pollution, which contributes to high rates of asthma in California (California Code of Regulations, title 17, section 94509);
3) The state's Safe Cosmetics Act, enforcement of which has led to a drastic reduction in the levels of formaldehyde gas in certain hair care products (Health and Safety Code sections 111791 *et seq.*);
4) Proposition 65, a "right to know" law, which has led many manufacturers to reformulate their products to reduce levels of toxic chemicals, including the reduction of lead in children's bounce houses, playground structures and play and costume jewelry; and
5) The state's Green Chemistry Program, a new and innovative set of laws designed to encourage companies to find safer alternatives for the toxic chemicals currently in their products (Hazardous Materials and Toxic Substances Evaluation and Regulation, Statutes 2008, chapter 559 (A.B. 1879); Toxic Information Clearinghouse, Statutes 2008, chapter 560 (S.B. 509)).

MARYLAND

1) Regulation of products with brominated flame retardants (Md. Code Ann., Envir. § 6-1202);
2) Ban on manufacture and sale of lead-containing children's products (Md. Code Ann., Envir. § 6-1303); and
3) Regulation of cadmium in children's jewelry (Md. Code Ann., Envir. § 6-1402).

MASSACHUSETTS

1) Ban under the MA Mercury Management Act (Ch. 190 of the Acts of 2006, amending MA General Laws ch. 21H), on the sale of certain mercury-added products, such as, without limitation and subject to certain exemptions: thermostats; barometers; flow meters; hydrometers; mercury switches; and mercury relays (310 C.M.R. 75.00);
2) Regulation of certain lacquer sealers, flammable floor finishing products, including clear lacquer sanding sealers (MA General Laws ch. 94, § 329);
3) The state's comprehensive chemicals management scheme that requires companies that use large quantities of particular toxic chemicals to evaluate and plan for pollution

prevention, implement management plans if practical, and annually measure and report the results (MA General Laws ch. 21I); and

4) MA General Laws ch. 94B Hazardous Substances Act, providing for ban of any toy, or other article intended for use by children, which contains a hazardous substance accessible to a child, or any hazardous substance intended or packaged in a form suitable for use in households (105 C.M.R. 650.000).

OREGON

1) Ban on any product containing more than one-tenth of one percent by mass of pentabrominated diphenyl ether, octabrominated diphenyl ether and decabrominated diphenyl ether, flame retardant chemicals (ORS 453.085(16));

2) Ban on art and craft supplies containing more than one percent of any toxic substance, as identified on a list of hazardous substances promulgated by rule (ORS 453.205 to 453.275);

3) The Oregon Health Authority may ban from commerce products that contain hazardous substances that OHA concludes are unsafe, even with a cautionary label, and can ban toys or other articles intended for use by children that make a hazardous substance susceptible to access by a child (ORS 453.055); and

4) Ban on mercury use in fever thermometers, novelty items, certain light fixtures, and commercial and residential buildings (exceptions not referenced; ORS 646.608, 646A.080, 646A.081, and 455.355).

VERMONT

1) Ban on lead in consumer products (9 Vt. Stat. Ann. § 2470e-l [the last character is the letter "l," not the number "1."]);

2) Ban on brominated and chlorinated flame retardants (9 Vt. Stat. Ann. §§ 2972-2980);

3) Ban on phthalates (18 Vt. Stat. Ann. § 1511); and

4) Ban on bisphenol A (9 Vt. Stat. Ann. § 1512).

WASHINGTON

1) Ban on the manufacture, distribution or sale of certain products containing polybrominated diphenyl ethers (Wash. Rev. Code 70.76);

2) Ban on the sale or distribution of sports bottles, or children's bottles, cups, or containers that contain bisphenol A (Wash. Rev. Code 70.280); and

3) Ban on the distribution or sale of children's products containing lead, cadmium, and phthalates above certain concentrations (Wash. Rev. Code 70.240).

Questions from Senator Barbara Boxer

1. **How would you describe the importance that the Office of Attorney General for the State of California places on its authority to protect environmental quality and the health of the people in California?**

From their earliest origins, the State of California and the Office of the Attorney General have held environmental and public health protection as keystone priorities of state public policy. It is a core function of government, in our view, to protect the environment and the health, welfare and safety of our citizens. Accordingly, California has long been a national leader and innovator in the law, policy and science of environmental protection. The Office of the Attorney General engages in both independent enforcement to protect the environment from, among other things, hazardous wastes and substances, toxic chemicals in consumer products, and air and water pollution harmful to public health, and, in addition, represents the state's environmental protection regulatory and oversight agencies

For more than twenty years, California's environmental enforcement authority has been unified in a single Cabinet level agency – the California Environmental Protection Agency (Cal/EPA). Under this umbrella agency, there are a number of boards, departments and other state entities that have specialized expertise in areas relating to California's public health and environment. They are the Air Resources Board, the State Water Resources Control Board, the Regional Water Quality Control Boards, the Department of Resources Recycling and Recovery, the Department of Toxic Substances Control, the Office of Environmental Health Hazard Assessment and the Department of Pesticide Regulation. In addition to its oversight duties, the Office of the Cal/EPA Secretary has several subject-matter specific programmatic responsibilities, which include Children's Environmental Health, Enforcement, Environmental Justice, the Environmental Management and Sustainability Project, and Environmental Protection Indicators for California. The California budget for 2012 includes total funding of $2.9 billion for all programs included in Cal/EPA.

California dedicates substantial resources to enforcing and improving the state's pathbreaking environmental quality laws. These include, for example, Proposition 65, a voter-enacted "right-to-know" law that requires businesses to warn consumers before exposing them to levels of carcinogens or reproductive toxins that pose a risk of harm; the Global Warming Solution Act of 2006 (AB 32), a landmark statute enacted to aggressively reduce greenhouse gas (GHG) emissions contributing to climate change; and the Clean Car Standards (also called the Pavley Standards), strong GHG emissions standards for vehicles, which served as the explicit model for national emission standards adopted in 2010.

2. Could you please describe how the State of California supplements and complements federal efforts to regulate the safety of chemicals?

For decades, California has been an active and expert partner to the U.S. Environmental Protection Agency (U.S. EPA). The existing relationship of the State of California and U.S. EPA was forged under the current Toxic Substances Control Act (TSCA), which respects the states' traditional police powers and their important role in protecting against exposure to toxic chemicals. Reflecting current law, California and U.S. EPA partner in a wide variety of both formal and informal ways, ranging from staff-level collaborations, to more formal institutional relationships

There are more than 84,000 chemicals listed on the TSCA inventory. As a practical matter, it is a massive task to screen, test, and oversee such a large, diverse range of potentially toxic chemicals. Considering its scale, complexity and importance, this task cannot reasonably be deemed the exclusive province of a single federal agency. It must be a shared responsibility between the states and federal government. As reflected in the testimony of Michael Troncoso, Senior Counsel to the California Attorney General, testing and enforcement at the state level has strengthened the federal enforcement scheme and advanced the shared policy of protecting residents from the risks posed by toxic chemicals. State-level efforts have resulted in important opportunities to mitigate potential harm from toxic chemicals.

The adoption of S. 1009, as currently written, could both harm the federal-state partnership, and imperil state-level progress. Under S. 1009, U.S. EPA's preliminary, pre-regulatory action – and even the mere designation of chemicals as "low priority" – could preempt California's ability to enact laws to protect its residents from toxic chemicals. This substantial change from current TSCA is likely to undermine the long-standing state and federal partnership. S. 1009 would also needlessly hinder the states' traditional role in protecting public health and safety.

3. Could you provide examples of where actions taken by the State of California or its citizens to reduce the risks of toxic chemicals have resulted in companies taking action to remove such chemicals from their products, and the benefits to the citizens of California and the citizens of other states from these actions?

The following are examples of in-state bans or limitations on harmful chemicals:

- Flame Retardants. In 2006, California instituted a state-wide ban on certain flame retardants, known as polybrominated diphenyl ethers (PBDEs). PBDEs are found in products everywhere and ultimately end up in our environment and accumulate in our bodies. PBDEs may disrupt thyroid hormones, harm the developing fetus, and cause cancer. California's ban on the use of PBDEs ensures that the state's residents will not be exposed to new sources of these harmful chemicals.

- Smog-Causing Chemicals. Ozone, a component of smog, is a powerful reactive chemical that damages respiratory tissues and increases the risk of respiratory

disease, including asthma. Because ozone is created in part by chemicals known as volatile organic compounds (VOCs), California has enacted regulations limiting the use of VOCs in consumer products, resulting in an anticipated 48% decrease in VOC emissions from such products.

California's right-to-know law, Proposition 65, requires that businesses warn consumers if the products they sell expose individuals to carcinogens or reproductive toxins. The Attorney General has used Proposition 65 to target products that put the most vulnerable among us at risk, with a special focus on children's exposures. Proposition 65 actions that have resulted in removing harmful chemicals from the marketplace include:

- Lead in Inflatable Play Structures. The Attorney General sued the manufacturers and sellers of lead-containing vinyl "bounce houses," the colorful blow-up structures children play in at birthday parties and in amusement parks. The bounce houses were exposing children to significant amounts of lead, a carcinogen, a reproductive toxin, and a potent neurotoxin. Pursuant to a settlement, the manufacturers of bounce houses elected to phase out high-lead vinyl, thereby protecting our children from a significant and unnecessary lead exposure.

- Arsenic in Children's Play Equipment. Manufacturers previously used wood treated with chromated copper arsenate in children's playground structures. Inorganic arsenic – a carcinogen and potent poison – leached out of the wood as it aged. Children touching and climbing on the structures and breathing dust were exposed to significant levels of inorganic arsenic. Pursuant to a settlement with the California Attorney General's Office, manufacturers agreed to switch to non-arsenic wood preservatives in California and nationwide, resulting in safe and durable play structures that no longer expose our children to arsenic.

- Formaldehyde in Baby Cribs. The Attorney General sued the manufacturers of baby cribs made with wood components that off-gassed formaldehyde, a known human carcinogen that can also cause severe respiratory problems. Infants sleeping in the cribs were exposed to significant levels of formaldehyde gas. The manufacturers agreed to reformulate their products to use composite wood components with lower levels of formaldehyde, and to coat the wood with paints and coatings that provided an effective barrier to formaldehyde emissions, eliminating this unnecessary risk.

- Lead in Artificial Turf. The Attorney General sued the manufacturers of artificial turf used in playing fields. The turf contained lead. Those running and playing on the fields were exposed to significant amounts of lead. As a result of our settlement, the turf manufacturers agreed to remove the lead from their products, thus eliminating a source of lead exposure to our children. These manufacturers proceeded to reformulate their products nationwide.

- Lead in Faucets. The Attorney General sued the manufacturers of water faucet fixtures and drinking water fountains made with components that contained lead. Individuals drinking from the faucets and fountains, including school children, were exposed to the lead. Because of our lawsuit, the manufacturers agreed to reformulate their products to make them virtually lead-free, thus significantly reducing the lead exposure to individuals in their homes and to children in our schools. Certain manufacturers now commonly advertise the availability of lead-free faucets nationwide.[1]

In our experience, once a company has found a way to reformulate to avoid a California Proposition 65 warning, it often adopts that practice nationwide, both to gain business efficiencies and to avoid causing harmful exposures that are now understood to be completely avoidable.

Questions from Senator David Vitter

1. **Do you agree that the preemption provisions of S. 1009 must be read in the context of the entire bill?**

Yes. If S. 1009 in its current from becomes law, courts will read its preemption provisions in the context of the entire bill, focusing on "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Those challenging state laws will likely point the courts to S. 1009's prefatory language, which could be read to favor preemption of state laws – at the expense of the states' longstanding authority and power to take action for "'the protection of the lives, limbs, health, comfort, and quiet'" of their residents. *See Slaughter-House Cases*, 16 Wall. 36, 62, 21 L.Ed. 394 (1872) (quotation omitted).

2. **Please outline the principles (or "canons") of statutory interpretation applied by the California Office of the Attorney General.**

We would expect that litigation challenging, or seeking interpretation of, S. 1009 would be filed in federal court. In considering issues of federal preemption, federal courts are guided by well-established principles set out in the federal case law governing statutory construction, and those principles would apply to any litigation focusing on amendments to TSCA. The facts and circumstances of the specific challenge would determine which precise cases and rules would apply.

3. **Do you agree that under S. 1009 States are afforded numerous opportunities to engage with EPA throughout the review and assessment of a chemical substance under the CSIA?**

S. 1009 permits states and others to provide to U.S. EPA relevant data and a recommendation that U.S. EPA identify a particular chemical substance as a high-priority or low-priority substance. *See* S. 1009, Section 4(e)(4)(A) (amending Section 4 of

[1] *See, e.g.*, http://www.americanstandard-us.com/learn/american-standard-advantage/lead-free/.

TSCA, 15 U.S.C. § 2603). This process is not an adequate substitute for the states' ability to take independent action within their own borders to protect the health and welfare of their residents.

4. **You argued that S. 1009 preempts state regulation "in the absence of any enforceable rule." The underlying assumption of your testimony appears to be that S. 1009 preempts all state actions from the date of enactment. Yet the provisions of Section 15 of S. 1009 (amending Section 18 of TSCA, 15 U.S.C. § 2617) clearly state that there is no preemptive effect unless and until EPA regulates a chemical substance.**

The oral and written testimony of Mr. Troncoso, and the letters attached to his written testimony, noted that under the current version of TSCA, there is no preemptive effect on state action unless and until EPA actually *regulates* a chemical substance – meaning that U.S. EPA takes affirmative, enforceable action to protect the public and the environment against that chemical's harmful effects. 15 U.S.C. § 2617(a)(2)(B). S. 1009 differs substantially on this point, as set forth in detail in the July 11, 2013, letter from Brian Nelson, Special Assistant Attorney General, California Attorney General's Office, to Senator Barbara Boxer ("Nelson Letter"), attached to Mr. Troncoso's written testimony.

Under S. 1009, states are barred from adopting and enforcing new laws regulating "low priority" chemical substances – of which there will be tens of thousands – even though the U.S. EPA Administrator is also expressly prohibited from performing a safety assessment for, much less regulating, low priority substances, and has made only a preliminary screening that is immune from judicial review. This creates a gaping and permanent regulatory vacuum. *See* Nelson Letter at p. 3 (citing S. 1009, §§ 4(e)(3)(H)(ii), 4(e)(5) and 15(b)(2)). Moreover, "[s]tates are prohibited from enforcing existing state laws or from adopting new laws regulating chemical substances determined by U.S. EPA to be 'high priority' even before federal regulations or orders become effective, creating a period of months or years where such chemical substances are unregulated. *See* S. 1009, § 15(a)(2)." *Id.*

a. Please explain the rationale for your conclusion that S. 1009 preempts states in the absence of any enforceable rule, with specific reference to the preemption provisions of the bill.

Please see the answer to Question 4, above.

b. Referencing specific sections of the bill, please explain your assumption that S. 1009 preempts all state action from the date of enactment.

Please see the answers to Question 4, above.

c. Does S. 1009 provide for prospective and retrospective preemption of certain State actions? If so, please identify the specific language which relates to the prospective or retrospective impact on state law and regulation and the conditions, if any, imposed on such preemption.

We understand the question to relate to whether S. 1009's preemption provisions reach both existing state laws and future state laws and, with that understanding, the answer to this question is "yes." Parts of Section 15 of S. 1009, titled "Preemption" (amending Section 18, 15 U.S.C. § 2617), prohibit a state from "continu[ing] to enforce" a "prohibition or restriction," while other parts of Section 15 also or separately prohibit a state from "establish[ing]" a "prohibition or restriction." *See* S. 1009, §§ 15(a) and 15(b).

d. Are there circumstances in which existing state law is not preempted under S. 1009, and if so, what are those circumstances?

There are circumstances – far narrower than under current law and of questionable workability – under which S. 1009 would not preempt state regulation or enforcement action. For example, a state might escape preemption where it has adopted a restriction or prohibition on a chemical that U.S. EPA thereafter deems to be of low priority. *See* S. 1009, § 15(b)(2). For limited exceptions to preemption, *see* S. 1009, § 15(c).

e. Would S. 1009 wholly preempt any entire state law? If so, please identify the specific language that would do so.

In those instances where the subject of the state law is commensurate with the preemptive provisions in Section 15 of S. 1009, those seeking to avoid state law will most certainly argue that the entire state law is preempted. In other instances, the preemptive provisions in Section 15 will incite case-by-case challenges over whether the state law is preempted in a particular application. Where such challenges to a state law succeed, the resulting piecemeal preemption will tear holes in state laws that were designed and intended to be comprehensive. For a further discussion of the harm that can come from piecemeal preemption of state laws, please see the answer to Question 7, below.

5. Your testimony to the Committee indicates that S. 1009 will undermine the authority of states to protect health and the environment and "undermine

our existing state and federal partnership." Please describe the existing partnership between the State of California and the U.S. Environmental Protection Agency relating to the regulation of chemicals under the Toxic Substances Control Act (TSCA) (or other law), and how that relationship will be negatively affected by S. 1009.

Please see the answer to Senator Boxer's Question 2, above.

6. **You testified that S. 1009 will preempt a long list of California actions intended to protect the environment:**

- **A statewide ban on certain flame retardants known as polybrominated diphenyl ethers (PBDEs).**
- **California restrictions on ozone and volatile organic chemicals (VOCs), presumptively regulated by California under both Federal and state authorities.**
- **The California Safe Cosmetics Act.**
- **The California Safe Drinking Water and Toxics Enforcement Act, otherwise known as Proposition 65.**
- **California's Safer Consumer Products regulations under California's Green Chemistry Initiative.**

These actions were also included in the list of examples of several state laws purportedly preempted by S. 1009 in the letter to Chairman Boxer and members of the Senate Environment and Public Works Committee. With reference to this list of examples and the supplemental questions contained in the attachment, please provide your specific arguments on how these actions are preempted by S. 1009. Please point to the specific language in S. 1009 which determines the preemptive effect in each case. In particular, please ensure that your response addresses the specific points raised in the attachment, and identify with specificity those state examples that address issues not within the scope of the CSIA.

In answering this question, the California Attorney General's Office can speak only to California's laws. The threat of preemption would likely materialize in a series of legal challenges to California's future and existing laws, regulations and enforcement actions, which would be expensive and time-consuming for California to defend. It is difficult to predict all the preemption arguments that California would face under S. 1009, in part because the specific arguments will be made by litigants challenging the state's actions (not by California itself) and because the scope of preemption under S. 1009 may vary based on its implementation by the Administrator.

As to flame retardants, we do not know what priority each individual retardant will be given or what restrictions or prohibitions, if any, will be adopted. We do know, however, that Section 15 of S. 1009 lacks the current exception to preemption in TSCA for state laws that prohibit the use of a substance or mixture in-state. *See* 15 U.S.C. § 2617(a)(2)(B)(iii).

As to VOCs and hair care products, the fact that U.S. EPA does not currently regulate VOCs in consumer products or formaldehyde in hair care products under TSCA is not a predictor as to actions U.S. EPA would take concerning the chemical substances at issue under S. 1009 (e.g., safety assessment or safety determination), which then trigger the preemptive provisions of the bill and litigation over the application of the limits of TSCA's preemptive reach.

Regarding Proposition 65, preemption proponents are likely to argue that Proposition 65 is not covered by any of the exceptions contained in S. 1009. Moreover, while Mr. Troncoso's testimony provided examples of the enforcement of Proposition 65, the law's reach extends to hundreds of chemicals listed as known carcinogens or reproductive toxins, most of which will be subject to the procedures set forth in S. 1009, which, in turn, trigger preemption.

Finally, California's Green Chemistry regulations were approved on August 28, 2013. As you note, a key component of those regulations includes the ability to adopt restrictions on the use of chemicals of concern in "Priority Products." (Please see also the answer to Question 8, below.)

7. **State labeling and other warning requirements are routinely considered to be preempted by federal requirements, particularly where Congress has found a need for national uniformity or the federal requirement reflects a balancing of competing interests. In fact, the Proposition 65 point-of-sale warning requirements were held to be preempted by USDA labeling requirements under the Federal Meat Inspection Act in *American Meat Institute v. Leeman*, 180 Cal. App. 4th 728 (2010), and the Proposition 65 warning requirements as applicable to nicotine replacement therapy products were held to be preempted by FDA's warning requirements under the FFDCA in *Dowhal v. SmithKline Beecham Consumer Healthcare*, 32 Cal. 4th 910 (2004).**

We respectfully differ with respect to whether courts have routinely found the warning provisions of Proposition 65 to be preempted by federal requirements. There are numerous examples where state law was not preempted. For example, in *Chem. Specialties Mfrs. Ass'n, Inc. v. Allenby*, 958 F.2d 941, 945 (9th Cir. 1992), the Ninth Circuit held that the detailed labeling requirements in the Federal Insecticide, Fungicide and Rodenticide Act do not preempt Proposition 65. *See also Dental Amalgam Mfrs. & Distributors v. Stratton*, 92 F.3d 807, 810 (9th Cir. 1996). In addition, the Food, Drug and Cosmetic Act and the Consumer Product Safety Improvement Act both exempt Proposition 65 from their respective express preemption provisions. 21 U.S.C. § 379r(d)(2); Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016, § 231 (August 14, 2008).

While, as the cases in the question illustrate, there are narrow circumstances in which a Proposition 65 warning has been held to be preempted, the norm under existing law is that the state warning requirements are preserved. They do not detract from federal requirements, provide additional useful information to individuals about chemical exposures, and allow for fully informed decision-making.

a. Please articulate the basis for your conclusion that Proposition 65 would be preempted by S. 1009.

In his oral testimony, Mr. Troncoso confirmed in response to a question from Senator Boxer that Proposition 65 could be impaired by S. 1009. For a further discussion of the preemption language in S. 1009, please see the answer to Question 6, above.

b. Please identify the specific language in S. 1009 that in your view simply extends current Federal preemption practices to labeling and other warning requirements. Are any exemptions articulated in S. 1009 that might apply? If not, why not?

For a further discussion of the preemption language in S. 1009, please see the answer to Question 6, above. It was suggested that the exception for "a reporting or information collection requirement" contained in Section 15 would allow state law-based labeling or warning requirements such as Proposition 65 to operate unimpeded. But the language of the exception in current S. 1009 does not reference "labeling and other warning requirements" – even though the word "warning" appears elsewhere in the bill. *See* S. 1009, Section 5(c)(5)(B)(i) (amending Section 5 of TSCA, 15 U.S.C. § 2604). Accordingly, proponents of preemption will likely argue that the exception does not apply to Proposition 65.

c. Numerous chemicals listed under Proposition 65 do not relate to "chemical substances" as that term is defined under section 3 of TSCA (a definition which S. 1009 would not change). The TSCA definition effectively excludes from EPA's jurisdiction under TSCA chemicals manufactured, processed or distributed for use in food, food additives, drugs, cosmetics or medical devices regulated by FDA under the FFDCA or for use in pesticides and regulated by EPA under FIFRA. Tobacco is also excluded. The Proposition 65 list includes a number of drugs, foods, and pesticides, as well as tobacco, so the warning requirements for them would appear to be unaffected. Please identify the basis for your contention that S. 1009 would preempt Proposition 65 as applied to these specific substances.

Proposition 65 is a right-to-know law enacted by California voters in 1986. It requires businesses to warn Californians about significant amounts of cancer-causing chemicals and reproductive toxins contained in the products they purchase, in their homes or workplaces, or that they are otherwise exposed to in the environment. By providing this information, Proposition 65 enables Californians to make informed decisions about whether and how to protect themselves from exposure to these chemicals, whatever the source. Assuming some types of Proposition 65 warnings would survive preemption challenges under S. 1009, the resulting piecemeal warning system would profoundly diverge from the comprehensive statute enacted by the California voters.

8. You raised California's forthcoming Safer Consumer Products (SCP) regulations under the California Green Chemistry Initiative as an example of state action that would be preempted under S. 1009.

a. Are the Department of Toxic Substance Control's (DTSC) SCP regulations final?

Yes. The regulations, approved on August 28, 2013, will go into effect October 1, 2013.[2]

b. Has DTSC or your office assessed the specific areas in which the SCP would be preempted by S. 1009? If so, please provide copies of any such assessment.

Neither the California Attorney General's Office nor DTSC has prepared a non-privileged assessment of specific areas of the SCP program that would be susceptible to preemption under S. 1009 if the bill is adopted in its current form.

California's innovative Green Chemistry Program, including the SCP regulations, will fundamentally change the way Californians deal with toxic chemicals by encouraging companies to find safer alternatives. Our office is gravely concerned that, in a legal challenge, a court could hold that some of the program's essential and central elements would be subject to preemption under S. 1009 as currently written.

c. It appears that you interpret the proposed notification and alternatives assessment requirements of the SCP to be prohibitions or restrictions on the manufacture, processing, distribution in commerce, or use of a chemical substance. Please provide the basis for this conclusion.

The SCP regulations (Cal. Code Regs., Div. 4.5, tit. 22, Ch. 55), effective October 1, 2013, will promote innovation and the development of safer alternatives to the use of chemicals of concern in consumer products. After DTSC establishes a list of Priority Products (*id.*, § 69503.5), manufacturers (or other responsible entities) must notify DTSC when their products are listed as a Priority Product. *Id.* at § 69503.7. The manufacturer or other entity then must perform an Alternatives Analysis to determine if there are ways to limit exposures or adverse impacts caused by the chemicals of concern in the product. *Id.* at § 69505.1. Based on its review of the Alternatives Analysis, DTSC is authorized to take various regulatory responses, including, but not limited to, restricting the use of chemicals of concern in the products, banning sales of the products into the California marketplace, or placing other restrictions on the sale of the products in California. *Id.* at § 69506-69506.10. Failure to comply with these requirements could result in administrative or civil sanctions, including fines or civil penalties. *Id.* at § 69501.2.

If S. 1009 becomes law, the courts will likely be asked to decide whether some or all of these components of the SCP regulations place "a prohibition or restriction on the manufacture, processing, or distribution in commerce or use of a chemical substance."

[2] http://www.dtsc.ca.gov/SCPRegulations.cfm.

This Committee can quash such unnecessary and disruptive suits simply by making its stated intent not to preempt clear in the bill.

d. Has California imposed any restrictions with respect to a Priority Product under the SCP?

No. The SCP regulations require DTSC to make the initial proposed list of Priority Products available for public review and comment within 180 days after the effective date of the regulations. Cal. Code Regs., tit. 22, § 69503.6(c). Manufacturers or other entities responsible for products on the final Priority Products list then have 60 days, or longer if DTSC specifies a later due date, to notify DTSC of their products that are on the list. *Id.* at § 69503.7(a).

9. You contend that California's ban on certain flame retardants (pentaBDE and octaBDE), Cal Health & Safety Code § 108920 et seq. would be preempted by S. 1009.

a. Please compare the restrictions on these flame retardants with the U.S. EPA's significant new use rule (SNUR) on certain polybrominated flame retardants, 40 C.F.R. § 721.10000.

In 2006, California became the first state in the nation to *ban* polybrominated flame retardants – PBDEs – which have the potential to disrupt thyroid hormone balance and contribute to a variety of developmental deficits, including low intelligence and learning disabilities, and to cause cancer. Cal. Health & Saf. Code § 108920(c). California law provides in relevant part: "On and after June 1, 2006, a person may not manufacture, process, or distribute in commerce a product, or a flame-retarded part of a product, containing more than one-tenth of 1 percent of pentaBDE or octaBDE, except for products containing small quantities of PBDEs that are produced or used for scientific research on the health or environmental effects of PBDEs." *Id.*, § 108922.

That same year, U.S. EPA issued a significant new use rule (SNUR) addressing certain PBDEs (40 C.F.R. § 721.10000).[3] The agency states that the "PBDE SNUR complemented the phase-out of two flame retardant chemicals. This regulation ensured that no new manufacture or import of these two chemicals could occur after January 1, 2005, without first being subject to EPA evaluation." In EPA's words, the SNUR:

> allows EPA to designate any new manufacture or import as a "significant new use." Advance notification is required prior to commencing the new use. Thus before the chemical could be manufactured or imported for the significant new use, the company would be required to provide advance notification to EPA under Section 5 of TSCA. This approach gives EPA the opportunity to evaluate any concerns, and if necessary, regulate future manufacture, import, or uses associated with these two chemicals.[4]

[3] http://www.epa.gov/oppt/existingchemicals/pubs/qanda.html.
[4] *Id.*

In contrast to California's PBDE law, California does not understand the SNUR to constitute a *ban* on PBDEs.

b. Please provide your opinion on whether California's action is consistent with the SNUR restrictions and not preempted, or whether it is preempted by the terms of the Federal SNUR under the existing provisions of TSCA. If it is not preempted under existing TSCA, please provide an explanation for your view that S. 1009 would force preemption of California's action.

As noted in the answer to Question 9.a., California does not understand the SNUR to constitute a ban. Accordingly, California's ban on pentaBDE and octaBDE is not in any way inconsistent with the SNUR and, therefore, is not federally preempted. For a discussion of the preemption language in S. 1009, please see the answer to Question 6, above. As noted, while current law exempts state bans on chemicals from the preemptive reach of TSCA, S. 1009 does not contain such an exemption.

c. Isn't the reason many of these flame retardants are found in furniture today is because of another California regulation, Technical Bulletin 117?

In 1972, to reduce fire-related deaths and injuries, California enacted a law requiring the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau) to establish upholstered furniture flammability standards. Regulations followed in October 1975, which resulted in Technical Bulletin 117 (TB 117). TB 117 sets out mandatory performance standards requiring that the concealed filling materials and cover fabric of upholstered furniture undergo individual component testing to ensure that they pass open flame tests. These performance-based standards do not purport to prescribe the use of any flame retardant, specific material, or manufacturing methods to meet the standard.[5]

Industry met California's regulations by adding halogenated flame retardants to fabrics and polyurethane foam. In the ensuing decades, California has continued to monitor the benefits and risks of the standard and industry's approach to meeting it, and the changing trends in the causes of fires. California is in the process of amending Technical Bulletin 117 to focus on the causes of fire that are currently of most concern – smoldering materials igniting furniture cover fabric. In the Bureau's words, "[t]hrough this proposed rulemaking, consumer fire protection will be preserved while the reliance on flame retardant chemicals will be significantly reduced or eliminated. In addition, this proposal aims to benefit stakeholders by decreasing the fire potential of today's primary ignition source."[6]

10. You testified that all state laws of general application to the environment would be preempted by S. 1009. Please identify the specific provision of S.

[5] *See* Department of Consumer Affairs, Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation, Initial Statement of Reasons, available at http://www.bhfti.ca.gov/about/laws/isr.pdf.
[6] *See id.* at p. 4.

1009 that would preempt general state laws and regulations protecting health and the environment, including those related to air, water, waste and disposal.

Respectfully, the question does not accurately restate Mr. Troncoso's testimony. Mr. Troncoso testified to California's well-grounded concern that various state public health, consumer and environmental protection laws would be subject to preemption challenges if S. 1009, as written, becomes law. For a more detailed discussion of the preemption language in S. 1009, please see the answer to Question 6, above.

11. **Please distinguish how the exceptions language (Section 15 (c) of the CSIA) differs from the exceptions language in current TSCA (Section 18 (a)(2)(B)) with regard to the use of the word "requirement" and its potential effect on potential causes of action as well as in exemption of state requirements adopted under authorities of other Federal laws.**

Current TSCA uses the word "requirement." 15 U.S.C. § 2617(a)(2). S. 1009, Section 15 uses the term "requirement" and, in addition, "prohibition or restriction," and "requirement, prohibition or restriction." The distinction, if any, being made by adding this additional language in S. 1009 is not clear. It is clear, however, that the language concerning exceptions to preemption in S. 1009 and current TSCA differ in at least two important respects. First, the exceptions language in S. 1009 lacks the exception in current TSCA that allows states to establish or continue in effect any requirement that "is identical to the requirement prescribed by the Administrator." *See* 15 U.S.C. § 2617(a)(2)(B)(i). Second, S. 1009 lacks an exception allowing states to establish or continue in effect any requirement which "prohibits the use of such substance or mixture in such State or political subdivision (other than its use in the manufacture or processing of other substances or mixtures)." *See* 15 U.S.C. § 2617(a)(2)(B)(iii). The joint letter from nine state Attorneys General and the Nelson Letter, both attached to Mr. Troncoso's written testimony, note the significant potential detriment to state police powers that would flow from striking these two exceptions from TSCA.

S. 1009 does include two newly formulated limited exceptions to preemption, but, as drafted, the purpose of those exceptions is unclear, and, in any event, they do not squarely address the loss of states' police powers. *See* S. 1009, §§ 15(c)(2), (c)(3) (amending Section 18 of TSCA, 15 U.S.C. § 2716).

12. **Your testimony states that S. 1009 preempts all state information gathering and collection requirements. Please identify the specific provision of S. 1009 that has this effect.**

Respectfully, the question does not accurately restate Mr. Troncoso's testimony. For a more detailed discussion of the limited exceptions to preemption in S. 1009, please see the answer to Question 11, above.

13. **Your testimony indicated that the scope of preemption in S. 1009 is essentially unlimited. Yet Section 15 clearly states that preemption, if it**

occurs, is limited by the scope of the review and decision taken by EPA on a chemical substance.

Mr. Troncoso's testimony noted that the scope of S. 1009's preemption is far broader than TSCA as currently written, and that the ultimate outcome from the flood of preemption litigation that could result from S. 1009's application to a broad range of state laws creates a significant risk of preemption.

a. Please explain your conclusion that S. 1009's preemption provisions are not limited, with specific reference to language in the bill.

Please see the responses to Questions 6 and 13, above, which address this question.

b. Assume that an EPA safety determination considers the toxicity of a chemical, but not its global warming potential. Do you believe that state restrictions related to global warming potential are nevertheless preempted? Please provide an explicit reference to the language of S. 1009 that in your view compels that conclusion.

The lack of statutory language addressing this issue illustrates a fundamental problem with S. 1009. The exact breadth of its preemption is unknown. Certainly, if this bill is passed in its current form, California will defend its duly enacted statutes and regulations from preemption challenges, but there will be confusion, delays, disruption and unnecessary cost. And it will be up to the courts to decide how much protection Californians will lose.

14. Assume that EPA makes a determination under S. 1009 that a chemical substance is a low priority for further review and assessment, concluding that the substance under its intended conditions of use will likely meet the safety standard. Is California precluded from bringing new or additional data and information to EPA's attention, or recommending the substance for re-designation as a high priority? If so, please identify the specific language in S. 1009 that closes low-priority decisions by EPA to further review.

Today, there are more than 84,000 chemical substances on U.S. EPA's TSCA inventory and new chemicals are coming on the market every day. If S. 1009 in its current form becomes law, the very structure of TSCA, the number of chemical substances in use, and the volume of recommendations for prioritization and data that U.S. EPA will receive will likely foreclose, as a practical matter, routine reevaluation by EPA of chemicals it has already classified as low priority.

15. You stated in your testimony that S. 1009's waiver provision "is illusory," in that it would not allow a state to adopt and enforce a stricter standard, and that it requires a showing of a compelling local interest.

a. Please identify the specific language in S. 1009 that compels a state program for which a waiver has been granted to be less stringent than the federal decision.

Mr. Troncoso testified that the illusory nature of the waiver in S. 1009 arises, in part, from the lack of opportunity for states to adopt and enforce a stricter standard after the federal government has adopted its own prohibition or restriction. First, under S. 1009, there is no waiver provision for low priority chemicals. Second, the waivers available for high priority chemical substances must be obtained before the Administrator has made a safety assessment and determination; after that point, new waiver applications are not permitted. *See* S. 1009, §§ 15(d)(1)(A) & 15(d)(2)(A) (amending Section 18 of TSCA, 15 U.S.C. § 2617). By contrast, under current law, there is no need for states to obtain a waiver prior to the Administrator's adoption of a rule or order (because there is no preemption), and after the effective date of a federal rule or order, states seeking to adopt a significantly higher degree of protection may apply for a waiver. *See* 15 U.S.C. § 2617(b)(2).

b. Several federal statutes have long required demonstration of "compelling local conditions" to justify State action in the face of federal action, including the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 346A and 360k, and the Occupational Safety and Health Act, 29 U.S.C. § 667. OSHA has determined that the phrase "compelling local conditions" in the OSH Act's preemption provision does not require uniquely localized risks. Indeed, in its approval of California's plan to add Proposition 65 to its State plan, OSHA concluded, 62 Fed. Reg. 31159 (June 6, 1997):

> **Conditions unique to a given State are a sufficient, but not a necessary, basis for a finding of compelling local conditions .... OSHA has never said that a State must establish that the conditions of concern to the State's lawmakers are not prevalent in any other State as well. Such an interpretation would be inconsistent with the plain meaning of "compelling"; more than one State may have a compelling interest in regulating particular safety issues. Simply put, "compelling local conditions" are compelling conditions which exist locally.**

Please articulate the basis for your contention that the term "compelling local conditions" as used in S. 1009 creates an "illusory" waiver provision. Please contrast it with the occasions where California has successfully demonstrated the existence of such conditions under other federal requirements. In particular, please provide your rationale for concluding that the term as used in S. 1009 would require California to justify that the compelling local conditions are unique to the state.

The waiver provision of each statute must be read in the statute's broader context, taking into account the subject matter of that statute and the precedent that has arisen under that statute. There is no assurance that courts will simply apply the waiver provision in S. 1009 in a manner similar to that in other statutes. Prefatory language in S. 1009 may influence the interpretation. And small, perhaps unintentional, word differences may

yield different judicial interpretation. We note, for example, that under the Clean Air Act, a waiver "shall" be granted if certain conditions are met. 42 U.S.C. § 7543(b). Under S. 1009, even if conditions are satisfied, a waiver "may" be granted. *See* S. 1009, § 15(d) (amending Section 18 of TSCA, 15 U.S.C. § 2617).

The meaning of the term "compelling local conditions" as used in the particular context of S. 1009 is unclear and, unless clarified, will be decided by the courts. Clarifying that the language does not create such a high bar for waiver as to be illusory would reduce the need for litigation over this issue. Such a clarification would not, however, address the lack of any provision to obtain a waiver to adopt a significantly higher degree of protection after the effective date of a federal rule or order as discussed in response to Question 15.a., above.

16. **Section 18 of TSCA currently provides a waiver mechanism, under which a state may apply to EPA to waive the preemptive effects of a TSCA decision. Several types of EPA decisions – notably test rules and orders, and Significant New Use Rules (SNURs) – preempt similar state activity. Has California ever applied for a waiver under TSCA Section 18? If so, please discuss EPA's decision. If California has never applied for a waiver under TSCA Section 18, why not?**

TSCA, as it is currently written, has not worked the kind of interference with California law that would necessitate California's application for a waiver under Section 18, below. As set out in the answer to Question 6, S. 1009 would change this, making arguments for federal preemption of important state environmental and public health laws routine. The difficulties presented by the more burdensome waiver process proposed in S. 1009 are set out in the answer to Question 15, above.

17. **Please identify any California state requirements that mandate the imposition of restrictions on the manufacture, processing, distribution in commerce or use of a chemical that are not taken under the authority of another Federal or state authority unrelated to the activities generally covered by TSCA.**

We are unclear regarding the meaning of "state authority unrelated to the activities generally covered by TSCA." This language does not appear in S. 1009. Therefore, we understand the question to ask for examples of state requirements that may not be eligible for the limited exception to preemption contained in Section 15 of S. 1009.

The types of state requirements that proponents of preemption will likely argue are preempted were outlined in Mr. Troncoso's oral testimony and written testimony, and in the Nelson Letter. These requirements include Proposition 65, in-state bans on harmful chemicals, and California's green chemistry requirements.

18. **S. 1009 establishes a process in which state governments can be more engaged in the chemical regulatory process. If a state believes that a restriction on the use of a chemical in products is needed for protection of its**

citizens' health or its environment, the state can nominate that chemical for expedited prioritization, and can then supply supporting information to EPA. The state can also provide relevant information to EPA during the safety assessment and safety determination processes. Your testimony indicates that EPA would not consider the state's needs and concerns and that it would not craft any regulatory response in a way to assure that preemption does not occur, or that would avoid the need for a waiver. Please identify the specific provisions of S. 1009 that you believe would lead EPA to simply ignore the input of a state government.

Respectfully, the question does not accurately restate Mr. Troncoso's testimony. As noted in the response to Question 1, the amendments emphasize the states' role in "recommending priorities for Federal assessment and regulation, providing safety assessment information, and fostering programs to protect consumers." *See* S. 1009, § 2(b) (amending Section 2 of TSCA, 15 U.S.C. § 2601). The bill also includes provisions to facilitate consideration of information and testing priorities submitted by states. *See* S. 1009, § 4(e)(4)(A) (amending Section 4 of TSCA, 15 U.S.C. § 2603). But such opportunities to "supply supporting information to EPA" cannot serve as a substitute for the states' ability to take action within their own borders to protect the health and welfare of their residents.

19. **Your testimony indicates an apparent belief that citizens in one state may suffer a risk of exposure to a chemical that is fundamentally different than exposures in other states. Please provide the basis for this conclusion, including specific examples of such differential exposures arising in California, the regulatory or statutory response taken by California, and specific references to the language of S. 1009 that you contend would preempt such responses. Please also identify specific examples where such exposures in other states or localities would not produce a risk worth addressing.**

The point that Mr. Troncoso made in his testimony was that in many instances, the risk of exposure to a chemical will *not* be fundamentally different from state to state. A child playing in a bounce house will be exposed to lead from the play structure's vinyl in the same way, whether that child is playing in California or New York. This is precisely why we believe the waiver provision in S. 1009 sets up a potentially impracticable test by requiring a state to certify that "the State has a compelling *local interest* to protect human health or the environment." *See* S. 1009, §§ 15(d)(1)(B)(i) and 15(d)(2)(B)(i) (emphasis added) (amending Section 18 of TSCA, 15 U.S.C. § 2617). Since dangerous chemicals often present similar risks in different locations, it may not be possible to show unique circumstances that differentiate health risks by geography. The waiver provision, as written, depending on how it is interpreted by the courts, could present a substantial hurdle to states.

20. **Please provide information on the State of California's organizational structure and resources (including technical and financial resources) to regulate the manufacturing, processing, use, and distribution in commerce of**

chemical substances, and compare that structure and resources to that of the U.S. Environmental Protection Agency.

California does not have a specialized understanding of the operational structure and resources available to U.S. EPA to carry out its national environmental and public health duties.[7] With respect to California's organizational structure and resources, please see the answer to Senator Boxer's Question 1, above.

[7] http://www2.epa.gov/planandbudget.

Senator BOXER. Thank you so much.

So now we turn to Mr. Michael Dorsey, Chief of Homeland Security and Emergency Response, West Virginia Department of Environmental Protection.

STATEMENT OF H. MICHAEL DORSEY, CHIEF, HOMELAND SECURITY AND EMERGENCY RESPONSE, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. DORSEY. Thank you, Madam Chairman, members of the Committee.

I was delighted to hear every single one of you acknowledge the fact that TSCA needs to be repaired or replaced. That eliminated my first paragraph.

I am here today as a representative of the State of West Virginia to urge your support for the Chemical Safety Improvement Act, or CSI. I think the CSI is the best and perhaps the last chance to make needed repairs to TSCA. I am aware of objections to the bill brought forth by other States' organizations. However, I do not think that any of these objections are insurmountable, especially given that even the severest critics praise the bill for its bipartisan effort to address the problems.

The bill states in its findings section that, "Scientific understanding of chemicals has evolved greatly since 1976, requiring that Congress update the law to ensure that chemical regulation in the United States reflects modern science, technology and knowledge." Sometimes it is easy to forget just how far science has progressed since 1976, with chemical analysis, epidemiology, environmental modeling and other disciplines that are so far advanced that they are barely recognizable today as what they once were.

The "best available science" of today is far better than it was 37 years ago. While this is not to imply that TSCA scientists haven't kept up with scientific trends and equipment, much of what was accomplished with existing chemicals under this law was done long ago. The public, the regulated community and those in State and local government need and deserve the most accurate and scientifically defensible information on chemicals we can possibly have. I think that is possible with this bill.

Notwithstanding the programs in California, Washington and a few other locations, most of the Country, West Virginia included, lacks the resources and/or personnel to develop and implement chemical testing programs of their own. Because of this, we look to the Federal Government to perform this important work for us. I understand the reason that the more fortunate areas have forged ahead on their own. And I understand their concern that their efforts not be undermined. But I strongly believe that protective language is in place or that stronger language can be forged that will protect existing programs and allow the program to move forward for the rest of us.

In fact, West Virginians have good reason to be concerned that we are able to maintain a level of independence in the evaluation process. As development of Devonian Shale, most recognizably known as the Marcellus Shale Gas Reserves progresses, we may need to evaluate and regulate chemicals used in the development and production of those reserves.

Consistency is important in any program, and it is especially important in programs that cross State lines and EPA regional lines. TSCA, for all its shortcomings, has been fairly consistently applied across State and regional borders. I understand it is important to protect the independence of programs that already exist, and I believe that can be done with this bill. But I just as strongly believe that a clear and consistent Federal program that actually does what TSCA was supposed to do can only benefit the citizens of this Country.

I also envision the CSI as having a positive influence on both innovation and competition in the chemical industry. Green chemicals are desirable to the industry on two levels. First, the consumer has become far more concerned about environmental and health effects on what he or she is buying. They are more likely to buy products that have been shown to be safe by an agency they trust.

Second, the short and long term environmental effects of a chemical are of great concern to the industry due to accidental releases. The easier to remediate a release is, the less expensive it is. Chemical companies know and appreciate the cost of long remediation costs.

Finally, I appear before you today as a greybeard. I have been around long enough to see some State and Federal laws, rule and regulations come to life and become implemented and others slowly die and become forgotten. I have also seen laws with good intentions fail. TSCA is one of those failed laws. It was passed for good reasons, and it still has an important role to play in our Country. Perhaps its role is more important today than it ever has been. Some of what has been accomplished has been very good, such as the regulation of PCBs, the elimination of lead-based paint, the regulation of asbestos.

But in the area the citizens most need protection it has failed. It has failed to adequately test and evaluate chemicals that have entered into our lives. The CSIA is the most viable chance to fix TSCA that has come along in my career.

There are problems, of course. There are always problems with any legislation. This legislation deserves the chance to have the problems ironed out and become law. If passed, it will still require a great deal of effort to care for it, to avoid falling into the same fate as TSCA. It must be managed and evaluated and adapted as needed to correct flaws that are not apparent to us today. But it is worth doing.

Thank you for the opportunity to appear here today.

[The prepared statement of Mr. Dorsey follows:]

Chemical Safety Improvement Act
TSCA Finally Repaired

H. Michael Dorsey, Chief
Homeland Security and Emergency Response
West Virginia Department of Environmental Protection

The Toxic Substances Control Act (TSCA) is long overdue for repair or replacement. I appear before you today as a representative of the State of West Virginia to urge support for and passage of the Chemical Safety Improvement Act (CSIA). I think that CSIA is the best, and perhaps the last, chance to make needed repairs to TSCA. I am aware of objections to the bill brought forth by other states and organizations; however, I do not think any of these objections are insurmountable--especially given that even the severest critics praise the current bipartisan effort to address the problems of TSCA.

I do not need to go into the many flaws in TSCA. Opponents and supporters alike all agree that it is past time for TSCA to be fixed, and even the Environmental Protection Agency's own Inspector General acknowledges that is broken. There are those of us who have held this position for decades. I will, therefore, focus on the reasons that I think that CSIA should become law.

The bill states in its "Findings" section that "...scientific understanding of chemicals has evolved greatly since 1976, requiring that Congress update the law to ensure that chemical regulation in the United States reflects modern science, technology and knowledge." Sometimes it is easy to forget just how far science has progressed since 1976; but, chemical analysis, epidemiology, environmental modeling, and other disciplines are so far advanced since then that they are barely recognizable as the same fields. The "best available science "of today is far, far better than it was 37 years ago. While this is not to imply that TSCA scientists haven't kept up

with scientific trends and equipment, much of what was accomplished under this law was done long ago. The public, the regulated community, and those in state and local government need and deserve the most accurate and scientifically defensible information on chemicals that we can possibly have. I think that is possible with this bill.

Notwithstanding the programs in California, Washington, and a few other locations, most of the country--West Virginia included--lacks the resources and/or personnel to develop and implement chemical testing programs of their own. Because of this, we look to the federal government to perform that important work for us. I understand the reason that the more fortunate areas have forged ahead on their own, and I understand their concern that their efforts not be undermined; but, I strongly believe that protective language is in place, or that stronger language can be forged that will protect existing programs and allow the program to move forward for the rest of us. In fact, West Virginians have good reason to be concerned that we are able to maintain a level of independence in the evaluation process. As development of the Devonian Shale (most recognizably known as the Marcellus Shale) gas reserves progresses, we may have a need to evaluate and regulate chemicals used in the development and production of those reserves.

In recent years, many states have inserted language into their laws to the effect that state law can be no more stringent than federal law. The impact that an ineffective TSCA has in that arena is obvious. In order for a state to take any regulatory stance on a chemical not regulated by another program, the federal program must have taken some action other than just adding the chemical to a list. I think that CSIA, when implemented, will provide a framework that states can use to support their own actions, if necessary.

Consistency is important in any program, and it is especially important in programs that cross state lines and EPA regional lines. TSCA, for all of its shortcomings, has been fairly consistently applied across state and regional borders. I understand that it is important to protect the independence of programs that already exist (and I believe that can be done with this bill). I believe just as strongly that a clear and consistent federal program that actually does what TSCA was supposed to do can only benefit the citizens of this country.

I also envision CSIA as having a positive influence on both innovation and competition in the chemical industry. Green chemicals are desirable to the industry on two levels. First, the consumer has become far more concerned about the potential health and environmental effects of what he or she is buying. They are more likely to buy products that have been shown to be safe by an agency they trust. Second, the short and long-term environmental effects of a chemical are of great concern to the industry due to accidental releases. The easier to remediate a release, the less expensive it is. Chemical companies know and appreciate the costs of long remediation projects.

While it is difficult for me to say, as someone who has spent much of his professional life in the environmental protection business, but TSCA has provided a false sense of security to untold numbers of people in this country who have bought into the proposition that it was providing a safety net--that it was testing and evaluating new chemicals before they could come on the market. We know that is not true and we know that it will be a difficult assignment if and when CSIA comes to pass. But I think that we can all agree that it needs to be done. We owe it to our constituents.

Finally, I appear before you today as a graybeard. I have been around long enough to see some state and federal laws, rules, and regulations come to life and become implemented, and others slowly die and become forgotten. I have also seen laws with good intentions fail. TSCA is one of those failed laws. It was passed for good reasons and still has an important role to play in our country. Perhaps, its role is more important today than it ever has been. Some of what it accomplished has been very good--such as the regulation of PCBs, the elimination of lead-based paint, and the regulation of asbestos; but in the area that citizens most need protection, it has failed. It has failed to adequately test and evaluate chemicals as they enter into our lives. CSIA is the most viable chance to fix TSCA that has come along in my career. There are problems, of course. There are always problems with any legislation. This legislation deserves the chance to have the problems ironed out and to become law. If passed, it will still require a great deal of effort and care for it to avoid falling to the same fate as TSCA. It must be managed, evaluated, and adapted, as needed, to correct flaws that are not apparent to us today. But it is worth doing.

Thank you for the opportunity to appear here today.

Response to follow-up questions from Senator Vitter, Ranking Member of the Committee on Environment and Public Works regarding the Chemical Safety Improvement Act.

Question: In your statement, you suggest that the CSIA would have a positive impact on both innovation in the chemical industry and in reducing the societal costs of remediation from accidental releases of chemicals. Can you elaborate on these two points?

Answer: The two points that I touched briefly upon in my testimony represent the extremes of the production spectrum from conception to disposal. Today's increasingly aware and concerned buying public has consistently shown preference for products that are safer both for them and the environment. CSIA, through its testing protocols would encourage the chemical industry to develop and produce products that would address both of these concerns. The work that takes place in the development phase will pay dividends in the event of an accidental spill of the material. Cleanup costs are directly tied to the toxicity of a material as well as disposal options. A material that can be recycled or inexpensively disposed of is preferable to one that cannot be easily or inexpensively cleaned up. West Virginia has a legacy of pre-regulation contamination by chemicals that were produced with no thought given to toxicity and potential cleanup costs. As a result, companies have had to bear horrendous remediation expenses, public health has been threatened, and the environment compromised. West Virginia has one site that cannot be remediated with current technologies and there are no disposal facilities capable of accepting the waste. Therefore, the material must be sealed in place and monitored in perpetuity. A well-managed CSIA would ensure that companies are certain of the attributes of their products, which would allow them to market products as health and environment friendly and, in the end, would lessen remediation costs based on the disposal options available to less toxic materials.

Question: During the hearing you mentioned that West Virginia is "no more stringent" than the federal government language in law. Can you elaborate on what that means for your state, particularly in the context of a broken federal TSCA?

Answer: West Virginia, along with at least 16 other states, has some form of "no more stringent" language in its environmental laws. In West Virginia's case, this means that unless there is a specific act by the legislature, based on a request from an agency and backed by extensive documentation, our environmental laws and rules may not be stricter than those of the federal government; nor may they include chemicals that are not regulated by the federal government. In addition, chemicals that are regulated by one program–such as TSCA-may not be regulated under another state program-such as a hazardous waste program. As an example, West Virginia tried to incorporate PCBs under its hazardous waste program a number of years ago, but was unable to because they were already regulated under TSCA. It did not matter that the state did not have an equivalent program; regulation was to be left to the federal program.

Perhaps more importantly, with a broken TSCA the safety net that was there in the case of PCBs might not be there for a different substance. PCBs are an example of a TSCA success story and their regulation under that act has made life safer for all Americans. There are, however, thousands of chemical substances that have passed through the TSCA screening process that have not had the same scrutiny as PCBs or asbestos or chlorofluorocarbons. It is possible, and perhaps even likely, that a chemical substance that has passed the oversight of TSCA will prove to be the next big problem substance. In that case, West Virginia may be prohibited from regulating it because it is already regulated under a federal law.

As stated above, at least 17 states have some form of "no more stringent" language. Some laws are extremely strict while others allow variation from the requirement given various levels of effort. The bottom line is that all of these states are in some form or other relying on a system that simply is not as protective as it needs to be to justify the faith of those who depend on it.

Question: The third series of questions is prefaced by testimony by the Physicians Committee for Responsible Medicine and the People for the Ethical Treatment of Animals. Three questions are then asked based on that testimony. The answers below are in the order that they are asked.

Question a: Do you agree with this assessment?

Answer a: In general, I agree with the assessment of the referenced organizations. I have not read *Toxicity Testing in the 21st Century: A Vision and a Strategy* , however, I understand that it underscores a point made in my original testimony about the advancement of science since the 1970s. I also agree that it is both unfeasible and undesirable to try to test untold numbers of chemicals using animal testing that would not be as efficient and may not be as accurate as modern risk assessment and modeling techniques.

Question b: Do you agree it is imperative that we have a federal system in place that does not delay regulation and effectively focuses on the more dangerous chemicals first as well as prioritizes agency resources?

Answer b: Yes. In states such as West Virginia, a timely and hazard-focused federal program is essential to the maintenance of an effective safety net that provides both the expertise and resources that we have no choice but to rely upon. It must be stated at this point that CSIA is an ambitious bill, much as TSCA is an ambitious law. In order for CSIA to succeed where TSCA has failed, sufficient resources-both financial and managerial- must be provided and maintained. Remember that TSCA started with the best of intentions but languished due to lack of attention.

Question c: How many states across the union do you believe would benefit from such a federal system?

Answer c: It is my firm belief that a carefully crafted compromise bill can benefit every state in the union. For the more fortunate states, CSIA can complement and support their advanced programs while

in the states that rely on our federal partners to provide the necessary chemical testing services, this bill could finally do what TSCA was supposed to do.

Senator BOXER. Thank you so much, Mr. Dorsey.

And now we will turn to Mr. Ken Zarker, Manager, Pollution Prevention and Regulatory Assistance Section, Washington State Department of Ecology.

STATEMENT OF KEN ZARKER, MANAGER, POLLUTION PREVENTION AND REGULATORY ASSISTANCE SECTION, WASHINGTON STATE DEPARTMENT OF ECOLOGY

Mr. ZARKER. Thank you, Chairman Boxer and Ranking Member Vitter, for the opportunity to testify on this important issue of protecting human health and reducing toxic chemical threats.

I also want to thank the members of the Committee for stepping forward to engage the States in meaningful dialog, and particularly the late Senator Frank Lautenberg.

Today I will focus my comments on why State programs are important, what States are doing and why Washington and other States are compelled to act and will continue to act in the absence of a Federal solution. I will just briefly summarize my points, I provided written testimony. We also provided additional written testimony and comments on the Chemical Safety Improvement Act in the spirit to help improve this bipartisan approach.

One trend is very clear: the States have stepped up to fill the Federal gaps that exist under the Federal current system. In recent years, 77 chemical restriction bills have been passed by the States, including 31 bills alone specifically addressing mercury. Bills at the State level have typically passed with strong bipartisan support.

My job and that of colleagues around the Country is to protect people and the environment from toxic threats. This job is becoming more challenging with an outdated Federal system.

I would like to share a few of the States' principles on TSCA reform. I think it is helpful to revisit that. Again, we need a strong prevention-based approach that protects the most vulnerable and ensures the safety of chemicals in commerce; preserves the States' authority to act and act as co-regulators; ensure EPA has adequate data to make safety determinations; require manufacturers to generate adequate data to show that chemicals meet the safety standards; include principles of alternative assessment and life cycle thinking; require EPA to make safety determinations in an efficient and timely manner; share information and coordinate with the States and Federal programs.

Ultimately, we need a stronger Federal TSCA that improves the safety of chemicals and restores trust in our institutions to protect our communities and economies from toxic threats. The States need a modernized TSCA to help us avoid the types of legacy problems in our States. In my written testimony, I provided two brief examples, just in Washington State alone, one related to recontamination of the Puget Sound after spending millions of dollars to clean that up, and new sources of PCB contamination in the Spokane River. These PCBs are coming actually from current products on the market.

States have demonstrated smart solutions that we can bring to the table. Over 10 years ago, Washington State became increasingly concerned with persistent, bioacumulative and toxic chemicals. In 2000, we were the first State to target these chemicals and

adopt regulations to phase them out. Our State became the first in the Nation to ban decaBDE, a commonly used flame retardant. As a result, EPA also took action on similar chemicals.

There are many similar examples around the States. I'd like to shift my final thoughts to the States' role in developing a Federal solution. Several States have been working together to provide a voice throughout this dialog. As a rest, here are a few ideas that we would offer to enhance and make a more workable solution.

Again, increasing all efforts to address all chemicals in commerce. Focus on chemicals of concern. Prioritization is the first step, including making sure that we have an adequate set of data to help us with that prioritization.

Conducting safety assessments and safety standards determinations. Authorizing EPA to share confidential business information with the States. Provide specific milestones for EPA with adequate funding. And integrate new tools, such as alternative assessment and life cycle assessments.

We also believe that State grants for technical assistance could enhance our role with working with small to medium size businesses. And addressing some overlapping regulations relating to polychlorinated biphenyls, or PCBs, waste and residuals.

In terms of State preemption, I think it is still early to be discussing this conversation, until we can get some structural fixes to the bill. Preemption is really about accountability. I think if we have a good Federal system, then it is likely that the States will have greater confidence in the system and we can deploy our resources more efficiently.

States must have the authority to establish programs.

Thank you for your time.

[The prepared statement of Mr. Zarker follows:]

Testimony of Ken Zarker

Pollution Prevention & Regulatory Assistance Section Manager

Washington State Department of Ecology

Before the Senate Environment and Public Works Committee

U.S. Senate

July 31, 2013

I want to thank Chairman Boxer and Ranking Member Vitter for the opportunity to testify on the important issue of preventing toxic chemical threats. The ongoing conversation to modernize our national chemicals management program is an important step forward. This is a unique moment for us to consider how we can work together to deliver greater environmental and human health benefits to the American people and the important role of the states.

I want to particularly recognize the efforts of the members of the committee for engaging the states in meaningful dialogue during the last Congress, including efforts by the late Senator Lautenberg. This has been a very helpful and informative process for the states and we appreciate the opportunity to share our perspective.

Today, I'd like to focus my comments on why states' programs are important, what states are doing, and why Washington and other states are compelled to act and will continue to in the absence of a federal solution.

Across the country, states have implemented programs to advance sound chemical management policies and programs. Beginning in the early 1990s, many states began to supplement existing end-of-pipe regulation with a

prevention-based approach aimed at reducing pollution at the source. It's encouraging that collectively our state pollution prevention programs have provided almost $6.6 billion in economic benefits and eliminated or reduced more than seven billion pounds of pollution for our most recent data for the years from 2007 – 2009.[1]

Despite this achievement, we still have chemical safety gaps as evidenced by accelerated state legislative actions over the past decade.

Over 77 individual chemical restriction bills have been passed by states in recent years, including 31 bills alone related specifically to mercury. In most cases, these bills have passed with broad bipartisan support. Washington State, as well as other states, enacted laws that require the identification and prioritization of chemicals of concern, the reporting by industry on the presence of priority chemicals in children's products, and phased reductions of copper levels in brake pads to reduce toxic stormwater pollution.

My job, and that of colleagues around the county, is to protect people and the environment from hazards and risks from toxic chemicals. This job has become more challenging with an outdated federal system. I think almost everyone agrees we need a fix at the federal level. A strong federal system that works is a more efficient use of our limited resources and reduces transaction costs for chemical management programs.

State and federal pollution prevention program have evolved over the past 30 years, but unfortunately, we have more work to do. Almost every state environmental and public health agency today has environmental data that show

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[1] National Pollution Prevention Roundtable

increasing levels of toxic chemical contamination to people and the environment.

While the states have valuable programs and solutions, ultimately we need a federal TSCA that improves the safety of chemicals and restores trust in our institutions to protect our communities and economies from toxic threats.

What are states doing about these issues? State legislators have passed laws in reaction to these toxic threats – typically with chemical or product specific approaches. State legislation includes individual chemical bans like lead, mercury and cadmium and more recently on toxic flame retardants, addressing chemicals of concern in children's products, and other consumer products.

Some states are looking at more comprehensive approaches to chemical safety, rather than fear the next set of toxic chemicals that we haven't even heard of yet.

The current federal program does not prevent tomorrow's problems. Obviously, it will take time to work ourselves out of our current situation and retooling the chemical sector for future innovation is an effort that needs a phased approach – many of the production units currently in use are designed to run 40 years or more. We cannot change the enterprise overnight, but starting this effort will put us on the road toward a more sustainable economy and keep the United States as global chemical producer while keeping good paying jobs in our states. A modern TSCA should promote innovation and green chemistry as the strategy for future economic growth.

The states need a modernized TSCA to help us avoid the types of legacy problems that continue to impact our states. I have two brief examples.

Over the past decade the private sector and taxpayers collectively spent over $100 million to clean-up the Foss Waterway in Tacoma, Washington from legacy

toxic pollution. After successfully measuring improvements to the Puget Sound which the Foss Waterway flows into, we are now concerned with recontamination from a new class of pollutants called phthalates. Phthalates are used as plasticizers in a variety of everyday products such as flexible piping, soft plastic toys or some common packaging materials for consumer products. After spending $100 million on cleanup it is likely our children will have to address additional future cleanup costs-- a travesty for future generations. And without fixes to TSCA, we could be facing additional untold new chemical cleanups.

Another example is located in eastern Washington on the Spokane River. In this case, polychlorinated biphenyls or PCBs continue to contaminate fish and sediments in the river. Like most Americans, I figured we solved the PCB problem with the passage of TSCA in 1976. But, PCBs are still allowed in products at low levels and we now know that they are inadvertently produced during manufacture of other materials such as pigments in inks. Inland Empire Paper Company, a regional paper company that's been around for more than 100 years began to notice PCBs in their wastewater resulting from their raw material – recycled newsprint and magazines. The company is now in a real regulatory bind – the desire to promote the recycling is now threatening to make it nearly impossible to meet water quality limits for PCBs set by the Clean Water Act. The company will need to meet strict water quality standards at levels orders of magnitude below as what's allowed in products under the TSCA regulations. It's a tall regulatory hurdle to meet.

This isn't an isolated problem. As more states look at these issues, we find similar problems. Over 10 years ago, Washington became increasingly concerned that persistent, bioaccumulative or toxic (PBT) chemicals were building up in the food chain and in our bodies. As a result, in 2000 we became

the first state in the nation to target these chemicals and adopted regulations in 2006 to phase out their uses and releases. Our state became the first in the nation to ban decaBDE, a commonly used flame retardant. Since then, several other states have banned decaBDE and the EPA announced the phase-out of decaBDE.

Washington State is not alone. Many states across the country are trying out creative solutions and providing leadership in the effort to advance sound chemicals management policy.

Today, as a manager of a pollution prevention program, I've come to the conclusion that federal action is essential. I'd like to share a few ideas to consider as we reach the tipping point for action.

Many of the federal bills that have been introduced over the past several years include good ideas for a workable national solution. These include granting authorization for the EPA to share confidential business information (CBI) with the states. This is not currently allowed under TSCA. The states recognize the importance of CBI data for companies to continue to bring new products and chemistries to market. The EPA has showed a willingness to share data with the states that can demonstrate compliance with federal CBI standards. As long as state agencies can ensure that CBI will be protected from disclosure to the same extent as it would be in the hands of federal regulators, there's no reason to prevent such exchange of information. States can be trusted with CBI data as demonstrated by over 40 years of states' implementation of federally delegated programs such as the federal Clean Water Act and the Resource Conservation and Recovery Act.

Chemicals prioritization for safety assessments should allow EPA to gather necessary data for making good prioritization decisions. New science related to computational toxicology and predictive models will continue to emerge in the coming years, so a modernized TSCA should support the advancement of new data and methods. Requiring the EPA to set and meet safety determination targets will be critical to the success of addressing and prioritizing the significant work ahead. A modernized TSCA would allow EPA to require manufacturers to collect additional information about chemicals if that information is needed for prioritization or development of the safety standard.

States should be able to continue to act and bring forward chemicals of concern to EPA as part of this effort, including providing peer reviewed data and information. EPA should be required to consider the availability of safer alternatives when conducting safety assessments. Also, a modernized TSCA should include specific timeframes for actions by EPA with funding commensurate with those expectations.

Finally, a modernized TSCA should also address the emergence of new tools such as alternatives and life cycle assessment. I am not aware of any of the federal legislative proposals that recognize or encourage the use of alternatives assessment as a smart method to addressing chemicals of concern, but the states have recognized alternatives assessment as a tool that could significantly improve our ability to prevent future legacy type problems from occurring.

Including alternatives assessment and life cycle thinking in TSCA reform is a proactive method for identifying, comparing, and selecting safer alternatives to chemicals of concern. Today, leaders from industry, U.S. EPA, the states, and nongovernmental organizations are working to design a process for prevention-

based decision making. Some in industry are already using these tools to support product development, reduce hazard and minimize exposure in an effort to promote transparency and seek competitive advantage in the marketplace. Washington State and several other states have been working with stakeholders to develop and refine the principles of alternatives assessment. California's Safer Consumer Products regulations include Alternatives Analysis provisions.

As we all know, any discussion related to preemption is of high interest to the states. A strong federal system that works will help reduce state concerns as some states don't want to set up and staff chemicals management programs.

Washington supports a strengthened federal-state relationship as part of TSCA modernization, including adequately resourcing both federal and state programs.

TSCA is unlike most federal environmental statues where the states are considered co-regulators with the federal government in protecting public health and the environment. Amendments to TSCA must preserve the existing authority of the states to act to enforce laws, support state chemicals management programs, and be strengthened to meet state needs.

Until we have a national solution, we will continue to act on chemical safety in our states. It's our obligation to respond to the citizen's of our state.

Finally, states have a demonstrated history of stepping up to fill federal gaps, introducing and passing laws to help mitigate the threats and costs to public health and supporting consumer demand that manufacturers produce safer products with more transparent disclosure. At the same time, businesses remain concerned that conflicting state regulatory actions will become increasingly challenging. An effective federal framework will do much to resolve this situation.

Continued gaps and holes leave consumers and constituents reliant upon the states to step up.

I want to end by emphasizing that we see TSCA reform as both a true necessity to protect people and the environment and as a real opportunity to strengthen American products and industry. The U.S. is a global leader in chemistry and there is increasing market demand for better products. I thank you for your leadership to move forward on practical solutions to improve our nations' chemical management system. Thank you for the opportunity.

Chemical Safety Improvement Act (S. 1009)
Washington State Department of Ecology Addendum
July 31, 2013

Introduction
These comments on the Chemical Safety Improvement Act of 2013 (CSIA) are submitted on behalf of the Washington State Department of Ecology (Ecology), a state environmental agency working to support reform of the Toxic Substances Control Act (TSCA).

Ecology is very pleased by the bipartisan nature of the CSIA, but we note that clarification and intent is still needed. As written, S. 1009, contains concerning requirements that make the onerous preemption provisions particularly problematic in that it will severely limit the states' ability to protect their citizen's health, children's health and their environments from toxic chemicals.

Reforming the Toxic Substances Control Act of 1976 (TSCA) is a key issue for Ecology, as well as other states. In 2010, Ecology worked with other state environmental commissioners as part of the Environmental Council of States (ECOS) to pass a resolution calling for responsible TSCA reform. The resolution included actions to cover both new and existing chemicals, provide for responsive actions when needed, allow for assessment of safer alternatives, ensure preservation of state authority by limiting preemption only to situations where compliance with both federal and state law would be impossible, and enhance collaboration and information sharing between federal and state programs.

Our state legislature has actively engaged with chemical policy legislation. Through our work, we have learned many lessons about what has worked and what has not in the federal TSCA law and about how to successfully address toxic chemical risks. Our comments address a number of key issues for Ecology, which are that TSCA reform should:

- Establish a strong federal system that protects the most vulnerable and ensures the safety of chemicals in commerce.
- Preserve States' ability to protect public health and the environment by limiting preemption of state authority, including preemption that limits the state's ability to establish environmental programs more stringent than federal programs, to situations where compliance with both federal and state laws would be impossible, and by expanding environmental authority to the States.
- Ensure EPA has adequate data to make informed prioritization decisions.
- Require manufacturers to generate adequate data to show that chemicals meet the safety standards.
- Require EPA to make safety determinations in an efficient and timely manner.
- Create a system where manufacturers have a responsibility to demonstrate that their chemicals are safe.

- Share information and coordinate between state and federal programs to maximize use of resources and ensure a predictable regulatory environment for all stakeholders

We respectfully ask for your consideration of the following comments and would welcome the opportunity to provide additional information, answer questions, engage in discussion, and provide suggested language on any or all of these issues.

Enhance States Role by Eliminating Preemption of State Authority and Programs to Protect Citizens and Environments

Under most federal environmental statutes, the states are considered co-regulators with the federal government in protecting public health and the environment (for example, Superfund or CERCLA, hazardous waste laws or RCRA, etc.). For more than 40 years, states have worked as partners with the U.S. Environmental Protection Agency (EPA) and other federal agencies to co-implement the nation's environmental laws facilitating the development, implementation and enforcement of environmental programs.

Congress has provided by statute for delegation, authorization or primacy of certain federal program responsibilities to the states, which, among other things, enables states to establish state programs that meet or go beyond the minimum federal program requirements.

States, where supported by their legislators and citizens, should be able to take necessary actions to reduce toxic chemicals and protect public health and the environment. Many of the states' regulatory and prevention-based actions have resulted in beneficial changes in chemical use and consumer product composition, and have provided our citizenry with information that is helpful in making individual choices about the products they wish to purchase and use. Some of these provisions have been models for subsequent federal legislation, such as the banning of phthalates in toys and children's products that was included in the federal Consumer product Safety Improvement Act of 2008.

This "co-regulator partnership" must be recognized in the modernization of the Toxic Substances Control Act (TSCA). States have a very different relationship with the U.S. EPA than we did over 35 years ago when TSCA was first passed. One area where the states have played a significant role is the use of chemicals in consumer products. Many states have passed laws requiring the labeling of products that contain hazardous chemicals, banning the use of chemicals in certain products or classes of products, and establishing reporting requirements on the use of hazardous chemicals in certain products. These laws have been important as they have taken action with regard to chemicals of significant concern to human health where federal action has lagged (example: brominated flame retardants, mercury); they have also provided information to consumers who are concerned about the complex and not yet fully understood effects on human health from exposure to low

levels of chemicals in everyday products (e.g. endocrine disrupting chemicals, chemicals linked to epi-genetic effects that can span generations, etc.) and choose to avoid these chemicals in their everyday purchasing decisions. Without these state-based regulations, this information would not be available.

CSIA would preempt states from adopting new laws addressing the manufacture and use of toxic chemicals following an EPA pioritization determination wheteher or not EPA takes timely or effective federal action to ensure safety. Existing, effective, state toxics laws are also subject to preemption following the mere completion of a safety determination by EPA, limiting state's abilty to take action based on new science indicating a risk not addressed by EPA, or if EPA fails to take effective action. This elimination of state's rights to take steps to protect their citizens and the environment is unaccpetable to a number of states and, on balance, outweighs the postive elements of the Act.

Prioritization
The CSIA directs the EPA to develop a framework for the assessment of chemical substances. This framework includes policies and procedures for the collection of existing information from manufacturers and processors of chemical substances; criteria for evaluating the quality of this data and information; and a process for prioritizing chemical substances for safety standard assessments.

The bill will prioritize chemicals into one of two groups, either low-priority or high priority. The EPA is to identify chemicals that, relative to other substances, have the potential for high hazard and high exposure, and may consider listing chemicals that exhibit only one of these characteristics, as high-priority substances. Low-priority chemicals substances are substances that the administrator determines are likely to meet the safety standard, on the basis of available information and under the intended conditions of use. High-priority chemical substances will undergo a safety assessment in accordance with a schedule published by EPA.

The states have many years of experience in the prioritization of chemicals substances, the evaluation of chemical substances for safety, and evaluating alternatives to hazardous chemicals.

We would like to raise several concerns regarding the proposed prioritization and screening process:

1. **Chemical Test Data** – Washington is concerned that CSIA will continue the common problem that that discourages the testing of existing chemical substances under the current TSCA. Unless a chemical is up for prioritization under CSIA there will be little incentive to generate new data. As testing could find evidence of hazard or risk and result in the chemical being scheduled for a safety standard assessment. Therefore, there would be little incentive to test existing chemicals, which lack toxicity data or have not been identified as a chemical of concern.

2. **Minimum Data Set** - CSIA needs revised language to require a minimum data set.
    a. ***High Priority Chemical s***- The language in the current proposal is not clear or sufficient regarding "lack of data" as a criteria for prioritization. We recommend that the Act require EPA to categorize chemicals lacking sufficient data as a high priority.
    b. ***Low Priority Chemicals*** – This language should be clarified to require a minimum amount of data to classify a chemical as a low-priority chemical substance. The amount of required information could be tiered based on production volume but should at a minimum include information on carcinogenicity, mutagenicity, developmental toxicity, acute toxicity, chronic toxicity, endocrine disruption, environmental toxicity, or other toxic effects as determined by EPA.
    c. ***Harmonization*** - The SCIA should support global harmonization of chemical safety data and information, including required basic health and safety information for all chemicals in commerce. At a minimum it should require manufacturers of chemicals to provide the same safety information provided in other countries. Washington is concerned that much of the information provided under international chemical management programs may not be considered "existing data." This is due to the complex financial arrangements required to pay for new testing of chemical substance. This data is often generated under contracts which provide that the data may only be used for purposes related to the other countries' chemical management programs. The language in the CSIA should be clear that the same information provided to other countries must be provided to EPA.
3. **Safer chemicals** – SCIA should require manufactures of chemicals to provide similar data for new chemicals. Lack of data can hamper innovation and prevent the adoption of safer alternatives. Many companies are working to remove hazardous chemicals from their products and processes – often saving money in the process. When companies remove a hazardous chemical they often have to identify a safer alternative. When doing this they must gather toxicity information on the proposed alternative chemical, to ensure they are making a smart substitution. If toxicity information for an alternative is not available they are left with two choices, search for another alternative or conduct the testing themselves. Manufacturers of chemical substances should bear the burden of generating basic health and safety information for all chemicals they sell.

Safety Assessments and Determinations

Ecology supports efforts in CSIA that call for an evaluation of all chemicals in commerce. After chemicals are prioritized, the EPA must conduct a safety assessment of high priority chemicals. A safety assessment is a risk based assessment of a high priority chemical. The EPA is required to develop rules to establish the procedures for carrying out the safety assessment. If EPA determines

that existing data is not adequate to complete a safety determination, they may require manufacturers and processors of chemicals to generate new data and information. Safety assessments are not subject to judicial review.

After completing a safety assessment EPA is directed to make a safety determination. This is a determination as to whether a chemical meets the safety standard of unreasonable risk or does not. If a chemical does not meet the safety standard, EPA has the authority to implement risk reduction measures, including labeling requirements, restrictions on the quantity of the chemical that may be manufactured, restrictions on use, or bans and phase outs. All risk reduction measures are implemented through rules and there are various additional requirements on EPA if they wish to ban or phase out the use of a chemical, including identifying economically feasible alternatives, evaluating the risks posed by these alternatives, and conducting an economic and social cost benefits analysis.

Ecology has the following comments on the safety assessment and determinations process:

1. **Determination Criteria** - It is unclear from the current bill language how these determinations are to be made. The bill states that these determinations are to be based solely on considerations of risk to human health and the environment, yet the safety standard is clearly defined as ensuring that no unreasonable risk of harm occurs. EPA is also called upon to evaluate issues unrelated to the risk of human health or the environment including an analysis of the economic and societal costs and benefits of an alternative chemical substance. This would appear to indicate that the determinations and EPA's ability to take action are not biased solely on the risk to human health and the environment. Ecology is concerned that this recreates the same high bar for EPA action as in TSCA.
2. **Shared Responsibility** - At each step in the review process, CSIA places the responsibilities squarely on EPA. The responsibilities should be more equitably shared between the manufacturers and EPA. For example manufacturers of high priority chemical substances should be required to conduct alternative assessments in accordance with guidelines established by EPA. The assessments should be publicly available. In cases where safer alternatives are available, chemical policy should help shift uses towards the safer alternatives. Manufacturers should also propose appropriate risk reduction measures, when their chemicals are reviewed for safety. These proposed risk reduction measures should then be required by EPA upon the completion of a safety determination.
3. **Timeframes & Implementation** - There may be a significant gap between the time a determination is made and when risk reduction measures are implemented. Risk reduction measures are implemented through rule and are implemented after safety determinations. Rule making can be very lengthy, with significant rules taking many years to complete. Risk reduction measures should take effect immediately after determinations are made.

4. **Authority and Rulemaking** - Certain risk reduction measures should not require rulemaking. For example EPA should not have to conduct rulemaking to require the labeling of a chemical substance. The EPA should be able to issue orders to implement certain risk reduction measures. Rulemaking should only be required when implementing a phase out or ban.

Safety Standard

The safety standard in the current proposal is "a standard that ensures that no unreasonable risk of harm to human health or the environment will result from exposure to a chemical substance" under its intended condition of use. While there have been some changes to this language the standard is very similar to the current safety standard – a standard that has proved nearly impossible to fail, as shown by the Corrosion Proof Fittings V. the EPA case. Based on this case, Ecology identified three principle concerns with the current safety standard:

1. The substantial evidence standard of judicial review.
2. The requirements on EPA to select the least burdensome risk reduction measure
3. The complex calculations EPA is required go through to determine what constitutes an unreasonable risk.

We are pleased that this proposal addresses one of these concerns, the requirement to select the least burdensome risk reduction measure; however we fear that these changes alone will not ensure an adequate level of safety for the use of chemicals in commerce. Ecology is significantly concerned that EPA will face a considerable "burden of proof" when adopting rules to implement risk reduction measures. Rules promulgated under TSCA should be subject to the same level of judicial scrutiny as other federal regulations.

Ecology would recommend striking the sections of TSCA which create this higher standard of judicial review.

One of the current problems with TSCA is that EPA has the burden of gathering evidence that a chemical poses an unreasonable risk before taking risk reduction measures. Ecology supports the principle that manufacturers should have to provide EPA with evidence that the chemicals they manufacture are safe. The EPA should then evaluate this evidence to determine if a chemical meets the safety standard.

A reformed TSCA should shift from the current process whereby EPA has to show that there is substantial evidence of an unreasonable risk, before taking risk reduction actions, to one where manufacturers must provide adequate evidence that the chemicals they manufacturer may be used safely in commerce.

Timelines and EPA Funding
The timelines and schedules in SCIA need to be revised to promote efficiencies when EPA starts implementation of the bill. While some elements of the SCIA contain specific timelines that EPA must meet many others do not. Without specific timelines it is impossible to know how long it will take to implement risk reduction measures or to evaluate chemicals for safety. There should be clear expectation on EPA to complete tasks within specific time frames. The EPA should also be required to complete the evaluation of a specific number of chemicals within a given amount of time.

In order to realistically ensure timely progress, a funding mechanism needs to be included in the bill. Without a dedicated funding source EPA will be unable to meet these timelines and the chances for delays increase. The cost of a federal chemical regulatory program should be borne by the manufacturer, importers, processors, and users of chemicals.

Confidential Business Information (CBI)
Section 13 of the CSIA revises confidential business information (CBI) will be treated. The proposal creates three categories of information and prevents the disclosure of CBI. The categories of information created by the proposal are information that is presumed to be protected from disclosure, information not protected from disclosure, and other information which may be protected from disclosure if a manufacturer files a claim. The proposal also provides for a process for the EPA to review claims, exemptions from CBI protection, and an appeal process.

Ecology understands the need to protect certain information from public disclosure. A strong chemical management system, however, should provide for the maximum amount of publicly available data.

We have the following specific comments related to the proposal:

1. **Information presumed to be protected**: The identity of the constituents in a mixture should not be presumed to be protected from disclosure. The identity of the chemical substances in a mixture should be treated in the same manner as the identity of the chemical substances themselves.
2. **Exemptions to protection from disclosure**: This section provides for information to be disclosed to state or local governments upon written request. The current language requires:
   > "1 or more applicable agreements with the Administrator ensure that the recipient government will take appropriate steps, and has adequate authority, to maintain the confidentiality of the information in accordance with procedures as stringent as those which the Administrator uses to safeguard the information."

   We would recommend changing this language to read:

"1 or more applicable agreements with the Administrator ensure that the recipient government will take appropriate steps~~, and has adequate authority,~~ to maintain the confidentiality of the information in accordance with procedures ~~as stringent as~~ comparable to those which the Administrator uses to safeguard the information."

This will avoid future concerns over whether a specific authority is adequate or if one procedure is more or less stringent than another. A written agreement with EPA should be sufficient to protect the confidentiality of this information.

3. **Timeframes** - In general, CBI information claims should not be granted indefinitely. We would recommend that the proposal require that manufacturers periodically recertify CBI claims still needing protection.
4. **Authority to Request Data** - The EPA should have the authority to require manufacturers to document any claims for CBI protection regardless of when those claims are submitted. The CSIA proposal creates a division between data and information submitted before the adoption of the act and after. This proposal expressly removes EPA's authority require documentation or re-documentation of claims submitted prior to the adoption of the act.

Preemption

The preemption previsions in the CSIA legislation are broad and sweeping. This makes it difficult to conduct a meaningful assessment of what is or is not preempted. Ecology is concerned that this language is open to a variety of judicial interpretations, which could have far reaching and unexpected consequences on areas of law never intended by the authors. Ecology has identified dozens of laws or regulations which could or would be preempted if this language were passed as written. It is likely that there are a similar number of laws and regulations, which could, or would be, preempted in other states.

For example, states are preempted from enforcing existing laws or requirements if the law places a prohibition or restriction on a chemical that has been subject to a safety determination when the prohibition or restriction is within the scope of this determination, requires the submittal of data that is likely to produce the same data as required by the EPA, or places a requirement for the notification of a new use for a chemical, where notice to EPA is also required.

The CSIA preempts states from establishing a new "prohibition or restriction on the manufacture, processing, distribution in commerce or use of a chemical" that has been prioritized as low priority or high priority by EPA.

While the CSIA provides for states to seek a waiver from EPA from the pre-emption requirements, Ecology, in consultation with the Office of the State Attorney General, has concluded that the proposed wavier provisions would be extremely difficult and costly to meet. It is highly unlikely that any state would likely attempt to seek a waiver under the current proposal, and if they did it is unlikely that it would be granted.

Chemical Alternatives Assessment
Chemical policy reform should shift chemical use from chemicals that possess a high intrinsic hazard to chemicals with lower hazard. In many cases there are equally effective and safer alternatives to hazardous chemicals. Manufacturers should be required to conduct safer chemicals alternative assessments as part of the safety assessment/determination process, prior to implementing any proposed risk control measures.

In instances where safer alternatives are available, for the intended use of a chemical, chemical policy should help shift uses towards these safer alternatives. When faced with the choice between implementing control measures to reduce exposure and reducing intrinsic hazard, Ecology has often found that the cheapest and most effective option is reducing hazard. Protection of public health and the environment requires identification and substitution of safer alternatives, irrespective of current known risks.

States Program Grants
Grant funding should be provided for state programs to reduce the use of and exposure to hazardous chemicals.

Ecology proposes amending section 28 – State Programs to read:

(a) In general - For the purposes of complementing the actions taken by the administrator, under this act, the administrator shall make grants to states for the establishment, operation, and expansion of programs that support the goals of this act. The administrator shall make grants to programs:
  (1) providing business with voluntary technical assistance to:
    (A) eliminate or reduce the use of hazardous chemical substances;
    (B) accelerate the adoption of safer alternatives to hazardous chemicals substances;
    (C) encourage the use of alternative assessment as a tool for reducing risk; and
    (D) promote and aid in the adoption of risk reduction measures
  (2) facilitating collaboration, data, and information exchange among the administrator, states, and local governments regarding:
    (A) chemical health and safety information;
    (B) product information;
    (C) safer alternatives; and
    (D) education outreach
  (3) recognizing business for leadership in reducing the use of hazardous chemical substances;

(4) monitoring for the presence of chemicals in the environment, animals, or humans; and

(5) coordinating, expanding, or enhancing green chemistry education at colleges, universities, and public schools;

Adequate funding for the purposes of making state grants will need to be authorized to be appropriated.

Regulation of PCB Waste and Residuals

TSCA Section 6 should be amended to provide for regulation of the management and disposal of polychlorinated biphenyl (PCB) waste and residuals under the appropriate provisions of RCRA and CERCLA. Currently, the management and disposal of PCB wastes and residuals are subject to overlapping regulation under three separate federal environmental statutes: TSCA, RCRA, and CERCLA. PCBs are identified as a hazardous constituent under RCRA and as a hazardous substance regulated under CERCLA. The existing regulatory authority under RCRA and CERCLA governing the management and disposal of hazardous and toxic wastes and residuals is broader in scope than the authority under TSCA. The coordination of management of PCB wastes and residuals under these overlapping authorities often requires substantial time and effort between the three regulatory programs, resulting in a redundant, cumbersome approval process that impedes the timely and efficient remediation of contaminated properties and management of PCB wastes and residuals.

Environment and Public Works Committee Hearing
Strengthening Public Health Protections by Addressing Toxic Chemical Threats
July 31, 2013

Follow-up Questions for Written Submission
Submitted by: Ken Zarker, Washington State Department of Ecology

Questions from Senator Barbara Boxer

1. **What types of economic and pollution reduction benefits have Washington States' pollution prevention programs provided?**

   Response: The Washington State legislature established our pollution prevention (P2) program over 25 years ago with the goal to eliminate or reduce hazardous waste and hazardous substances at the source. Certain businesses that use hazardous products or generate hazardous waste are required to prepare plans for voluntarily reducing these patential sources of pollution.

   Washington State businesses report that Washington State Department of Ecology (Ecology) pollution prevention programs and services hove created more than $56 million in business value for them since 2005. That $56 million would pay for 1,100 jobs based on an average Washington State wage of approximately $50,000, as compiled by the Bureau of Labor Statistics, U.S. Department of Labor.

   Additional savings have occurred through other prevention programs such as our energy audits which have saved over $2.7 million for approximately 40 businesses involved, our engineering efficiency program, which has documented a savings of over $3 million for approximately 35 businesses helped, and ten businesses saved over $2.1 million through our Lean and Green efforts. These three efforts provide value despite the small amount of state resources used.

   With Ecology's help, these businesses found ways to eliminate 61 percent (approximately 183 million pounds) of Washington's total onnual hazardous waste during the 22 years of P2 planning.

   Reducing the volume of hazardous substances used in commerce is important because the risk from toxic chemicals doesn't begin with a leaking drum at an industrial site; it begins when toxic chemicals are used to make products or deliver services. Safe hazardous waste management is essential to protecting human health and the environment, but avoiding the use of toxic chemicals in the first place is the smartest, cheapest, and healthiest approach.

Over 20 states have established pollution prevention programs similar to Washington State that are providing similar results. This network of state programs provides a good framework to support federal pollution prevention policies. They are a good resource for business technical assistance.

Pollution prevention means reducing or eliminating the use and toxicity of hazardous substances and hazardous wastes at the source, before they are generated. Prevention is source reduction through toxic chemical substitution, process improvements and other practices, and reducing or eliminating the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources.

However, despite all the successes of the pollution prevention programs, there is still work to be done. One of key challenges is related to increasing concerns associated with chemicals of concern. Traditional management and control programs are not effective in controlling these sources of contamination that are often found in people, our homes, and the environment. Given the successes of pollution prevention efforts, we should ensure that Toxic Substances Control Act (TSCA) reform includes a strong prevention-based ethic to address the most problematic chemicals in commerce while encouraging innovation and green chemistry.

2. **What were Washington's main health concerns with persistent, bioaccumulative and toxic chemicals (PBTs) building up in our food chain and bodies and how did the state's regulations seek to protect people from these threats?**

Response: While Washington has made progress in protecting people from PBTs, there is much we don't know about what PBTs are in use in which products, where they end up, and their health effects.

Washington State is an example of why states' action is necessary to address toxic chemicals in situations where the federal government, for whatever reason, does not.

The U.S. Environmental Protection Agency (EPA) should prioritize PBTs for screening and action in the reformed TSCA.

PBTs have a wide range of health effects for people and the environment. What distinguishes PBTs from other toxic chemicals is their persistence in the environment and their biooccumulation in the food choin. This means that even smoll releases have the potential to result in high enough levels to cause harm. In addition, once PBTs are in the environment it tokes a long time for the concentrations to decrease,

making prevention more important. Because PBTs remain in the environment and people for long periods of time and easily transfer among different media, Washington decided to address PBTs across different media instead of relying on single medium approaches.

In our 2000 Strategy to reduce PBTs, we mentioned a wide range of toxic effects including effects on the nervous system, reproductive and developmental problems, immune-response suppression, concer, and endocrine disruption. Washington is also particularly concerned with exposures during early childhood that have more potential to affect the development of the brain and other organs. In 2000, Washington started with a list of 9 candidate PBTs that had 15 local fish consumption advisories, 2 statewide fish consumption advisories, and 244 water segments that exceeded surface water quality criteria. These chemicals included DDT, dioxin, Mercury, and PCBs, which have a range of adverse health effects. The 2006 administrative rule on PBTs updated this initial list to include a total of 27 chemicals and groups of chemicals with a wide range of health concerns.

One specific example of what we have done to protect people and wildlife from PBTs is writing and implementing the chemical action plan (CAP) for polybrominated diphenyl ethers (PBDEs). The PBDE CAP found PBDEs are used in a variety of consumer products, they are detected in people and the environment at increasing levels, and there are potential impacts to neurodevelopment. The CAP recommended a ban, and the state legisloture subsequently banned the use of PBDEs for specific applications where we knew there was a safer alternative.

Another example is from the Lead CAP, which found that the largest single source of lead exposure to children is old lead-based paint that is still in homes from before the federal ban. While we have implemented some of the recommendations in the Lead CAP, we have not been able to fully address this important source by assessing older housing for lead hazards and remediating where indicated. This work has been hampered by the lack of funding and cuts in federal funding for Centers for Disease Control, Prevention Healthy Homes and Lead Poisoning Prevention programs, and Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control programs.

3. Should TSCA reform legislation require an established number of chemical safety assessments over a set period of time?

Response: Yes, the legislation should provide an expectation regarding the annual number of chemical safety assessments that should be conducted by the

EPA, and ensure available resources.

As part of the prioritization process, EPA should identify at least 50 PBTs for expedited action at the earliest opportunity. EPA should move aggressively toward risk reduction measures and restrictions for this class of chemicals.

EPA should be provided adequate financial and staffing resources to accelerate and sustain the chemical safety assessment process. This system should be funded by a fee-based or cost-recovery system paid by the chemical manufacturer to the EPA. Fees could be based on toxicity and volume. EPA could create incentives to encourage green chemistry safety assessments for innovative chemistries.

EPA should consult and partner with the states in establishing the number of chemical safety assessments. EPA should publish the anticipated schedule on a regular basis.

The number of safety assessments should be prioritized based on the chemical prioritization framework. States should be able to conduct safety assessments if EPA fails to meet schedules on a timely basis.

4. **Should TSCA reform legislation explicitly require chemical safety assessments to consider the unique vulnerabilities of pregnant women, infants, children, and other vulnerable populations when assessing and addressing toxic chemicals?**

   Response: Yes, the legislation should consider the most vulnerable of our population as a prevention-based approach to public health concerns. We understand this is the intent of the authors of the legislation, but it should be clarified.

5. **Should TSCA reform legislation require EPA to collect information on safer alternatives to dangerous chemicals and adopt tools to promote the use of these safer alternatives?**

   Response: Yes, while safer chemical alternative assessments are not the only tool for advancing chemical regulation, they do play a vital role, aiding in the transition to safer chemistries.

   Manufacturers of chemicals that da not meet the safety standards should be required to conduct safer alternative assessments in accordance with guidance from EPA. These assessments should be publicly available on an EPA website.

EPA should also provide states and industry with technical assistance services, grant funding, and tools to facilitate the move towards safer alternatives.

Questions from Senator David Vitter

1. **If TSCA is modernized to require EPA to screen and prioritize all chemicals in commerce, taking input from states like Washington, and to conduct comprehensive safety assessment on high priority chemicals, will the state of Washington need to do its own assessments of chemicals? Please explain your answer.**

   Response: Yes, it is likely that there will be a continued need for Washington State to perform its own assessments of some chemicals, and preservation of the State's authority to do so is essential. Even under a robust reformed TSCA, it will be many, mony years before EPA is able to complete assessments on the tens of thousands of existing chemicals in commerce. EPA's priorities may not always coincide with those of Washington State.

   For example, Washington State is particularly concerned with sources of copper and other metals that are impacting the health of salmon in the Puget Sound region. We also have another regional issue related to source of PCB contamination in the Spokane River, including toxics loading resulting from pigments that contain PCBs which are ending up in the river.

   Having the authority to conduct our own assessments is an important regulatory tool for the states.

   Under the provisions of S. 1009 as introduced, chemicals categorized as "low priority" would not be subject to further assessment by EPA. There may be instances in which: (1) Washington State does not concur with EPA's assessment of a particular chemical as "low priority;" or (2) circumstances unique to Washington warrant action at the state level in the absence of federal action.

   Well crafted TSCA reforms that are effective will provide the states with greater accountability and confidence in the federal system. A federal system that works will allow states to redirect resources to other priorities and is more cost effective to tax payers. If TSCA reform is not effective, states will be compelled to act.

2. **If TSCA is modernized in a strong and transparent way at the federal level, is some level of preemption acceptable in your view?**

   Response: State action should be preempted only where compliance with both a state and federal law would be impossible. As a practical matter, implementation of a comprehensively reformed TSCA will render the state preemption issue largely moot, as states will focus their increasingly limited resources on other priorities. During the past 20 years, however, states have acted to fill the regulatory void at the federal level, illustrating the vitally important role states play in providing a "backstop" to federal inaction and as laboratories of innovation.

   States' action is a necessary right to address our regional and local concerns that have high importance to our citizenry, but do not have the same level of visibility when viewed from a national perspective. In Washington State, our state legislature has been responsive to these issues based on concerns expressed by constituents, and is able to respond in a timely manner.

3. **Do you view provisions in the CSIA allowing the federal government to share confidential business information with states as an improvement in current law?**

   Response: Yes, provisions authorizing EPA to share Confidential Business Information (CBI) with the states is an important improvement on the current law. As explained in the detailed comments appended to my testimony before the Committee, however, Washington State strongly recommends amendments to the existing CSIA provisions to ensure EPA's ability to share CBI with all states.

4. **Do you believe that the State of Washington would benefit from an updated federal chemical management law? Is the State negatively impacted by the current federal system?**

   Response: Yes, there has been general agreement from most parties that Washington State, as well as other states, would benefit from an updated federal chemical management law. It's been our experience that Washington State has been negatively impacted by the failures of the current system. This has resulted in chemical contamination, including expensive toxic cleanup sites and impacts on the state's water quality permitting program which significantly impacts our businesses. There are also related concerns to potential public health impacts.

5. **If strong deadlines were inserted into the CSIA, do you believe it will create a more credible system that will allow Washington to benefit from more federal action? Would strong deadlines help ease any concerns surrounding preemption? Where do you believe deadlines are need in the CSIA?**

   Response: Yes, the inclusion of deadlines for EPA action would clearly strengthen S. 1009. Enforceable deadlines are important for the successful implementation of any environmental regulatory statute. At a minimum, TSCA would benefit from the establishment of deadlines for decisions on prioritization, assessment, and whether to require additional testing. While incorporation of appropriate deadlines for EPA action would address an important flaw in the current bill, compliance with such deadlines is dependent on the availability of adequate resources and other factors that are not entirely within EPA's control. As we know from many years of practical experience with implementation of federal environmental statutes, simple inclusion of regulatory deadlines does not guarantee timely action. For these reasons and those explained above, inclusion of regulatory deadlines would not alter Washington's position on the need for preservation of state chemicals management authority.

6. **Current TSCA has a preemption provision which says that following a rule or order by the Administrator under sections 5 or 6, "no State or political subdivision of a State may, after the effective date of such requirement, establish or continue in effect, any requirement which is applicable to such substance or mixture."**

   a. **How do you and the State of Washington read the word "requirement" in current T5CA preemption? Has the use of that word precluded any state tort claims or causes of action in Washington that you are aware of?**

      Response: By its plain language and common usage, the term "any requirement" suggests a very broad application of the preemptive effect.

      With regard to the impact of the current TSCA on the exercise of Washington State or common law authority, because EPA has acted on so few chemicals under TSCA, preemption of state authority has not been an issue under the current law. We are not aware of any instance in which the scope of this preemptive language has been addressed by the courts in regards to its possible effect on tort claims or causes of action in Washington, or for that matter, an state statutes or agency rules.

      The term "requirement" could be broadly interpreted to include statutory mandates, regulations, consent agreements, court ordered actions, or other legal actions.

b. In TSCA's preemption provision, there is an exception for requirements "adopted under the authority of the Clean Air Act or any other Federal law." Do you read that as similar to the provision in the CSIA which exempts requirements, prohibitions, or restrictions "adopted under the authority of any other Federal law" from the bill's preemption language? Has current TSCA in any way hindered Washington's abilities to use authority under the Clean Air Act or any other Federal laws?

Response: The text of both provisions is similar. Both existing TSCA and the CSIA provide for the similar provision as described in the question. As noted above, because TSCA is structurally flawed and EPA has acted on so few chemicals under TSCA, preemption of state authority has not been addressed or tested in any significant or meaningful way under the current law.

However, I do have concerns related to new provisions in CSIA preemption section that appears more restrictive and would possibly limit state actions. The CSIA proposed language under Section 18(c)(3)(A) includes a new criteria that would place a burden on the states to prove that any state action "does not impose a restriction on the manufacture, processing, or distribution in commerce, or use of a chemical substance."

For example, the Washington State legislature enacted a ban on coal tar sealants which could be preempted under the CISA language, since this is a product that would include chemical substances that were "manufactured, distributed or used" in our state. My interpretation is that CSIA would not allow the state to enforce our current ban on pavement sealants.

Senator BOXER. Thank you so much.

I have to be tough with this because of our situation today.

I want to thank the three of you. If I could just say, all of you really added a lot. And I want to say to the two Majority witnesses on either side of Mr. Dorsey, what I really appreciate is your specifics, in your written testimony, your specific examples of why it is essential that we allow States to have States' rights. And Mr. Dorsey, I appreciate your willingness to say, we can work with this. Because that is critical.

Because if we don't fix these problems, we are not going to have a bill. Too many States are objecting. Not only the attorneys general, who wrote to us, and they are very respected and they represent huge populations in America, but also the State legislatures who are fighting the battles have written to us. So we need to fix it. And I believe we can fix it.

So my first question is to the two who said that this preemption, to quote Mr. Troncoso, is crippling. Will you work with me, with Senator Vitter, with others, to make sure that we do allow States' rights? Will you work with us? Mr. Troncoso.

Mr. TRONCOSO. Absolutely. I would be happy to work with the Committee in any respect that is helpful.

Senator BOXER. And Mr. Zarker, will you as well?

Mr. ZARKER. Will do.

Senator BOXER. And Mr. Dorsey, we will run it by you as well. Because I think that your attitude today is terrific, which is, look, if other people have problems, we should try to solve them.

So let's just say S. 1009 became a law, which I do not see happening until it is fixed, and I think most people have said it has to be, even the Ranking Member. If S. 1009 becomes law, and EPA listed a chemical as a low priority chemical due to a lack of data and took no other action, how long would States be preempted from enforcing or creating protections against that particular chemical, under the way it is written now?

Mr. TRONCOSO. Madam Chair, I believe it would be in perpetuity. I don't know that there is a bounded duration.

Senator BOXER. That is my read.

Mr. TRONCOSO. If it is a low priority chemical and it is not going to be subject to a later safety determination, my belief is it would be barred going forward.

Senator BOXER. Well, if we add up all the population from the attorneys general who wrote to us, and there were two other States who were planning to sign but didn't sign, but sent separate letters, like New York, it is the majority of the population of the Country that has concerns about this. So it is often said that States are the laboratories of democracy and that Federal law should set a floor, not a ceiling, on the level of protection. I certainly believe that is true. I think it is our job to set a minimum standard.

But if the States in their wisdom and the people vote for Prop 65, what right does anyone sitting up here to overturn the will of the people in our States? And yet this bill, as written, according to Kamala Harris, could possibly impact Prop 65. Do you agree with that, that Prop 65 could be imperiled here, a bill that passed with huge support of the people of the State in a vote?

Mr. TRONCOSO. Madam Chair, absolutely. I believe that, the way that we read the bill, and I think it is quite clear from the express preemption provisions in Section 15 in particular, that if a chemical is listed in a certain way by EPA, preemption would kick in at the State level. And any State application of Prop 65 to any of those chemicals, whether it is a low priority chemical or high priority chemical, depending on the point of the process that we are at, I think we run a serious risk of preemption in our ability.

Senator BOXER. So it could drive an arrow through the heart of Prop 65.

Let me ask you further, because you alluded to this issue. We in California took, with your leadership, your meaning our State's lawyers, took action against this inflatable bounce house toy that young children often played in. Could you describe these bounce houses, and if there was no right for you to act, they would still be going. Explain the dangers that kids faced in that situation.

Mr. TRONCOSO. I will explain it, Madam Chair, about the case and then relate to some personal experience in this respect.

Back in 2010, we first brought this case. It is not bounce houses generally, it was the vinyl that was being used in the manufacturing.

Senator BOXER. The vinyl in the bounce house.

Mr. TRONCOSO. That is correct. And the vinyl had a very high concentration of lead in it. Anyone that is a grandparent or parent knows that when you get a small child, like my 17-month-old goes in and he sits there, he can't really bounce much, but he will lick the vinyl. Who knew that it was laden with lead? Completely unnecessary exposure.

So under Prop 65, our Right to Warn law, we took some action against those manufacturers that were putting these into commerce without an appropriate warning. We were able to get an agreement that they would reduce the level of lead.

Senator BOXER. We know what happens when kids are exposed to lead, what happens to their IQ, what happens to their bodies. So I just want to thank you very much, and again, if you could say to the Attorney General of California, because I know she helped organize the letter from all these attorneys general, because she feels so strongly about it, how much I appreciate her work.

I think with this testimony that we have heard from all three of you, we can fix the problems in this bill and make it work for our States. And most importantly, for the people of our States and the families and the children.

Senator Vitter.

Senator VITTER. Thank you, Madam Chair, and I thank you and the witnesses for bringing up Prop 65. I think it is a perfect example of one of the misimpressions I was talking about in my opening statement.

Frank and I talked specifically about Prop 65, and we never intended to neuter Prop 65 in any way. We thought that was clear in our language, but Senator Udall and I are going to make it crystal clear in our manager's amendment. I think that is a very good example of a misimpression or a concern that was never our intent to foster.

Senator BOXER. I just wanted to ask you, what do you mean, manager's amendment?

Senator VITTER. We are working on proposed revisions to the bill to address all of these concerns.

Senator BOXER. I just want to make it clear that I will be working the manager's amendment with you. That is where we are, unless you don't like it and I get somebody else who does, like Senator Barrasso.

Senator VITTER. Fine. Well, we are here. Senator Udall and I are here to listen to all legitimate concerns.

Senator BOXER. As we all are, of course.

Senator VITTER. And we have been meeting actively with folks with those concerns. And we are compiling clarifications to the bill. I think this is a great example of one of those clarifications. It is going to be crystal clear what our original intent was. Certainly Frank nor I wanted to neuter Prop 65 in any way, so we will make that crystal clear.

Mr. Dorsey, you mentioned a few times that you thought the Lautenberg-Vitter bill was "the most viable chance to fix TSCA" that has come along during your career. Why don't you elaborate on that, and what would be the impact on your and other States if we miss the opportunity and this present law continues for the foreseeable future?

Mr. DORSEY. Senator Vitter, when we began the hearing, Senator Boxer recited a litany of efforts that had taken place over the years to fix TSCA. They have all failed. I sit here today looking at this group, and I'll be retired in 17 months and 1 day——

Senator VITTER. Not that you are counting, obviously.

Mr. DORSEY. Not that I am counting.

[Laughter.]

Mr. DORSEY. But it is so encouraging for me to sit here and see bipartisan support for something to fix TSCA. I think it is probably the best effort that I have ever seen and has the most bipartisan support for and effort to fix this.

Now, I sit here and quite frankly, the States of California and Washington have Prop 65 and other laws that will allow them to take these huge strides. In West Virginia, we have what we refer to as no more stringent than language, which allows us to be no more stringent than the Federal Government. We are not the only State, there are a number of other States out there that do the same thing.

So we rely on the Federal Government to take some of the bigger steps when it comes to epidemiology, chemical safety, things along those lines, to help us protect our citizens.

Senator VITTER. Great. Let me follow up on that. Why don't you elaborate on how and to what extent West Virginia, your State, has tried to regulate any chemicals, and what was the outcome of the State's work?

Mr. DORSEY. Many, many years ago, the one that comes immediately to mind to me is PCBs, polychlorinated biphenyls. Back when EPA was still rummaging around, trying to come up with a solution for those, I personally tried to take a rule package to our legislature to have them regulated as hazardous waste in West Virginia. In the meantime, EPA regulates them under TSCA. I was

told, no, if the Federal Government is regulating those, we are not going to regulate them as a State.

It has worked out in the long term fairly well, but we were denied the opportunity to regulate those chemicals because of that no more stringent than language.

Senator VITTER. And for a State like West Virginia, for the vast majority of States, why don't you describe the significance and importance of the Federal role in terms of resources, expertise, et cetera, and your reliance on it?

Mr. DORSEY. I mentioned it briefly in my talk, and it is in my written testimony. States like West Virginia, and most States throughout the Country, just simply do not have the resources. We have a few epidemiologists within our agency and other agencies, but we just don't have the personnel, the money and the expertise to do the work that needs to be done on a large scale across the board to protect the citizens.

Senator VITTER. Thank you very much.

Senator BOXER. Senator Vitter, I am so encouraged by your commitment to make sure that State law to make sure that State laws are not preempted. So when you and Senator Udall have fixed the bill or rewritten those sections, because my reading of the bill is it is endemic throughout the bill, it is not just in one place. So the whole bill has to be looked at.

We wrote, I just want you to know, my commitment is to send it to the 10 attorneys general who have written to us and said they have huge problems with preemption, to make sure that their concerns are met. And I am looking forward to seeing that rewrite. That would be wonderful. And if it is written in the right way and the AGs believe it, that would be an enormous step forward. So let me just go on record as saying that.

OK, let's see now. I think we are going to go to Senator Udall.

Senator UDALL. Thank you, Madam Chair. I think what you have just said is very important. We look forward to working with you on constructive changes. I don't think that Senator Lautenberg and Senator Vitter ever thought that this was going to be a perfect bill, that you would unroll it and there weren't going to be any changes. As I have said earlier, many of us realize that as you move along in the legislative process, there may be language that you did not intend it to be that way but that you can work to change it. We look forward to working with the Chairwoman and the Ranking Member to get that done.

I think some of these, to turn to the witness from West Virginia, some of these questions have been asked and answered, but I wanted to emphasize this again. You see the array up here of what we are dealing with. I have New York on my left and California on my right. But then we have smaller States that are out there, like West Virginia and like New Mexico, who don't necessarily step into this situation of regulating chemicals. We don't produce a lot of chemicals in New Mexico, and so we don't have the kind of resources that these larger States do.

So how many chemicals do you analyze on a yearly basis?

Mr. DORSEY. We have a number of programs, Senator. Our Resource Conservation and Recovery Act program, which is our haz waste program, has a list of chemicals we have adopted to Federal

law. And the list of chemicals, there are several thousand in there. We have our brownfields program and our Superfund equivalent, which is tied into our brownfields program. So there are a lot of chemicals out there that we are regulating.

But I think that the common number that people would talk about that TSCA grandfathered in was 62,000. So we do what we can, we run our authorized programs from the Federal Government and we look at those chemicals. But nothing really above that.

Senator UDALL. When I say analyze, are you really in the business in the State of West Virginia in terms of analyzing chemicals? What you talked about is adopting what other agencies have done. I am talking about analyzing chemicals, how many chemicals has the State of West Virginia prohibited in commerce.

Mr. DORSEY. I misunderstood your question, Senator, I apologize. None, to my knowledge.

Senator UDALL. And do you feel adequately protected by other State laws and what other States may be doing?

Mr. DORSEY. The problem there is, we just don't know. And we find out on a regular basis that there are things out there that we were not aware of.

Senator UDALL. And I think you find yourself in the situation that many small States do, that we would like to see something at the national level and see TSCA fixed and see an aggressive effort to deal with toxic chemicals.

Let me just, Mr. Troncoso, talk a little bit about this attorneys general letter. I was a former attorney general back in the old days. So I am very interested in your analysis and very much appreciate the attorneys general stepping forward on this. At the bottom of the letter it states that S. 1009 would preempt States from enforcing existing laws or adopting new laws regulating chemicals that EPA designates as high priority. And I would like to clarify here on the reading of our bill.

Existing State prohibitions or restrictions on a chemical would remain in place until EPA made a final safety determination on that chemical. Only new State prohibitions or restrictions on a chemical would be precluded by an EPA prioritization decision. State requirements, whether new or existing, that do not directly prohibit or restrict a chemical, would never be preempted, including requiring reporting on a chemicals' use or presence in products, warning labels, such as under California's Proposition 65, which we have had a little bit of discussion about here, limits on exposure levels or releases, monitoring, et cetera. And States could also apply for waivers.

So balancing the Federal and State standards on chemicals and consumer products is a very challenging task. I think that is the big task that is before us and that you are helping us with. Some States have strict laws and other States produce most of the chemicals in interstate commerce. My State is in the middle, we do not have the resources of California and we have very little chemical production.

So I am trying to reconcile a variety of interests here, and I hope that, and I think you have said this in questions from the Chairman, that you will work with us through this issue in terms of the trickiness. Is that correct?

Mr. TRONCOSO. Yes, Senator. As you know, and I will resist calling you General, Senator, the attorneys general have a terrific record of working on a bipartisan basis together through the National Association of AGs, and forming working groups. We will be happy to work with the Chairman.

Senator UDALL. Thank you.

Senator BOXER. Thank you, Senator.

We go to Senator Barrasso.

Senator BARRASSO. Thank you, Madam Chairman.

Mr. Troncoso, you state in your written testimony and you said it today, you said, as written, S. 1009 will not give us more protection. As written, S. 1009 will not give us more protection. I don't think anyone would question Senator Lautenberg's record in defending people from the risk of harmful chemicals. So just to give you a chance to clarify that statement, in terms of Senator Lautenberg negotiating a bill that was designed to provide more protection for children, seniors and families from harmful chemicals, does your statement go too far?

Mr. TRONCOSO. Thank you, Senator, for that question. I think our State joins in full complement all of the statements made about Senator Lautenberg's work and his commitment to these issues. We share the goal that the Committee has of reforming TSCA in a way that will increase protection.

Our fear, though, Senator, is that in significant respects, the preemption provisions roll back important State protections that have been demonstrated to result in significant harms to people in our State and harms in particular to children.

Senator BARRASSO. Your quote was, "will not give us more protection." Will not give us more protection, none. And I just want to know if that went too far.

Mr. TRONCOSO. Senator, I believe within the context and as amplifying now, with respect to the preemption provisions, I think with respect to those, I stand by that statement, sir.

Senator BARRASSO. The entire bill doesn't do any good, that is your testimony today.

Mr. Dorsey, you said you came to us today as a greybeard. Given your years of service, do you recall opportunities like this where Congress can move a major bipartisan reform on chemical policy? When is the last time you saw it? What will happen if we don't really advance this bill, if we just scrap it and start from scratch?

Mr. DORSEY. Well, the last time was probably in the 1980s, the Superfund Reauthorization Amendments, 1984, that may be, as a greybeard, my mind slips sometimes. I may have missed a call there. But it has been a while. As I said before, I don't anticipate seeing it happen again before I am gone.

Senator BARRASSO. Do you agree with Mr. Troncoso's statement that "As written, S. 1009 will not give us more protection"?

Mr. DORSEY. I can't speak for California or Washington, but I think in West Virginia it will give us additional protection.

Senator BARRASSO. Can you elaborate further as to the provisions in this bill that you will find most beneficial to protecting public health and safety at home?

Mr. DORSEY. The main thing that I see is that it actually does the analysis on the chemicals that needs to be done, whereas TSCA

didn't do that. That may be a simple statement, but it has profound meaning.

Senator BARRASSO. Mr. Zarker, you said starting this effort will put us on the road toward a more sustainable economy and keep the United States as a global chemical producer, all while keeping good-paying jobs in our States. So unemployment is at 7.5 percent, this is not including the people who have given up looking for work, folks look for work want a strong economy, a strong chemical industry to provide new and innovative life-saving products. New products create jobs, bring down unemployment.

I am wondering what you think of in terms of, what is the sustainable economy that you are advocating for? Does it exclude certain products and the jobs that go with making those products from the marketplace?

Mr. ZARKER. Thank you, Senator. That is a great question. I think that we have opportunity here within TSCA reform to send the right market signal for new products and services. We realize that the chemical infrastructure and this industry cannot be changed overnight. Typically those plants are put in place for 40, 50 years. But by reforming TSCA today and including incentives for innovation and green chemistry, I think that will send a very strong signal to the market and the industry will want to position itself globally to lead in that area. That is the opportunity I see.

Senator BARRASSO. It is curious, because I am a doctor, have practiced medicine for 25 years. We are able to detect chemicals in small, minute amounts, that we weren't able to detect in the past. I am wondering if this is driving some of the efforts. Because we really don't know that some of these things actually do harm at low, low, low doses.

Mr. ZARKER. You are correct. We have the ability to detect these materials to the picogram level. This is an example going back to, I mentioned the Spokane River, where we have a paper company that recycles paper and uses it as raw material. It comes into their plant. And unfortunately, PCBs get into the wastewater and can be detected. They have done everything they can to get it out of the system. But there are current provisions under TSCA that allow inadvertent PCBs to be included in products today that come into the U.S., probably through pigments. So it is a problem.

Senator BARRASSO. Thank you. Thank you, Madam Chair.

Senator BOXER. Thank you so much. Senator Gillibrand.

Senator GILLIBRAND. Thank you, Madam Chairwoman, again, for holding this hearing.

Obviously the issue of preemption is a non-starter. I think there is some clarity here on the Committee on a bipartisan basis that if we don't fix that part, this bill is never going forward. I think that is essential. Because for those of us who care deeply about protecting our children, we want to make sure States that have done good work in regulating harmful chemicals can keep those standards in place. I agree with Senator Boxer that the Federal Government's role is to set the floor, not the ceiling.

So setting the floor in States like yours that say, you can't exceed, I think is absolutely essential. I would be so dismayed having a child in any State that can't regulate these harmful chemicals. I would be so concerned about their well-being. And I would like

you to submit for the record all the bounce houses that have lead in them and how I can make sure my children do not participate in those bounce houses.

[Laughter.]

Senator GILLIBRAND. So assuming we can deal with this preemption issue, Mr. Troncoso, do you have specific suggestions for the Committee about how you would change that provision specifically to ensure that there is no preemption of right to know laws, like Proposition 65?

Mr. TRONCOSO. Thank you, Senator, for that question. I think our office has a lot of experience in working with the legislature both at the State and Federal level on these issues. I think there are many examples in other Federal statutory schemes, where you have much less onerous preemption provisions. So I am happy to work with you on that.

Senator GILLIBRAND. I would like you to submit your recommendations for the record when you have time to consider it, for all of you actually, how you would write and fix language specifically about preemption to make sure good work has been done in other States is not harmed or undermined in any way. I think that is essential.

So assuming we can address this issue, Mr. Troncoso, what areas of the CSIA do you feel would aid EPA in regulating hazardous chemicals? What parts do you think we should build on that are useful?

Mr. TRONCOSO. I would join in the comments that we have heard from the bipartisan consensus here at the Committee. I think that having a more comprehensive, rigorous testing program at the Federal level is a good thing. I think we have been calling for that for some time at the State level. The State really has filled in the gaps in a lot of respects.

Because of this testing at the State level, which wasn't done at the State level, many of the examples in my testimony, the bounce houses in particular, were only uncovered because of testing at the State level. So we would like to see a more rigorous Federal program that can exist in a complementary fashion and cooperative fashion with the States.

Senator GILLIBRAND. And I would like your recommendations submitted for the record on that as well.

Mr. Zarker, again, assuming you can address the issue of preemption, what are the areas of the CSIA do you feel would aid the EPA in regulating hazardous chemicals, and what would your No. 1 priority be to fix language within the CSIA?

Mr. ZARKER. Well, if we can address the preemption issue, I think that would be No. 1, to give us more confidence, if the States can continue to act. Second, I think there are some very important issues related to privatization, and within privatization looking at addressing persistent, bioacumulative and toxic chemicals first.

One of our concerns is that there are so many chemicals that need to be evaluated, how can we move through that list in a rapid and efficient manner, and make sure the EPA has the resources to be able to do that. Because otherwise we could be here for a long time trying to go through the inventory.

Senator GILLIBRAND. More broadly, what do you think are the principles or requirements that an effective chemical safety act would need to have to be able to be useful?

Mr. ZARKER. One of the things I mentioned was the idea of the States as co-regulators, helping to find a role for the States in the future. Our State environmental programs are mature, we have resources at different levels. But we feel that a State-Federal partnership is really important going forward. TSCA wasn't set up that way originally. Most States think of it as a black box. We have an opportunity to real enhance that role and the States can contribute to that effort.

Senator GILLIBRAND. An issue that we haven't raised today, you mentioned that TSCA should be used to promote innovation and green chemistry as a strategy for future economic growth. How would you see green chemistry being implemented within the CSIA?

Mr. ZARKER. Again, if we go back to looking at prioritization, one idea to think about is how we prioritize chemicals, and maybe a simple analogy is red, yellow and green. So red chemicals, avoid and move away from toward yellow, safer choices in the market, and moving toward green. That is an emerging area of science and really offers opportunities for our researchers in the universities and to train our next generation of chemists to be able to think about these things as they are designing new molecules.

Senator BOXER. That is extremely interesting. I want to thank our panel.

I wanted to say to Senator Vitter, Senator Udall and Senator Gillibrand, during this time, we found that, because Senator Udall makes a point that, what good does Prop 65, what good does it do his people. I am going to give you a specific case in point. Under 65, they test a lot of products in California. They tested baby bibs in 2007. They found out they contained lead. So they were banned in California and guess what, taken off all the shelves nationwide.

So I think it is important that the States that do move more aggressively do have an impact on our people all over this great Nation. I don't know about the bounce houses, we have asked about that, Senator Gillibrand, whether or not as a result of this they have changed the vinyl in the bounce houses, that they have taken the lead out.

But I am so encouraged that we seem to have this bipartisan agreement, and we are going to fix preemption. I am so grateful to all of you for being here today. We all are going to make sure that the attorneys general who have written to us so eloquently about preemption will take a look at the new language that we can agree on here and make sure it does what we say. The devil is in the details always.

I am not gray, I amazingly turned blonde instead of gray.

[Laughter.]

Senator BOXER. But I have to admit, I have been here 20 years. So the devil is in the details. Thank you all very, very much, and I will ask the next panel to come forward, please.

Our friends are coming forward, I want to announce for Senators who are here, our vote begins in just about a few minutes. So I am going to start this, and if people could sit really fast, my goal is

to get through this entire panel. I may not be able to do that. Paul will let us know when the vote starts.

First we are going to hear from Mr. Daniel Rosenberg, Senior Attorney, National Resources Defense Council. Please get started while your colleagues are getting seated, because we must move along. Go ahead.

STATEMENT OF DANIEL ROSENBERG, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL

Mr. ROSENBERG. Chairman Boxer, Ranking Member Vitter and members of the Committee, thank you for the opportunity to testify on this important issue.

The Toxic Substances Control Act is the one foundational environmental law from the 1970s that is almost universally considered to be broken. For years it has been a virtually dead letter in dealing with chemicals that were already on the market when the statute was enacted. The law makes it difficult for the Environmental Protection Agency to obtain the information it needs to adequately assess newer chemicals.

The result is that public exposure to potentially harmful substances has grown even as science has learned more about the manifold ways chemicals can affect human development, contribute to disease and harm the environment.

Virtually every witness invited to testify before the Committee on the issue TSCA over the past several years has agreed that the law needs to be substantially reformed. It sounds like we are going to hear that again today. The most recent proposal before the Committee, I think you all know, to reform TSCA is the Chemical Safety Improvement Act, S. 1009.

Ever since the bill was introduced, NRDC has had two major points about this bill, and they need to be understood together. First, the bill as currently drafted has fundamental weaknesses that would prevent it from enhancing chemical safety. Second, we are willing to work to improve the bill. The CSIA has opened the door to developing an effective bill that could garner broad support. NRDC does not want to walk by that door or slam it shut.

I discuss a number of the billings failings at length in my written testimony, but let me mention some of the key ones here. First, CSIA does not set any deadline or minimum requirements for prioritizing, assessing or making decisions on whether to regulate chemicals. Enforceable deadlines, which should include minimum requirements, are the key to statutory effectiveness, as experience has long shown. In a world of competing priorities and political pressures, nothing happens without a deadline.

Second, the CSIA requires EPA to develop multiple overlapping frameworks, procedures and criteria. The result would be to tie EPA in knots for several years before it could even begin to prioritize which chemicals to assess. It is not clear how much of this is by design. What is clear is that the bill as currently drafted will require EPA to spend a lot of time and resources reinventing the wheel, not once, but multiple times instead of reviewing or regulating chemicals.

Third, the CSIA would vastly broaden the current State preemption provisions of TSCA. Among other problems, States could be

prohibited from imposing new restrictions on high priority chemicals used before EPA takes any action. Think about that. Under the bill, EPA recognizing a high priority threat is actually a signal for States to stop taking action, even though EPA may be years away from even proposing any protection. How does that help the public?

Fourth, the CSIA does not require that EPA safety standards or determinations be protective of vulnerable populations, including women, children and workers. This is in the context of retaining the problematic safety standard of unreasonable risk that is currently in TSCA. And the CSIA contains no mechanism for expediting action on chemicals known to be unsafe, including asbestos and PBTs.

As I have said, these problems do not mean that work on this bill should stop. The CSIA takes some steps in the right direction in terms of requiring EPA approval of new chemicals, making it easier for EPA to get information from chemical companies, and removing cost as a factor in risk assessment. But the bill is written in a way that raises questions about whether those provisions would work as advertised, and then negates their overall impact because of the problems I have just enumerated.

The reaction to this should not be to throw up our hands, but to roll up our sleeves. This Committee should make TSCA reform top priority. CSIA signals both that many members believe it is worth trying to make progress and that there is still a lot of work to be done. NRDC looks forward to working with any and all Senators who are interested in pursuing real reform, reform that will truly advance and enhance protection of the public, while giving the chemical industry the certainty it seeks from an efficient and effective process for prioritizing, assessing and regulating chemicals.

Thank you again for inviting me here to testify.

[The prepared statement of Mr. Rosenberg follows:]

Testimony of

Daniel Rosenberg
Senior Attorney
Natural Resources Defense Council

Before the
Committee on Environment and Public Works
United States Senate
Washington, DC

July 31, 2013

Hearing on Strengthening Public Health Protections by Addressing Toxic Chemical Threats

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Testimony of Daniel Rosenberg, Senior Attorney, Natural Resources Defense Council (NRDC)

Chairman Boxer, Ranking Member Vitter, members of the Committee, thank you for the opportunity to testify today on "Strengthening Public Health Protections by Addressing Toxic Chemical Threats." My name is Daniel Rosenberg, and I am a senior attorney in NRDC's Health and Environment program.

NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 1.3 million members and online activists nationwide, served from offices in New York, Washington, Los Angeles, San Francisco, Chicago and Beijing.

Today's hearing provides the Committee another opportunity to grapple with the legacy of the decades-long failure to adequately regulate the use of toxic chemicals in everyday commercial and consumer products – chemicals to which we are regularly exposed in our homes, cars, and schools, in the workplace and the marketplace. The failure even to assess thousands of chemicals used in commerce, and regulate those determined to be unsafe has led to a situation that is unacceptable to most Americans. This failure has meant that babies are born with man-made chemicals already in their developing bodies; that there is no credible assurance that exposure to those chemicals – individually or in an ever expanding number of possible combinations – is safe; and that such exposure may be contributing to the disturbing rise in the incidence of numerous diseases and conditions, including several types of cancer, learning and developmental disabilities, fertility problems, birth defects, "age-related" illness, and asthma.

Over the past generation, scientists have gained a greater understanding of the potential health and environmental threats posed by exposure to toxic chemicals. Over the almost 37 years since enactment of the Toxic Substances Control Act (TSCA), science has raised many new concerns about the potential health effects of individual chemicals, as well as classes of chemicals. While scientific understanding has been increasing rapidly, TSCA has remained virtually dormant for existing chemicals and inadequate to assure the safety of new chemicals.

Since 1976, scientists have linked exposure to toxic chemicals to a wide array of health risks. Research increasingly indicates, for example that exposure to low doses of certain chemicals, particularly in the womb or during early childhood, can result in irreversible and life-long impacts on health. It is now commonly known that some toxic chemicals persist in the environment, sometimes for decades, and build up in the food chain and in our bodies. It is now well recognized that some chemicals are able to disturb human and other hormonal, reproductive, and immune systems and that chemicals interact so that substances that individually may be considered "safe" at low levels can act in concert to harm health.

It's no wonder, then, that so many major independent health and science organizations have expressed concern and called for steps to better characterize and address the risks from chemical exposure.

The President's Cancer Panel -- appointed by President George W. Bush – found that "the true burden of environmentally induced cancer has been grossly underestimated." The American Congress of Obstetricians and Gynecologists has said: "Today, we know that expert obstetrical care, from preconception to delivery, can only do so much to ensure healthy birth outcomes. Chemicals that affect fetal programming and placental stem cells, the point at which significant damage can occur, may lead to multi-generational health care issues across the lifespan." The Endocrine Society – the largest professional association of the nation's endocrinologists has stated: "The evidence for adverse reproductive outcomes (infertility, cancers, malformations) from exposure to endocrine-disrupting chemicals is strong, and there is mounting evidence for effects on other endocrine systems, including thyroid, neuroendocrine, obesity and metabolism, and insulin and glucose homeostasis."

The known and potential health impacts of exposure to toxic chemicals are a concern for much of the public. The public wants – and deserves – a federal system for assessing chemicals that would quickly eliminate or reduce the use of those chemicals already known to be unsafe, and that would enable the Environmental Protection Agency (EPA) to obtain the information and data it needs to determine the safety of chemicals that have not yet been assessed. It is time to dig ourselves out of a hole almost forty years in the making, and also identify safe and effective substitutes for chemicals that are dangerous dinosaurs – rewarding in the marketplace those innovators that produce safer products.

The most important step that this Committee and Congress can take to help solve the problem of our current broken system for regulating toxic chemicals is to pass strong, effective legislation to reform the Toxic Substances Control Act (TSCA).

The Committee has several chemical safety-related bills pending before it, including the Chemical Safety Improvement Act, (S.1009) which has received the most attention recently. The bill has fundamental flaws that must be addressed, but NRDC continues to be willing to work to improve it.

Key problems with the bill as currently drafted include:

No deadlines or minimum requirements – The key to making any statute work is ensuring that it has enforceable deadlines. Yet S. 1009 imposes no statutory deadlines for assessing chemicals or making decisions on whether to regulate them. The bill's sponsors argue that, unlike TSCA, the measure directs EPA to assess chemicals. But without any mandatory and enforceable schedule, action can be delayed indefinitely, and no one will be able to compel the agency even to start evaluating a chemical. There is also nothing in the bill requiring EPA to take action on a minimum number of chemicals. Long experience has shown what happens in response to statutes with such gaps – nothing. In addition, the bill appears to stop the current work of EPA pending the development of multiple new frameworks and criteria (discussed below). Most of the history of TSCA can be summed up in two words: "nothing happened." TSCA reform must be written to make sure that something actually happens.

Preemption of state authority – In the absence of meaningful regulation of toxic substances, states have stepped-in to fill the vacuum, enacting and adopting a host of measures to inform and protect the public including restrictions on specific uses of certain chemicals and use reporting requirements. Coupled with activity to restrict the use and sale of unsafe chemicals in the retail sector, these state actions – many of which have been adopted with strong bi-partisan support at the state and local level – have benefited citizens nationwide as manufacturers have dropped some uses of chemicals to maintain

a uniform approach, information available to all citizens has expanded, and the overall use and release of substances that do not stay within state boundaries have been reduced.

The CSIA imposes limits on the ability of States to protect their citizens – limits that are in critical ways worse than current law. S. 1009 blocks states from taking new action on a chemical as soon as the Environmental Protection Agency (EPA) has listed the substance as a "high priority" and scheduled an assessment. This is especially damaging because years could elapse between the time EPA schedules an assessment and the time it conducts the assessment and decides whether to regulate. Numerous chemicals deemed "high priority" by EPA could be languishing on the schedule, which as noted above, would be unenforceable. The waiver provision of the bill is too narrow and onerous to mitigate the fundamental flaws in the preemption section of the bill.

The bill also would preempt existing state laws on high priority chemicals, once EPA has adopted a restriction on the substance, even if the State provision may be broader in scope and more protective of the public but not directly in conflict with the federal provision. A powerful example of the work that has been done at the state level – and which must be allowed to continue – is the widely successful effort to reduce the publics' exposure to mercury, including phasing out its use in a variety of commercial and consumer products.

The declining use of mercury in the manufacture of consumer and other products illustrates the important role states have assumed in protecting public health and the environment. As you know, mercury is a powerful neurotoxin, adversely affecting childhood development at low concentrations. The principal exposure route for most Americans is the consumption of fish. In 2010, 81% of all state-issued fish advisories were due to the presence of mercury, covering most states. Twenty-five states have statewide mercury advisories for all their fresh water lakes and rivers, and 16 states have statewide advisories for all their coastal waters.[1]

This prevalence of mercury contamination throughout the country spurred states to reduce mercury releases arising from the life cycle of mercury-added products (manufacture through disposal). States within the New England and Great Lakes regions worked collaboratively to develop policy recommendations for the phase out of mercury product sales where alternatives are readily available.[2] Many states within these regions and other states as well, subsequently enacted legislation to phase out the sale of mercury in such products as thermometers, blood pressure cuffs, thermostats, switches and relays, and button cell batteries. At the present time, twelve states have comprehensive mercury product legislation (California, Louisiana, New York, Rhode Island, Vermont, Maine, Massachusetts, Connecticut, New Hampshire, Minnesota, Wisconsin, Illinois), while other states restrict sales of one or several of the products.[3]

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[1] U.S. Environmental Protection Agency (EPA) National Listing of Fish Advisories General Fact Sheet: 2010 National Listing http://water.epa.gov/scitech/swguidance/fishshellfish/fishadvisories/general_factsheet_2010.cfm.
[2] http://www.glrc.us/documents/MercuryPhaseDownStrategy06-19-2008.pdf; http://www.newmoa.org/prevention/mercury/modelleg.cfm.
[3] http://www.newmoa.org/prevention/mercury/imerc/guidance.cfm.

These state laws produced dramatic results. In 2001, the amount of mercury in products sold in the USA was approximately 130 tons. State laws prompted mercury use reduction to almost half that amount by 2007,[4] and to approximately 53.4 tons by 2010 (based on preliminary analyses of the 2010 data). The effect of the state laws extends beyond the 12 states, as major USA manufacturers of thermostats, batteries, and other products now produce only mercury free products instead of continuing to sell mercury products where still legally allowed.

It should also be noted that the information available on USA mercury product manufacture and imports is largely from the states. Fifteen states are now members of the Interstate Mercury Education and Reduction Clearinghouse (IMERC), where data from product manufacturers are collected every three years and systematically entered into a publicly accessible data base.[5] Despite EPA's 2006 acknowledgement that a national data base covering mercury use in both products and processes is needed,[6] TSCA has not yet been used to develop one.

In addition to the state activity, 140+ countries agreed on text for the Minamata Convention on Mercury earlier this year, which will require the global phase out of the production, sale, and trade of many of the same mercury products by 2020.[7] Several of these products are medical devices (fever thermometers and blood pressure cuffs), and thus are exempt from TSCA.

To be clear, NRDC seeks federal action on mercury products to complete the national transition to mercury free alternatives. For this reason, NRDC supports the Mercury Use Reduction Action of 2012, S. 3697, introduced by Senator Whitehouse in the last session of Congress. The bill would phase out the manufacture and sale of those products already targeted by the states, and address several outstanding issues related to the implementation of the Mercury Export Ban Act of 2008. We look forward to the reintroduction of similar legislation in this session of the Congress and hope that it will receive broad bi-partisan support.

The mercury product experience over the last decade is instructive in two ways. First, there has been comparatively little federal leadership and action on phasing out the use of mercury in products, even where the path forward has ample precedent and is relatively non-controversial because industry is already far down the road. Second, state involvement can be critical, and expertise sometimes often resides in the states.

S. 1009 also preempts states from taking any new action on chemicals deemed "low priority" by EPA. This is extremely problematic because under the terms of the bill, EPA can designate hundreds or even thousands of chemicals as "low priority" simply because the agency lacks sufficient data on hazard or exposure. States cannot seek preemption waivers for "low priority" chemicals under the bill. In addition, the bill contains a mechanism that would allow Governors to overwhelm EPA with special "expedited" petitions to designate chemicals as "low priority" – creating additional pressure on the

[4] http://www.newmoa.org/prevention/mercury/conferences/sciandpolicy/presentations/Wienert_Session3B.pdf.
[5] http://www.newmoa.org/prevention/mercury/imerc.cfm.
[6] http://www.epa.gov/mercury/archive/roadmap/index.html, p. 38.
[7] http://www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/INC5/5_7_e_annex_advance.pdf. See particularly Article 4 and Annex A.

agency when it will already be overburdened and under-resourced. Rather than ensuring that chemicals are safe for use in commerce the preemption of State action on chemicals deemed "low priority" by EPA, coupled with the other provisions in the bill, virtually ensure that hundreds or thousands of substances will simply be swept down the memory hole. The bill must have a mechanism to address potential concerns regarding chemicals for which EPA has not taken – and may never take – action, and particularly so if EPA's deferral need not be based on a sufficient examination of data and information about the chemical.

The preemption section of the bill contains numerous other provisions that either make no sense or are just bad policy. For example, it would prevent states even from adopting protections identical to federal law, limiting those states' ability to "co-enforce" the federal restrictions or requirements under State law. The bill could preempt state labeling laws – most notably Proposition 65 – if they are deemed to be restrictions on "distribution in commerce." And the bill contains provisions that could pre-empt state court decisions and interfere with the current balance between plaintiffs and defendants in state tort actions.

It is my understanding that a number of other witnesses will be testifying at this hearing, including representatives of States who will likely have other concerns and additional analysis of the preemption provisions of S.1009 as well as other examples of its potential effects on current and future health and informational protections. Suffice to say that my brief summary above is not exhaustive.

Certainly it is neither tenable nor preferable for the entire burden of regulating chemicals in the marketplace to continue to fall on the states, which simply do not have the resources to do the job on their own. That is why a strong federal system for prioritizing , assessing and regulating chemicals is needed. However, there is no justification and no good policy purpose for adopting sweeping preemption legislation that would overturn an array of actions taken in states, directly and indirectly affecting chemicals, or preventing states from continuing to take steps to protect the public, unless they directly conflict with federal actions. States are just beginning to absorb the preemption provisions of the CSIA and determine how their state and local laws might be affected. The Committee should carefully consider and consult with States regarding the implications of any preemption provision.

Unprotective safety standard – The bill relies on the current standard in TSCA for determining whether a chemical is safe to use as intended. While the bill's intent appears to be to drop cost in determining risk, the current language is not sufficiently clear to definitively accomplish that. Moreover, the standard of unreasonable risk should be made more protective. S. 1009 fails to define "vulnerable populations" and require that they be protected as part of the definition of the safety standard, or as part of a safety determination. The bill also fails to require EPA to consider aggregate exposure to multiple sources of chemicals, and does not account for ongoing exposure to legacy chemicals.

In addition, although the "least burdensome" requirement is deleted under S.1009, it appears that the same requirement is still incorporated in the bill for bans or phase-outs of substances, only without the two lightening rod words. It is unlikely that under the bill EPA would be able to make a decision to ban

or phaseout the use of a chemical any faster – or have it any more likely to be upheld under judicial review – than under the terms of the current law.

Assessment methodology – The bill's technical language on how chemicals should be prioritized and assessed is cumbersome and it does not direct EPA to follow the assessment methods that have been recommended by the National Academy of Sciences, or even define "best available science" to include recommendations from the NAS. S.1009 – particularly in sections 4, 6 and 8, requires EPA to develop an elaborate structure of frameworks, criteria, guidances, processes and methodologies, many of which are overlapping, and most of which must be put in place before EPA can even begin prioritizing chemicals, let alone conducting safety assessments and determinations. For EPA to prioritize and assess chemicals it would be required to establish *five separate* "frameworks." In addition to developing the five frameworks, before any prioritization and assessment can begin, EPA must:

- promulgate two sets of rules, which are subject to notice and comment;
- develop two sets of guidance documents, also subject to notice and comment;
- establish a risk-based screening process for prioritizing existing chemical substances, which is also subject to notice and comment; and
- develop a science-based methodology for conducting safety assessments, which is also subject to notice and comment and scientific peer review.

It is not clear how the frameworks relate to some of the rules, processes and methodologies. For example, before EPA can prioritize a chemical, it must develop not only a framework for prioritization, but also a risk-based screening process for prioritizing chemicals; the difference between these two is not clear.

Complying with all of these requirements, and subjecting the multiple rules and guidances to notice and comment (and in one case also scientific peer review) could tie EPA's hands for years before it can even begin the business of prioritizing chemicals and conducting safety assessments[8]. EPA's hands have been almost entirely tied for the entire 36 years of TSCA. NRDC reform should not increase the red tape EPA is bound by and further delay action already underway at EPA.

What's Missing – In addition to the many problems with the substance of the introduced legislation – and the above list is not exhaustive -- is the problem of those provisions that are missing. These include any provision directing EPA to address the problem of communities heavily polluted by "legacy" chemicals. Objections that such a provision cannot be considered because it is "not within the structure of current TSCA" make little sense. In the first place, Congress decides what is and isn't part of any law, and it can and has expanded and contracted the scope of many laws as it deems necessary. Second, TSCA itself has had several additional Titles added since it was initially enacted, to account for problems not addressed in the original bill – including Asbestos Hazard Emergency Response (Title II), Indoor Radon Abatement (Title III), and Lead Exposure Reduction (Title IV). Finally, there is significant precedent for Congress adding provisions to legislation outside its "natural scope" which at a minimum illustrates the ability of Congress to legislate outside the box when it wants to.

[8] This section draws from an analysis by Eve Gartner of Earthjustice.

Nor does the bill contain any mechanism for EPA to take expedited action to address chemicals we already know are unsafe, including asbestos, and other PBTs, including toxic flame retardants. The single significant success of TSCA was the phase out of production and use of poly chlorinated biphenyls (PCBs) in the original law. The most prominent failure of TSCA has been the inability of EPA to ban most uses of asbestos, despite its well-known deadly health effects. 50 other countries have adopted a ban on asbestos. Meaningful TSCA reform should correct this clear failure under current law. And TSCA reform needs to provide EPA the ability, and the mandate, to address other instances of widespread contamination by known unsafe chemicals – particularly including persistent, bioaccumulative toxins (PBTs) via expedited action.

There are some other areas of the bill, such as where EPA is granted order authority to obtain information and require testing of chemicals that are step in the right direction but where the precise wording in the bill remains problematic. The Chemical Safety Improvement Act is a potentially viable legislative vehicle for advancing meaningful TSCA reform if its fundamental flaws are addressed. NRDC supports working on the bill to address its problematic provisions with the goal of developing a vehicle that can merit the support of a broad set of stakeholders (including NRDC). We welcome the opportunity to work with Committee members and their staff on this important effort to strengthen protections from toxic chemicals and successfully reform TSCA.

The Strengthening Protections for Children and Communities from Disease Clusters Act (S.50) and The Community Disease Cluster Act (S. 53) – TSCA is intended to address the potential for exposure to unsafe chemicals through the entire lifecycle of the chemical, from production to disposal. One legacy of careless production, use, and disposal practices of chemicals over many decades are the heavily polluted hazardous waste sites around the country, the worst of which are covered under the Superfund program. A less understood but still-pervasive concern for communities across the country are disease clusters, some tied to community exposure to toxic substances – and others of unknown origin. Senators Boxer and Crapo have introduced two pieces of legislation, The Strengthening Protections for Children and Communities from Disease Clusters Act (S.50) and The Community Disease Cluster Act (S. 53) to address this issue.

This Committee held a hearing on the problem of disease clusters in May, 2011. My former NRDC colleague Dr. Gina Solomon testified at the hearing. Here is an excerpt from Dr. Solomon's testimony:

> "Although it is difficult to conclusively prove what caused any specific disease cluster, we can gather invaluable clues and hints from these tragic events. The Woburn cluster, for example, provided a key clue linking trichloroethylene (TCE) with cancer in humans – something that has since been confirmed in multiple studies. The cluster in Fallon, Nevada also provided important scientific clues. Biological sampling in Fallon revealed community-wide exposure to tungsten with almost 80% of the participants having urinary tungsten levels above the 90th percentile in the National Health and Nutrition Examination Survey (NHANES), and the median tungsten levels were almost 10-fold higher than the 1999 NHANES median level for tungsten. Tungsten was not previously thought to be carcinogenic, but had never been adequately studied. This same metal subsequently showed up at elevated levels in Sierra Vista, Arizona, another

community affected by a childhood leukemia cluster. This tungsten is now undergoing testing by the National Toxicology Program to better understand its potential health effects.[9] Other disease clusters have revealed the cancer-causing properties of asbestos, the profound peripheral neuropathy caused by exposure to n-hexane, the complete wipe-out of sperm production from the pesticide DBCP (dibromochloropropane), and the liver cancers caused by vinyl chloride. All of these chemicals are now well-known to be human health hazards, and one of them – the pesticide DBCP – has been banned. The other chemicals, which fall under the purview of the Toxic Substances Control Act (TSCA), are still in widespread use today.

There is good reason to believe that only a small fraction of the links between the environment and disease has been revealed to date. Although there has been much focus on the genetic causes of disease, the scientific consensus has shifted to the position that most diseases are primarily caused by a combination of genetic and environmental factors. For example, a study of nearly 45,000 twins published in the New England Journal of Medicine evaluated the relative importance of genetic and environmental factors in cancer.[10] If the cancers were primarily genetic, identical twins (which share the same genome) would have more similar cancer patterns than fraternal twins (which only share the genetics of any siblings). The bottom line of this important study was that the vast majority of cancers are environmental rather than genetic. Statistically significant genetic effects were only seen for three cancers -- prostate, colorectal, and breast. In the case of breast cancer, less than one-third of the risk was due to inherited factors (potential range 4-41%); that means that about 70% of the remaining risk of breast cancer is due to environmental factors. For other cancers, the environmental component was even larger. The same principle is true for most other diseases, where environment is turning out to be more important than genetics."

Due to a lack of resources, the limited statistical power in doing investigations of small communities or rare diseases, and a lack of knowledge about exposures, it is difficult for state and federal agencies to shed light on most disease clusters and their causes. People living in neighborhoods and communities that may be disease clusters are often lacking in technical and scientific resources to help them obtain the answers they need. Senators Boxer and Crapo have introduced two pieces of legislation to help assist people in communities with disease clusters. The Strengthening Protections for Children and Communities from Disease Clusters Act (S.50) would direct and fund federal agencies to swiftly assist state and local officials, and investigate community concerns about potential disease clusters and their causes and to create guidelines for a systematic and integrated approach to investigating disease clusters; improve coordination between various agencies at the federal, state, and local level; and support local advisory committees that can help improve the outreach to and involvement of

[9] National Institute of Environmental Health Sciences. Tungsten and Selected Tungsten Compounds: Review of Toxicological Literature. Research Triangle Park, NC, 2003.
http://ntp.niehs.nih.gov/ntp/htdocs/Chem_Background/ExSumPdf/tungsten.pdf

[10] Lichtenstein P, Holm NV, Verkasalo PK, Iliadou A, Kaprio J, Koskenvuo M, Pukkala E, Skytthe A, Hemminki K. Environmental and heritable factors in the causation of cancer--analyses of cohorts of twins from Sweden, Denmark, and Finland. N Engl J Med. 2000 Jul 13;343(2):78-85.

community members. The Community Disease Cluster Act (S. 53) would authorize EPA, in conjunction with the Department of Health and Human Services, to provide grants to communities to help pay for technical assistance. This bill would give communities in need a very modest level of support as they work through the process of addressing a reported disease cluster, including mitigation efforts. NRDC supports both of these bills.

Summary and Conclusion – The failure of Congress over many years to take necessary action to protect the public from exposure to unsafe chemicals, and ensure a federal program is in place that will effectively review the safety of chemicals in commerce should be of deep concern to every member of the Committee. TSCA reform is long-overdue, and should be at the top of the Committee's agenda. But the Committee should take the time needed to report a bill that will truly improve chemical safety. Any legislation to reform TSCA must ensure that EPA will be able to protect the public by taking timely action to reduce or eliminate exposure to unsafe chemicals, and obtain the information it needs, to make informed assessments of the safety of new and existing chemicals, while recognizing the innovation and leadership of the states is preserved.

We look forward to working with every member of the Committee to on legislation that earns and merits strong support from a broad array of members and stakeholders.

Thank you again for the opportunity to testify before the Committee.

Senator BOXER. Thank you very much to the NRDC.

Mr. Thomas McGarity, Professor of Law, University of Texas in Austin.

STATEMENT OF THOMAS O. McGARITY, JOE R. AND TERESA LOZANO LONG ENDOWED CHAIR IN ADMINISTRATIVE LAW, UNIVERSITY OF TEXAS SCHOOL OF LAW

Mr. MCGARITY. Thank you, Madam Chairman, and I thank all the Committee members who are here for inviting me.

I am pleased to speak about the need to fix TSCA. I think there is general agreement that TSCA is a broken statute. Unfortunately, in looking at S. 1009, as written, I think it may make a bad situation worse. But I agree with most of the folks who have talked today that it can be fixed.

One of the provisions in TSCA that really hasn't been broken and we haven't seen much controversy about is the preemption section. It has a preemption section that has worked reasonably well. I wrote a book about preemption several years ago. I didn't have to talk about TSCA in that book, really much at all, because it had a preemption provision that was working reasonably well.

We have heard from the States' attorneys general and various representatives of the States about the problems of S. 1009 by way of preempting State regulatory agencies. Let me speak then about the provisions in S. 1009 that I think could deprive victims of their day in court.

S. 1009 will require State courts to admit EPA safety determinations as evidence in both civil and criminal trials, and, this is interesting, preclude State judges and juries from concluding that a chemical declared safe by EPA is unsafe for purposes of imposing liability on manufacturers, et cetera. I have been teaching torts and environmental law for 36 years now, so I do have some gray hairs as well. I have never seen a proposal for such an intrusive interjection of Federal law into the day to day administration of justice at the State level.

Now, as I said, I wrote a book about it several years ago. I haven't seen any evidence that the rules of evidence in the State courts are giving problems. I think the provisions basically are a gift of partial immunity to the manufacturers who are fortunate enough to have their chemicals declared safe by EPA.

Now, the bill also addresses grandfathered chemicals, and that is great. The bill needs to address grandfathered chemicals, those chemicals that have been around that we haven't gotten testing for. It gives the appearance of a systematic mechanism for prioritizing and evaluating the tens of thousands of chemicals that haven't been tested, but I think appearances can be deceiving in this regard.

We have a number of jobs that EPA has to do before it ever starts requiring testing, much less taking a chemical off the market or regulating a chemical. So we have to have a chemical assessment framework created. We have to have criteria for evaluating the quality of individual studies promulgated. We have to have a risk-based screening process set up. We have to have a science-based methodology for conducting safety assessments, and a struc-

tured evaluative framework for deciding what action to take based on these safety assessments.

Take it from someone who has been observing this for over 35 years, if the statute does not subject EPA to reasonable and judicially enforceable deadlines, the agency will be evaluating methodologies and conceptualizing frameworks for the next decade or two. I saw it at EPA when TSCA was first enacted in 1976, and we spun our wheels for well over a year as the program office conceptualized about what TSCA was supposed to be doing.

I think that the safety test set out in S. 1009 takes away the least burdensome requirement. But that doesn't really go to the heart of what I think is the problem with Corrosion-Proof Fittings, which is the unreasonable risk test. I think the bill could be much improved by changing that standard to one that we put in the Food Quality Protection Act back in 1996, "reasonable certainty of no harm," which is also in the Food, Drug and Cosmetics Act.

One thing that hasn't been mentioned, and I think this has always been a problem with TSCA, is that we have had judicial review that has been incredibly activist. We have had essentially one case that neutered Section 6, and it was written by the Fifth Circuit. What contributed to that, I think, is the designation of the standard of review in TSCA of being the "substantial evidence" test, which is usually used for formal adjudications, and not rulemaking.

I think if you just changed the test to "arbitrary and capricious," which is usually the test for rulemaking, you would send a message to the courts that we don't want you intruding so much with this new statute. I think that is very important.

Thank you very much.

[The prepared statement of Mr. McGarity follows:]

TESTIMONY OF

THOMAS O. MCGARITY
Joe R. and Teresa Lozano Long Endowed Chair in Administrative Law
University of Texas School of Law

on

Strengthening Public Health Protections by Addressing Toxic Chemical Threats

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United States Senate
Committee on Environment and Public Works

July 31, 2013

My name is Tom McGarity. I hold the Joe R. and Teresa Lozano Long Endowed Chair in Administrative Law at the University of Texas School of Law, where I teach courses in Torts and Environmental Law. I am also a member of the Board and immediate past president of the Center for Progressive Reform. I have written several law review articles on federal regulation of toxic substances. In 2008, I published a book entitled *The Preemption War: When Federal Bureaucracies Trump Local Juries*, in which I explore issues involving federal preemption of state common law claims. In that same year, I published, with my co-author and colleague Wendy Wagner, *Bending Science: How Special Interests Corrupt Public Health Research*, in which we explore many issues involving the regulation of toxic substances. I am very pleased to be here to testify on the topic of federal regulation of toxic substances and changes to the Toxic Substances Control Act. Please note that I am expressing my own views and not necessarily those of the University of Texas or the Center for Progressive Reform.

Introduction.

The Toxic Substances Control Act (TSCA) is a broken statute, but S. 1009 is not going to fix TSCA. In fact, it will almost surely make a bad situation worse.

S. 1009 appears to provide a systematic mechanism for prioritizing and evaluating the tens of thousands of grandfathered chemicals that have not been adequately tested to determine the risks, if any, that they pose to human health and the environment. But appearances can be deceiving. The numerous and rather ill-defined procedural and analytical steps that the EPA must take prior to requiring companies to begin testing their chemicals, combined with EPA's perennial lack of resources and the absence of any enforceable deadlines, ensure that we will not see any testing results for high priority chemicals for many years or even decades.

The Bill does not change the tests for requiring additional testing and for taking regulatory action to protect the public and the environment in any significant way. As a result, EPA will face the same daunting difficulties in demonstrating to reviewing courts that testing or other regulatory action is necessary. At the same time, the Bill fails to change the standard of judicial review from "substantial evidence" to the "arbitrary and capricious" standard that Congress generally prescribes for judicial review of informal rulemaking, thereby ensuring that reviewing courts will continue to review TSCA rules more stringently that most federal regulations.

Although the preemption section of the current law has been working well for thirty-five years, S. 1009 changes that section to preempt state data production requirements that are likely to produce the same information as an EPA data production rule, a prohibition or restriction on a subject for which EPA has completed a safety determination, or a significant new use notification requirement for a chemical for which EPA has prescribed such a requirement. The current law allows a state to prohibit the sale of a chemical without regard to any EPA regulation governing that chemical. The Bill will

unnecessarily force states to allow the production, processing and distribution of chemicals that state agencies have deemed to be too dangerous.

Finally, a highly unusual provision in S. 1009 will require state courts to admit EPA safety determinations as evidence in both civil and criminal trials and preclude state judges and juries from concluding that a chemical declared to be safe by EPA is unsafe for purposes of imposing liability on manufacturers, processors and distributors of the relevant chemical. This provision is simply a gift of partial immunity to companies that are fortunate enough to have their chemicals declared safe by EPA in proceedings in which potential victims are not likely to be represented.

The Toxic Substances Control Act: A Failed Statute.

When Congress enacted the Toxic Substances Control Act of 1976 (TSCA), I was a young attorney in the Environmental Protection Agency's Office of General Counsel in the division that was responsible for implementing that brand new statute. Although it took five years for the final version to emerge from Congress, most observers agreed at the time that the statute would for the first time allow the federal government to protect American citizens from the serious risks posed by potentially toxic substances in the environment.

TSCA was supposed to fill in the considerable jurisdictional gaps left by the topical statutes like the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Federal Insecticide, Fungicide and Rodenticide Act. The hope was that EPA would in short order require companies to test the thousands of chemicals for which rudimentary toxicity studies were lacking and would require manufacturers, processors and distributors of risky toxic chemicals to use proper warnings, to limit human exposure to those chemicals, and, in some cases, to take dangerous chemicals off the market altogether.

Thirty-five years later, it has become painfully apparent that, with some modest exceptions, TSCA is a failed statute.

TSCA requires manufacturers of new chemicals to notify EPA of their intent to introduce their products into commerce.[1] This notification aspect of the statute has worked reasonably well over the years, though the process has not always been as transparent as Congress originally envisioned.

TSCA also empowers EPA to promulgate rules requiring the manufacturer to test an existing chemical if EPA can demonstrate that insufficient information is available to evaluate its safety and that human beings or the environment are heavily exposed to the

[1] 15 U.S.C. § 2604

chemical or that the chemical is likely to be toxic.[2] The problem with this "selective interdiction" program is that it places the burden on EPA to justify a testing requirement. Given the toxic substances program's perennial lack of resources, this requirement has effectively driven TSCA's testing function underground as EPA and manufacturers negotiate testing agreements outside of the public rulemaking process envisioned by Section 4 of the statute. More important, only a very few chemicals to which the public and the environment are routinely exposed (sometimes at high levels) have been the object of TSCA's testing requirements. Consequently, thousands of "grandfathered" chemicals have not undergone the full range of testing necessary to determine whether they are safe for human beings and the environment.

TSCA's greatest disappointment, though, is EPA's inability to take effective action under section 6 to ban, label, or otherwise limit exposure to existing toxic substances. Section 6 provides that when EPA finds that the manufacture, processing, distribution, use or disposal of a chemical substance presents an "unreasonable risk of injury to health or the environment," it must issue a rule applying "one or more" of eight requirements "to the extent necessary to protect adequately against such risk, using the least burdensome requirements."[3] When EPA, in an early test of its rulemaking powers under section 6, promulgated a rule providing for a gradual phase-out of the manufacture, processing and distribution of asbestos for most domestic uses, the Fifth Circuit Court of Appeals set the rule aside in an opinion that made it abundantly clear that EPA would be hard-pressed to take effective action to protect the public health and the environment under section 6 in the future.

Based on the expertise of its own scientists and an EPA-appointed panel of experts that examined more than one hundred toxicological studies, the agency had concluded that "asbestos is a highly potent carcinogen" and that "severe health effects occur after even short-term, high-level or longer-term, low-level exposures to asbestos."[4] Relying upon numerous exposure studies the agency concluded that "[r]elease of asbestos fibers from many products during life cycle activities can be substantial" and that "[p]eople are frequently unknowingly exposed to asbestos and are rarely in a position to protect themselves."[5] In electing to ban most uses of asbestos, EPA recognized that it was adopting a very burdensome requirement from the perspective of the regulated industry, but it also concluded that this was the only alternative that would protect adequately against the risks posed by human exposure to asbestos. To ease the burden, the rule provided a vehicle through which persons interested in the continued manufacture and use of particular asbestos-containing products could obtain exemptions from the ban.[6]

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[2] 15 U.S.C. § 2603.

[3] 15 U.S.C. § 2605(a).

[4] 54 Fed. Reg. 29,460 (1989).

[5] Id.

[6] Id.

The Fifth Circuit Court of Appeals, in *Corrosion Proof Fittings v. EPA*[7], remanded the rule to EPA in part because of flaws that it found in "the manner in which the EPA conducted some of its analysis."[8] The court held that before EPA may ban a chemical under TSCA it must first analyze the costs and benefits of all less burdensome alternatives:

> Upon an initial showing of product danger, the proper course for the EPA to follow is to consider each regulatory option, beginning with the least burdensome, and the costs and benefits of regulation under each option. The EPA cannot simply skip several rungs, as it did in this case, for in doing so, it may skip a less-burdensome alternative mandated by TSCA.[9]

Later in the opinion, the court made it clear that this analysis was to include an assessment of the risks of possible substitute products and a comparison of those risks to the risks posed by existing asbestos-laden products.[10]

The statute, as interpreted by the court, sends EPA on a potentially endless analytical crusade in search of the holy grail of *the* least burdensome alternative that still protects adequately against unreasonable risk. The agency can, of course, avoid the analytical nightmare by adopting options that are sufficiently inoffensive to the regulated industry to avoid legal challenge or by giving up the quest altogether. The agency has adopted the latter option. EPA has not initiated a single action under section 6 of TSCA since the *Corrosion Proof Fittings* case was decided, and it is not likely to use section 6 to impose requirements that regulatees oppose until it is amended.

One reason for the court's willingness to substitute its judgment for that of the agency was the odd standard of review that TSCA provides for rulemaking. Although the standard of review in the Administrative Procedure Act (APA) for informal rulemaking is the familiar "arbitrary and capricious" test under which the courts are supposed to defer to the agencies' exercise of expert judgment, section 19 of TSCA provides that the reviewing court shall set aside a rule promulgated under that statute if it is not supported by "substantial evidence in the rulemaking record."[11] This test, which the APA reserves for formal adjudications and formal rulemakings, has been construed by some courts to provide for more stringent judicial review than the arbitrary and capricious test. The court in *Corrosion Proof Fittings* made explicit reference to this point in overturning EPA's asbestos rule.[12]

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7 947 F.2d 1201 (5th Cir. 1991).

8 947 F.2d at 1216.

9 947 F.2d at 1217.

10 947 F.2d at 1221.

11 15 U.S.C. § 2618.

12 947 F.2d at 1213.

One provision in the original statute that is clearly *not* broken is section 18, the statute's preemption clause.[13] That section provides that, with certain exceptions, the courts are not to interpret the statute to "affect the authority of any State to establish or continue in effect regulation of any chemical substance, mixture, or article containing a chemical substance or mixture."[14] The exceptions are for state testing requirements for a chemical after EPA has promulgated a testing rule for the same chemical and state regulations other than outright bans that differ from rules promulgated under sections 5 and 6. Under this relatively straightforward preemption provision, the states and the federal government have effectively stayed out of each other's way for thirty-five years with very little, if any, controversy.

S. 1009 is an attempt to fix some of the problems that have plagued TSCA implementation for the past three decades. As such, the bill recognizes the need for a more systematic approach to testing and evaluating existing chemicals, and it appears to provide a comprehensive mechanism for determining whether additional testing should be required for chemicals to which EPA assigns a "high priority" status. But the numerous and prescriptive requirements that the Bill would impose on EPA before it gets down to actually regulating chemicals ensure that it will be years, or even decades, before the agency begins to see any real progress.

The Bill does nothing to change the threshold, which, according to the court in *Corrosion Proof Fittings*, requires EPA to conduct a detailed analysis of the costs and benefits of all of the regulatory alternatives. It does eliminate the "least burdensome" limitation on EPA's choice of actions to take with respect to a chemical that crosses the "unreasonable risk" safety threshold. But, given the court's interpretation of the "unreasonable risk" threshold, the elimination of that limitation will do little to ease the burden that the statute puts on the agency to justify regulatory action, especially when the environmentally preferable action is to ban or phase out the relevant chemical.

Finally, S. 1009 would replace the current preemption provision with a new federal preemption regime under which existing state regulations would be preempted in some cases by the mere fact that EPA considered the relevant chemical to have a high priority for additional testing. Worse, the bill contains a provision that will make it extremely difficult for local juries to hold manufacturers, processors, and distributors liable for damages caused by their chemicals if EPA has previously determined that the chemical meets its test for safety.

I elaborate on each of these observations in more detail below.

Grandfathered Chemicals.

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[13] 15 U.S.C. § 2617.

[14] 15 U.S.C. § 2617(a).

S. 1009 recognizes that thousands of chemicals will never receive adequate toxicity testing if EPA must meet the burden of demonstrating the need for testing in advance. The best way to ensure that new and existing chemicals get tested is to put the burden on the manufacturer to test prior to putting the chemical on the market and to require manufacturers of existing chemicals to test their products by a statutorily predetermined deadline.

The Bill does place the burden on manufacturers to test "high priority" chemicals for which EPA, by rule or order, requires additional testing. But it accomplishes this improvement through a convoluted process that requires the agency: to develop a "chemical assessment framework" for collecting and analyzing existing information on chemicals; to promulgate criteria for evaluating the quality of individual studies; to identify those studies that do and do not meet the criteria; to explain how the agency used information that does not meet the criteria and indicate the scientific limitations in that information; to develop a "structured evaluative framework" for deciding what action to take with respect to chemicals; to come up with a risk-based screening process (within one year of the date of enactment) for identifying "high priority" and "low priority" "active" chemicals; to prioritize existing chemicals under this screening process (making "every effort" to complete the prioritization of all "active" substances in "a timely manner"); to determine an order for performing safety assessments on all high priority chemicals; and to publish and maintain a list of high priority and low priority chemicals. Except for the one-year deadline for coming up with the screening process, the statute does not impose any definite deadlines for accomplishing these tasks. Instead, the agency is to "make every effort" to complete the prioritization of all active chemicals "in a timely manner."

Much of this work will require the agency to engage in notice-and-comment rulemaking, a process that has become laden with resource-draining and time-consuming analytical and procedural hurdles. For example, in grouping chemicals into the "high priority" and "low priority" categories, the Bill requires the agency to take public comment on an initial list of chemicals and proposed prioritization outcomes before publishing the final prioritization list. The Bill even requires EPA to go through the notice-and-comment process in issuing generally applicable guidance documents to aid manufacturers and distributors in implementing the Bill's rather complex requirements.

Mercifully, the Bill declares that the prioritization process does not constitute final agency action and is not itself subject to judicial review. But this will not prevent regulatees from challenging the prioritization in connection with an testing rule or other regulatory requirement long after EPA has completed the prioritization exercise. For example, a company might claim that a rule requiring it to test a chemical it manufactures should be set aside because EPA's characterization of the chemical as "high priority" was not supported by substantial evidence.

Only after the initial prioritization has been accomplished does S. 1009 require EPA to determine whether additional testing data are needed to perform safety assessments. In making that determination, the Bill requires the agency to publish a rule, a consent

decree, or an order identifying the relevant chemical, identifying the entity required to undertake the testing, specifying procedures for developing the data, and setting a time limit (not to be of an "unreasonable duration") for the completion of the required studies. The rule must be accompanied by a statement identifying the need that the requirement is intended to meet, explaining why existing data are inadequate, and encouraging to the extent possible non-animal testing in complying with the rule. If the agency decides to proceed by order, it must show good cause for not undertaking the considerably lengthier rulemaking process. Surprisingly, the Bill does not address the consequences of a company's failure to complete the studies within the specified time limit. Presumably, the agency will simply give the testing entity more time to complete the required studies.

The requirements for the chemical assessment framework are also quite burdensome. For example, S. 1009 would require EPA to determine "for both cancer and non-cancer endpoints, whether available data support or do not support the identification of threshold doses . . . below which no adverse effects can be expected to occur." This appears to be an attempt to require EPA to go through the exercise of explaining why the uncertainties inherent in carcinogen risk assessment preclude the determination of a definitive no adverse effects level for each chemical that EPA evaluates. Although the day may come when scientists can make more definitive statements about the effects of low-dose exposures to carcinogens, it seems unwise to require EPA to determine whether that day has arrived in the context of each chemical that it evaluates.

S. 1009 requires EPA to conduct a safety assessment for every high priority substance, to make a safety determination based on the safety assessment, and to establish appropriate risk management requirements for those high priority substances that do not meet the safety test. The agency must develop an "appropriate science-based methodology" for conducting safety assessments that meets several statutory specifications.

EPA is required to establish a schedule for completion of safety assessments and procedural rules for the safety assessment determination in accordance with criteria specified in the Bill. The schedule must specify deadlines for the completion of each assessment and determination. The Bill does not, however, place any outside limit on the length of time that EPA gives itself to complete the safety assessments; nor does it specify the consequences of failing to adhere to the deadlines.

In conducting the safety assessments, EPA is required to "use the best available science." After going to great lengths in section 4(c) to make it clear that EPA may employ a flexible "weight of the evidence" approach in evaluating the quality of the available information for purposes of the required risk-based screening process, when it comes to the critical evaluation of available scientific information for the purpose of deciding what regulatory action to take with respect to individual chemicals, the Bill limits the agency to the "best available" scientific evidence. The term "best available science" is defined in section 3(2) to mean science that: maximizes the quality, objectivity, and integrity of information; "uses peer-reviewed and publically available" data; and "clearly documents and communicates risks and uncertainties in the scientific basis for decisions." While these are all highly desirable characteristics of scientific information, it is probably

unwise to make critical regulatory determinations depend on the use of the "best available science," so defined. For example, an attorney for a chemical manufacturer might well challenge an EPA determination with respect to its chemical on the ground that the agency relied on one or more studies that were not published in a peer-reviewed journal.[15] This is the sort of inflexible statutory mandate that makes attorneys for regulatees lick their lips in anticipation of future judicial challenges.

Finally, the agency must determine whether the chemical meets the new safety standard. Curiously, the Bill requires EPA to consider the "weight of the evidence of risk" posed by the chemical, but it also requires EPA to use the "best available science" in making the safety determination. Under the "weight of the evidence" approach, decisionmakers consider all relevant studies and give them greater or lesser weight in the decision, depending on the quality of the studies. Some of the studies may not represent the best science that is available, but the agency considers them for what relevant information they do contain. If this Bill is enacted, the courts will have to clarify this apparent inconsistency.

For chemicals that do not meet the safety standard, the agency must promulgate a rule establishing the "necessary restrictions," choosing from among a list that fairly closely tracks the list of regulatory alternatives in the current statute. In accomplishing this task, the agency must "consider and publish a statement" on: the availability of technically feasible alternatives; the comparative risks posed by the alternatives; the economic and social costs and benefits of the proposed regulatory actions and alternative approaches; and the economic and social benefits of the chemical, alternatives to the chemical, and restrictions on the chemical or alternatives. All of the analytical operations that the statute requires in making the safety determination and risk management prescriptions are subject to judicial review under the statute's "substantial evidence" test.

One fundamental, but perhaps unavoidable problem with the Bill is that imposes a large number of very burdensome new obligations on an agency that is currently struggling to keep up with its existing statutory duties. I recognize that this committee is not responsible for EPA's appropriations, but it should be sensitive to the realities of the appropriations process in these days of budget cuts and sequestrations when it imposes highly prescriptive obligations on the agency to set up new programs and procedures. In deciding whether to force the agency through more procedural and analytical hoops, the committee should bear in mind the limited resources that are likely to be available to the agency, at least in the near term.

Another fundamental problem with the "chemical assessment framework" that the Bill envisions is the lack of judicially enforceable deadlines. The only definitive deadline in the provisions of the Bill prescribing the chemical assessment framework is the requirement that EPA promulgate a risk-based screening process within one year of the

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[15] Since much of the information that EPA receives from industry and other sources to establish the safety of their chemicals is not published in peer-reviewed journals, judicial acceptance of this position could cripple the agency's efforts.

statute's enactment. Otherwise, the Bill requires the agency to act "in a timely manner" and to avoid establishing time limits for completion of testing requirements that are of "unreasonable duration." The Bill does not define either term, both of which are, without further statutory guidance, highly discretionary in nature. Nor does the Bill address the consequences, if any, of failure to act in a timely manner or to complete studies within time limits of reasonable duration. In the absence of statutory deadlines or adverse consequences to give the industry an incentive to move expeditiously and to press EPA to complete its tasks in a timely fashion, the agency will direct its very limited resources to those programs for which it faces deadlines or strong pressure to act expeditiously.

When faced with the very similar problem of pesticide tolerances that had not been evaluated under modern toxicological protocols, Congress in the Food Quality Protection Act of 1996 required EPA to divide all existing tolerances into three groups, and it established specific deadlines for accomplishing the required re-evaluations.[16] The deadlines are backed up by the threat of "action forcing" citizen suits against the agency for failing to meet them. The Committee should consider putting into place a similar deadline regime with respect to existing chemicals that have not been sufficiently tested under the failed TSCA testing program. And the consequences of failing to adhere to the deadlines should be sufficiently severe to induce EPA and regulatees to do their best to adhere to the deadlines.

Overly Risky Safety Test.

S. 1009 requires EPA to determine whether a high hazard chemical meets the Bill's safety standard. Only if the chemical fails to meet the safety standard may the agency require the manufacturer to take action to protect public health and the environment. Thus, whether the Bill represents an improvement over the current law depends in large part on the content of the safety standard. Unfortunately, it seems reasonably clear that the Bill's safety standard represents no improvement at all over the standard in the current statute for taking regulatory action.

The term "safety standard" is defined in section 3(16) as "a standard that ensures that no unreasonable risk of harm to human health or the environment will result from exposure to a chemical substance." This is virtually indistinguishable from the "unreasonable risk of injury to health or the environment" standard that the current statute employs. The "unreasonable risk" standard has been interpreted by many courts, including the court in *Corrosion Proof Fittings*, to require the agency to balance the benefits of the chemical against the risks that it poses to human health and the environment in determining what regulatory action to take.

The Bill does delete the requirement that EPA select the "least burdensome" regulatory requirement in making its risk management determination, and this should make it easier

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[16] Food Quality Protection Act, Pub. L. No. 104-170, sec. 405, § 408(q).

for the agency to promulgate protective regulations. But that requirement is not the primary reason that EPA has been unable to regulate toxic substances under section 6. The most debilitating aspect of section 6, as interpreted by the court in *Corrosion Proof Fittings*, is the requirement that EPA engage in an extensive analysis of the costs and benefits of the regulatory alternative that the agency selects as well as all of the other alternative regulatory approaches indentified in the statute. The Bill clearly requires EPA to engage in the very same debilitating analysis of the costs and benefits of a set of alternatives that closely resembles the alternatives identified in the current law. Not surprisingly, EPA has been extremely reluctant to engage in this never ending exercise in the wake of *Corrosion Proof Fittings*, and it will no doubt be equally reluctant to engage in such an exercise under the regulatory regime established in the Bill.

Beyond the analytical difficulties of applying the risk-benefit standard in the real world, the standard itself is insufficiently protective of human health and the environment. Even if EPA had infinite resources to devote to the analytical exercise, the risk-benefit test is inherently biased against protective regulatory action. Although this is not the place for an extended discussion of the infirmities of risk-benefit analysis, suffice it to say that the benefits of a chemical that is already in use are typically obvious and easily exaggerated, while the risks that the chemical poses to health and the environment are often clouded by uncertainty and easily belittled or ignored (especially in the case of environmental risks).[17]

History teaches that sometimes a ban or phase-out is by far the most effective way to reduce the risks that toxic chemicals pose to human health and the environment. The phase-down of lead in gasoline and the phase-out of the pesticide mirex are two examples of situations in which society benefited greatly from forceful action that, in retrospect, had very few, if any, negative effects on the economy.[18]

Reacting to EPA's failed pesticide tolerance setting program in 1996, Congress, in the Food Quality Protection Act (FQPA) adopted a more protective standard than the risk-benefit test for establishing pesticide tolerances. FQPA provides that EPA "may establish or leave in effect a tolerance for a pesticide chemical residue in or on a food only if the Administrator determines that the tolerance is safe," and it goes on to define "safe" to mean "that there is a *reasonable certainty that no harm* will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary

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[17] For an extended discussion of the practical and theoretical difficulties and biases inherent in cost-benefit analysis, see Thomas O. McGarity, Sidney A. Shapiro & David Bollier, Sophisticated Sabotage (Environmental Law Institute 2004).

[18] See Thomas O. McGarity, Radical Technology-Forcing in Environmental Regulation, 27 Loyola of L.A. L. Rev. 943 (1994).

exposures and all other exposures for which there is reliable information."[19] The test explicitly omits any reference to the benefits of the pesticide.[20]

The Bill states that that the safety determination must be "based solely on considerations of risk to human health and the environment," but the "unreasonable risk" safety standard, as interpreted by the courts, allows consideration of the chemical's benefits. It is unclear how the courts would resolve this apparent contradiction if the Bill were enacted, but Congress could eliminate the ambiguity (and the need for more litigation) by adopting the "reasonable certainty of no harm" standard employed in FQPA (and the food additive provisions of the Food, Drug and Cosmetics Act).

The Bill also fails to take into account the special sensitivities of fetuses, infants and children to chemicals in the environment. The Food Quality Protection Act provides special protections for fetuses and children. In establishing tolerances, EPA must assess risks to infants and children on the basis of "available information" concerning (1) consumption patterns among infants and children, (2) special susceptibility of infants and children, and (3) cumulative effects of exposures to infants and children.[21] More importantly, in the case of threshold effects, the agency must apply an additional "tenfold margin of safety" to take into account "potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children."[22] If the committee wants to enact a protective risk-based standard, it should similarly ensure that EPA gives special attention to the risks posed by toxic chemicals to fetuses, infants and children.

Unchanged Standard of Review.

S. 1009 makes no attempt to address an anomaly that lies at the heart of the current law's ineffectiveness -- the standard for judicial review. As discussed above, the curious specification of the "substantial evidence" standard for judicial review of TSCA rules has invited the courts to review those rules less deferentially than they would under the "arbitrary and capricious" test that normally applies to judicial review of informal rulemaking. If Congress amended the statute to provide for arbitrary and capricious

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[19] FQPA, (b)(2)(A)(ii), 110 Stat. 1513, 1516 (codified as amended at 21 U.S.C. § 346a(b)(2)(A)(ii) (Supp. IV 1998)) (amending FDCA) (emphasis added).

[20] See Kenneth Weinstein, Jeffrey Holmstead, William Wehrum, & Douglas Nelson, *The Food Quality Protection Act: A New Way of Looking at Pesticides*, 28 E.L.R. 10,555, 10,556 (1998) ("[t]he new standard does not generally allow for the consideration of benefits.").

[21] *See* 21 U.S.C. § 346a (b)(2)(c) (1994 & Supp. IV 1998).

[22] 21 U.S.C. § 346a(b)(2)(C)(ii)(II) (1994). The agency may use a different additional margin of safety, but "only if, on the basis of reliable data, such margin will be safe for infants and children." Id.

review, it would send a clear signal to the reviewing courts that it disapproved of the overly intrusive review demonstrated in the *Corrosion Proof Fittings* case.

Excessively Powerful Preemption.

As noted above, TSCA's preemption provisions are not broken and have in fact been functioning quite well for the past 35 years. S. 1009 would work a fundamental change in the relationship between EPA and the states in the area of toxic substances regulation for no apparent reason.

The general rule under the current law is that courts are not supposed to interpret the statute to "affect the authority of any State to establish or continue in effect regulation of any chemical substance, mixture, or article containing a chemical substance or mixture."[23] S. 1009 would change the general rule to state that "no State or political subdivision may establish or continue to enforce": (1) a data production requirement for a chemical or category of chemicals that "is reasonably likely" to produce the same data and information required by an EPA data requirement; (2) a "prohibition or restriction on the manufacture, processing, or distribution" of a chemical after EPA has completed a safety determination; or (3) a significant new use notification requirement for a chemical for which EPA has required such notification. Unlike the current law, the Bill does not even allow the state to promulgate an identical requirement so that the same requirement would be enforceable under state or federal law.

S. 1009 goes even further to prohibit states from establishing a new prohibition or restriction on a chemical that EPA has identified as a high priority substance or a low priority substance. The preemption of regulatory action against low priority substances is apparently based on the assumptions that: (1) EPA will always assess the risks posed by chemical substances accurately in the first instance; and (2) EPA will continuously update its assessments and priority lists in light of new scientific evidence. Both of these assumptions are misplaced.

As discussed above, EPA does not have sufficient resources to make accurate assessments of substances that are likely to fall within the low priority category. It will probably assign chemicals to low priority status on a generic basis based on information about classes and categories of chemicals, rather than on individual assessments of individual chemicals. And the attention that the agency devotes to these assessments will no doubt be influenced by the fact that it can always change the classification of individual chemicals if information later becomes available suggesting that they should be assigned high priority status. The same lack of resources, however, will insure that the agency is unlikely to revisit its assessments in light of changing scientific information. In sum, there is no good reason to suppose that EPA will fulfill its priority ranking

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[23] 15 U.S.C. § 2617(a).

responsibilities so perfectly that the states should be precluded from conducting their own evaluations of the available scientific evidence.

The prohibition on state regulation of chemicals assigned high priority status is even more difficult to comprehend. EPA's assignment of high priority status to a chemical represents the agency's determination that the chemical has the potential for high hazard and/or high exposure. High hazard chemicals are likely to be the very chemicals that states are most likely to identify as in need of further regulation. But once EPA makes the high hazard determination, S. 1009 would preclude any state regulatory action. Given the absence of statutory deadlines, discussed above, it may take EPA years (or even decades) to get around to determining the most effective risk management approach for the chemical. In the interim, no governmental entity will have the authority to protect public health and the environment from the risks posed by the chemical. If potential victims cannot motivate EPA to take effective action against the chemical, which might subject only isolated populations in particular geographic locations to exposures high enough to warrant regulatory action, then they are simply out of luck.

S. 1009 does allow a state to petition EPA for a waiver of federal preemption, but the state must demonstrate: (1) that "compelling" state or local conditions warrant a waiver to protect health or the environment; (2) that compliance with the state or local requirement will not burden interstate commerce in the manufacture, processing, distribution, or use of the chemical; (3) that compliance with the state or local requirement will not cause a violation of any applicable federal law; and (4) that the state or local requirement is based on the best science and supported by the weight of the evidence. It seems highly unlikely that any state will be able to surmount this high threshold in situations other than clear emergencies. And should the state persuade the agency to issue the waiver, the waiver itself would still be subject to judicial review under the substantial evidence test.

Finally, S. 1009 contains a highly unusual constraint on the discretion of local judges and juries in state courts to consider and evaluate evidence that chemical substances or products containing chemical substances are unsafe, dangerous or defective. Section 15(c) provides that once EPA has completed a safety determination for a high-priority chemical, that determination is automatically admissible in any public or private litigation in state or federal court for recovery of damages or equitable relief relating to injury to health or the environment caused by the chemical. Moreover, the safety determination is "determinative of whether the substance meets the safety standard under the conditions of use addressed in the safety determination."

In my thirty-six years of teaching and research in the area of torts, I have never seen a proposal for such an intrusive interjection of federal law into the day-to-day administration of justice at the state level. Not only does the Bill change the state judiciary's procedural rules governing the admissibility of evidence, but it also takes away from state court judges and juries the ability to determine whether a chemical is abnormally dangerous or otherwise unsafe in common law litigation. I have seen no evidence whatsoever that the substantive and procedural rules promulgated by the courts

of the 50 states are causing any problems for the manufacturers, processors and distributors of chemical substances. This provision is nothing less than a gift of partial immunity to manufacturers who are fortunate enough to have their chemicals declared safe by EPA.

Although the public is invited to participate in the administrative proceedings through which EPA makes its safety determination, the potential victims are not likely to be represented, because they do not know who they are until the chemical causes them harm. Yet their rights to compensation for damages caused by the chemical will be determined in that procceding, and not in the state courts where their lawyers would otherwise have an opportunity, through expert testimony, to prove (often using the company's own documents) that the chemical is unreasonably dangerous or otherwise unsafe.

Moreover, the provision appears to work in both directions by making EPA's determination that a chemical is unsafe determinative in state public and private litigation. If the Bill is enacted, plaintiffs' attorneys will no doubt be on the lookout for chemicals that EPA has found not to meet the safety standard. If a plaintiffs' attorney can prove that such a chemical has caused injury to a plaintiff, the attorney may well be able to persuade a judge to instruct the jury to find the chemical to be unreasonably dangerous or otherwise unsafe.

Either way, the provision makes very little sense from the perspective of state/federal comity or from the perspective of respect for the integrity of state civil and criminal justice systems.

Conclusions.

The Toxic Substances Control Act is badly in need of repair, but S. 1009 is not the way to fix that broken statute. The committee should reject this Bill or amend it in ways that make it more protective of human beings and the environment and less protective of the chemical industry. The Bill could be improved by:

- Providing clear deadlines for the tasks that it assigns to EPA in establishing assessment frameworks, collecting and analyzing existing information, prioritizing chemicals, and deciding whether to require additional testing. It should also provide an outside limit on the deadlines for testing chemicals and specify the consequences of a company's failure to complete the testing by the prescribed deadline.

- Clarifying the conflict between "weight of the evidence" and "best available science." The weight of the evidence approach allows the agency to consider all available evidence, giving great weight to the evidence that meets all of the relevant scientific norms and less weight to evidence that may be deficient in one or more regards. Since few scientific studies are flawless, the weight of the evidence approach, which allows the agency to act on the basis of less-than-

perfect scientific evidence is best suited to a precautionary statute like the Toxic Substances Control Act.

• Replacing the "unreasonable risk" test for safety with a more protective test like the "reasonable certainty of no harm" test used in the Food Quality Protection Act and the Food, Drug and Cosmetics Act.

• Changing the standard of judicial review from "substantial evidence" to the "arbitrary and capricious" test that the Administrative Procedure Act and most environmental statutes employ.

• Leaving the express preemption section of the current statute in place. That approach has worked very well in the past. There is no reason to believe that a more restrictive approach to state regulation and state common law would benefit society, and there are many reasons to believe that the extremely restrictive approach adopted by S. 1009 will leave innocent victims unprotected by state law and without recourse in the courts.

Environment and Public Works Committee Hearing
July 31, 2013
Follow-Up Questions for Written Submission

Questions for McGarity

Questions from:

Senator Barbara Boxer

1. **Can you describe whether you believe S.1009's definition and use of "unreasonable risk" will allow EPA to quickly address public health threats?**

   I am convinced that the definition and use of the term "unreasonable risk" will not allow EPA to quickly address public health threats. To the contrary, retention of the "unreasonable risk" standard for action under section 6 of TSCA will make it just as difficult for the agency to take expeditious action in the future as it has in the past. The court in the *Corrosion Proof Fittings* case made it very clear that the "unreasonable risk" threshold test for taking regulatory action required the agency to engage in an extensive risk-benefit balancing exercise for all of the reasonably available alternatives listed in section 6(b). In the case of a widely used chemical, this analytical exercise will consume millions of dollars of agency resources and a great deal of staff time. Every step of the complex risk-benefit analysis would be subject to attack by the chemical's manufacturer and others with an interest in slowing down the agency's progress. The agency would have to prepare responses to all of the attacks on its analysis. And at the end of the process, a court might still conclude that the agency had not selected the alternative with the optimum risk-benefit ratio.

   As I noted in my written testimony, "EPA has been extremely reluctant to engage in this never ending exercise in the wake of *Corrosion Proof Fittings*, and it will no doubt be equally reluctant to engage in such an exercise under the regulatory regime established in the Bill."

2. **Could you please describe some of the problems with S.1009's safety standard, and how to address some of these problems?**

   The risk-benefit analysis required by the "unreasonable risk" safety standard raises all of the practical, analytical, and theoretical problems that plague cost-benefit analysis as a decision criterion. These problems are widely discussed in the legal and economics literature and are highlighted in a book that I co-authored with Sidney Shapiro and David Bollier entitled *Sophisticated Sabotage* and published by the Environmental Law Institute.[1] In an article entitled A Cost-Benefit State, I summarized the virtues and

[1] Thomas O. McGarity, Sidney A. Shapiro & David Bollier, SOPHISTICATED SABOTAGE (Environmental Law Institute 2004)

impediments to cost-benefit analysis.[2] I have attached a reprint of that article for your consideration.

Some of these problems can be addressed by gathering better data to reduce uncertainties and by employing models that employ conservative assumptions, thereby erring on the side of safety. In my view, however, there is no way to rid cost-benefit analysis of its inherent bias against government intervention into the marketplace.

3. **Your testimony states "S. 1009 makes no attempt to address an anomaly that lies at the heart of [TSCA's] ineffectiveness -- the standard for judicial review."**

    a. **Could you please describe why the current standard of review is a problem and how this problem can be addressed?**

As I mentioned in my testimony, several courts have held that when Congress specifies "substantial evidence" review for informal rulemaking, it intends for the courts to employ a less deferential standard in reviewing the substance of the findings and conclusions that the agency makes on the rulemaking record. The standard of review ordinarily applicable to informal rulemaking (the form of rulemaking that EPA engages in under TSCA) is the "arbitrary and capricious" test, upon which the Supreme Court elaborated in *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29 (1983). The problem with substantial evidence review in the context of highly technical informal rulemaking is that it encourages judges who lack scientific and technical expertise to substitute their judgments for those of the agency. Changing the scope of review in TSCA from "substantial evidence" to "arbitrary and capricious" or some even more deferential test would allow EPA to take protective action without the threat of judicial reversal of the sort that occurred in the infamous *Corrosion Proof Fittings* case discussed in my testimony.

4. **Can you describe how the existing TSCA preemption provision works and whether it needs to be amended?**

As I understand it, the intent of the TSCA preemption provision is to preserve state regulatory law and state common law and to preempt state law only in specifically enumerated situations. Those situations include state testing requirements for a chemical after EPA has promulgated a testing rule for the same chemical and state regulations, other than outright bans, that differ from rules promulgated under sections 5 and 6. To my knowledge, the current TSCA preemption provision has never been invoked in litigation. In my view, the preemption provision should work reasonably well in the context of section 4 testing rules. Once EPA requires a company to conduct a particular testing regime for a specific chemical, it makes little sense to allow states to require the same testing regime for the same substance. Such duplication would waste scarce testing resources for very little gain in scientific understanding.

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[2] Thomas O. McGarity, "A Cost-Benefit State," 50 AD. L. REV. 7 (1998)

The matter is different in the context of regulations promulgated under section 6 banning or otherwise regulating chemical substances. Since EPA has promulgated no significant regulations under section 6, there have been no occasions for TSCA to preempt state regulations. Should section 6 of the statute be amended to make it easier for EPA to promulgate regulations, the potential for conflict between state regulation and a section 6 rule will exist.

In my view, a section 6 regulation should never preempt state common law claims because regulatory law and common law serve different functions. While both regulations and the threat of common law liability should steer corporate conduct in particular directions, only the common law has the ability to require a wrongdoer to compensate the victims of its actions. That function should be preserved, even if EPA promulgates a regulation banning or otherwise regulating a chemical. Moreover, since EPA's very limited resources prevent it from revisiting prior decisions with respect to chemical substances on a routine basis, I believe that the common law provides an essential backstop to provide incentives to companies to make their chemical products safer, even if they comply with perhaps outdated EPA regulations. I would suggest that any amendments to TSCA be accompanied by a savings clause preserving all state common law actions.

For the same reason, I believe that state regulations that are different from regulations promulgated by EPA under section 6 should be preempted only when the manufacturer (or other advocate for the chemical) can show that they will clearly impede commerce. To prevent a pliable EPA from conspiring with chemical companies to replace existing state regulations with weak federal regulations, I would suggest a savings clause preserving state regulations existing at the time of the promulgation of a section 6 rule. In the case of state regulations promulgated after the time that EPA promulgates a section 6 rule, I would suggest that the statute place the burden on the manufacturer (or other advocate for the chemical) of demonstrating that compliance with state law would unreasonably impede interstate commerce.

Questions from:

Senator David Vitter

1. **Mr. McGarity, you mentioned in your testimony that the new chemicals program under current law seems to work "reasonably well" yet could perhaps benefit from increased transparency. Do you believe TSCA reform requires a major overhaul of the current new chemicals program? Do you think that the CSIA requirement that EPA make an affirmative finding of safe for intended use before a chemical enters the marketplace is an improvement in the transparency of EPA's decision making?**

   I do not think that the current new chemicals program under section 5 of TSCA is in need of a major overhaul. Congress could improve that program by making it crystal clear that health and safety testing data and information relevant to human and environmental

exposure to the chemical substance at issue are not protected by the trade secrecy or confidential business information exceptions to disclosure under the Freedom of Information Act.

I believe that the CSIA requirement that EPA make a determination whether the chemical is or is not likely to meet the safety standard or whether additional information is necessary to make that determination represents a significant improvement in terms of both transparency and the overall protection that the statute affords, but only if it clarifies that the manufacturer may not market the chemical for the first time or market it for a significant new use while the manufacturer undertakes the necessary additional testing.

2. **Admissibility of evidence is generally decided by a presiding judge with great discretion of what to allow or not often on a case by case basis. Wouldn't it be likely that the language in the CSIA stating that completed safety determinations "shall be admissible as evidence in any public or private action" simply means that it is available for admission at the judge's discretion?**

I do not read the language in the CSIA stating that completed safety determinations "shall be admissible as evidence in any public or private action" merely to make the determinations available for admission at the judge's discretion. The use of the mandatory "shall" suggests to me (and, I believe, would suggest to most courts) that the determination *must* be admitted by the trial judge. This reading is supported by the fact that the bill goes on to say that EPA's safety determination "shall be determinative of whether the substance meets the safety standard . . . ." If the judge were free to disregard EPA's safety determination, it is hard to see how it could be "determinative" in the trial.

3. **Do you consider yourself a TSCA expert? Please share with the committee any experience you have with the implementation or compliance of current TSCA at the federal level or as a regulated entity?**

I do consider myself to be a TSCA expert. I was in the division of EPA's Office of General Counsel that dealt with pesticides and toxic substances when TSCA was enacted in 1976, and I either wrote or participated in the writing of some of the earliest legal memoranda addressing TSCA. For many years, I taught TSCA as part of a general survey course on environmental law at the University of Kansas and the University of Texas, and I have written about TSCA in the context of research regulation, biotechnology regulation, trade secrecy, and judicial review of scientific rulemaking.

4. **In your testimony you also mentioned that the CSIA "does not change the test for requiring additional testing and for taking regulatory action to protect the public and the environment in any significant way."**

    a. **Can you point to specific language in the CSIA that would retain the need for EPA to show potential "unreasonable risk" prior to requiring additional testing? If this language is not retained in the CSIA, wouldn't that make getting more information by the Agency easier?**

I did not mean to suggest in my testimony that EPA was required to show potential "unreasonable risk" in order to require testing under section 4 of TSCA or under the CSIA amendments to section 4. The two-fold test for requiring testing is whether the chemical "may present unreasonable risk to health or the environment" or whether the chemical "is or will be produced in substantial quantities and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture." The CSIA would amend section 4 of TSCA to add section 4(f), which provides that the Administrator may require the development of new test data and information if the Administrator determines that the data and information are needed (A) to perform a safety assessment; (B) to make a safety determination; or (C) to meet the testing needs of the implementing authority under another federal statute. I do not read this as a requirement that EPA show "unreasonable risk" prior to requiring additional testing. I do not, however, think that this new test for requiring additional testing changes the testing requirement in any significant way because, as I explained in my testimony, it does not clearly put the burden on the proponent of the chemical to demonstrate the safety of that chemical before manufacturing, processing or distributing it in commerce.

b. **The CSIA also grants EPA the ability to use order authority to require additional testing, something not currently available to the Agency under current law. Would being able to use order authority rather than time consuming rulemakings not be a benefit to the Agency at all?**

The order option in the CSIA certainly has the potential to speed up the process of requiring additional testing. As such, it represents a potential improvement in section 4 of the statute. However, section 4(g)(2) of the CSIA requires the Administrator to write a statement explaining "why good cause exists" for issuance of an order instead of promulgating a rule or entering into a testing consent agreement, and it goes on to specify in some detail the content of the statement. Among other things, the Administrator must identify readily accessible data, attempt to obtain the data through voluntary submissions, and use available data from structurally related substances. If EPA does not interpret the "good cause" criterion too narrowly and the reviewing courts are willing to give EPA some leeway in applying that criterion, it is possible that the agency could in some cases require testing more expeditiously under its order authority than under its rulemaking authority. If not, then the order option may not be especially useful to EPA. At the end of the day, the CSIA appears to express a preference for rulemaking or consent agreements as the appropriate vehicles for requiring additional testing.

c. **The CSIA also removes the current TSCA language requiring regulatory action to be found as the "least burdensome" approaches, language that has been specifically identified as perhaps the biggest barrier faced by**

EPA under current TSCA. Furthermore, the CSIA makes explicit in both the Safety Assessment and Safety determination sections that they are to be made "based solely on considerations of risk to human health and the environment" which removes any consideration of cost benefit analysis from the safety standard determination. Three former EPA Assistant Administrators have publically reviewed the CSIA and said that the removal of this language and the subsequent changes made to the bill will make it substantially easier for the Agency to take regulatory action; do you disagree with their assessment?

Removing the "least burdensome" requirement should make it easier for EPA to justify banning a chemical or taking some other action that a court might deem more burdensome than other options available to the agency under section 6. As I stated in my testimony, I am not convinced that the "least burdensome" requirement has played that large a role in shaping EPA's reluctance to regulate under section 6. Given the Fifth Circuit's interpretation of the "unreasonable risk" threshold, the elimination of the least burdensome requirement will do little to ease the burden that the statute puts on the agency to justify regulatory action under section 6. The agency will still have to engage in an extensive analysis of the costs and benefits of the regulatory alternative that the agency selects as well as all of the other alternative regulatory approaches identified in the statute.

The provision in the CSIA stating that the safety determination is to be "based solely on considerations of risk to human health and the environment" may not remove any consideration of cost benefit analysis from the safety determination if EPA resolves the conflict between that language and the risk-benefit approach inherent in the term "unreasonable risk" in favor of adopting a risk-benefit approach to making the safety determination or if a court determines that the risk-benefit approach inherent in the "unreasonable risk" standard trumps the command that the safety determination be based solely on considerations of risk to human health and the environment. As I stated in my testimony, this is an ambiguity that the EPA and the courts will have to resolve. Congress could, however, resolve that ambiguity at the outset by adopting a "reasonable certainty of no harm" test for safety determinations, thereby making it crystal clear that cost-benefit considerations are irrelevant to safety determinations.

5. **In your testimony you mention that S. 1009 would preempt current state regulations merely through prioritization. Could you please explain your reading of the language in the CSIA to do so and point to the specific provision that would allow prioritization to preempt existing state regulations?**

I stated in my testimony that the CSIA would preempt "states from establishing a new prohibition or restriction on a chemical that EPA has identified as a high priority substance or a low priority substance." I base that statement on the language of section 15(b) of the bill, which states that, with certain exceptions, "no State or political subdivision of a State may establish (after the date of enactment of the Chemical Safety

Improvement Act) -- (1) a prohibition or restriction on the manufacture, processing, distribution in commerce or use of a chemical substance that is a high-priority substance identified under section 4(e)(3) (as of the date on which the Administrator publishes a schedule under section 6(b)); or (2) a prohibition or restriction on the manufacture, processing, distribution in commerce or use of a chemical substance that is a low-priority substance identified under section 4(e)(3)."

6. **In your testimony you went on to say that testing rules and regulatory actions will be challenged and potentially set aside because EPA's high priority decision was "not supported by substantial evidence." Are you aware that S. 1009 expressly provides that "limited availability of relevant data and information to be a factor in designating substance as a high priority?" Given that statutory language which clearly allows for a chemical to be labeled high priority precisely because of a lack of information, do you still believe that someone could successfully challenge a high priority determination on the basis that it was "not supported by substantial evidence?"**

I am aware of the fact that the CSIA provides that "limited availability of relevant data and information" is a factor in designating a substance as a high priority. That does not reduce my conviction that chemical manufacturers (and perhaps others with an interest in the fate of a chemical substance) will challenge EPA's prioritizations as unsupported by substantial evidence in connection with a subsequent rule requiring the testing of a chemical. The manufacturer might, for example, claim that substantial evidence did not support EPA's conclusion that there was limited availability of relevant data and information at the time that the agency placed the chemical high on the priority list. I would hope that the courts would not be sympathetic to such claims, but I would expect manufacturers to make them, despite the fact that the Bill expresses a clear intent not to subject the agency's prioritizations to judicial review.

Senator BOXER. Thank you so much.

Our next speaker is Ms. Linda Fisher, Vice President of Safety, Health and Environment, and Chief Sustainability Officer at the DuPont Company.

Senator CARPER. Madam Chairman, could I just say a brief word before she speaks?

Senator BOXER. Very brief word, Senator.

Senator CARPER. I just want to welcome you all. I especially want to welcome Linda, whom I have known for forever, and the great work that you did at the EPA when Christie Whitman was EPA Administrator. Thank you for that and wearing the white hat at DuPont. Thanks very much.

Senator BOXER. Thank you for being here representing DuPont.

STATEMENT OF LINDA J. FISHER, VICE PRESIDENT AND CHIEF SUSTAINABILITY OFFICER, DuPONT

Ms. FISHER. Thank you, Madam Chairwoman, Ranking Member Vitter and members of this Committee. My name is Linda Fisher and I am the Vice President and Chief Sustainability Officer at DuPont.

It is a pleasure to testify before you today on the importance of reforming TSCA.

DuPont, as you know, is a broadly diverse company. We operate in over 90 countries around the world. We have about 620 employees whose responsibility it is to keep DuPont in compliance with the emerging growth of product regulations globally.

Like my colleague, Steve Owens, next to me, I did have the privilege of serving at EPA as the Assistant Administrator for what was named during my tenure the Office of Prevention Pesticides and Toxic Substances. Steve then changed the name. So I have had the experience of working both as a regulator and a regulated entity under this statute. I can tell you, it doesn't matter where you said, TSCA is a very difficult statute. So I am very grateful for the work up here in the Congress to reform TSCA that was begun under the late Senator Lautenberg and has continued under your leadership, Chairman Boxer.

TSCA is a critically important statute to protecting public health and the environment. It is a critically important statute to American jobs and innovation. So I want to express my appreciation for the work, Senator Vitter, that you have done with Senator Lautenberg to introduce the Chemical Safety Improvement Act with bipartisan support.

With each passing year, TSCA becomes more and more outdated. Our scientific understanding of chemicals and the public awareness of exposure has changed significantly since enactment. Governments around the world with economies as diverse as China, Korea, Turkey, Canada, not to mention the EU, have all passed comprehensive regulatory programs. But their regulations are not as transparent as our programs here at home. So it is very important that we give EPA the tools they need to become a leader, a global leader in chemical regulation.

Without effective EPA regulation, we do see increasing numbers of State by State, chemical by chemical bans and restrictions. That

makes it very difficult and introduces a lot of uncertainty into our business.

In addition, consumers are more and more asking for data around the safety of products. Many of our customers are responding to concerns by doing their own bans. So we as an industry are subject to a lot of "private regulations" which are taking over because of the lack of a strong Federal program.

It is time to reform TSCA. I think the Chemical Safety Improvement Act gives us the vehicle to do that. It does it a number of ways. First of all, it is the first time that EPA would be directed to systematically review and regulate all existing chemicals that are not under TSCA, and it would bring the U.S. up to pace with other countries. It streamlines the data gathering authority to make it much easier for EPA to get data from companies.

It streamlines EPA's authority to identify and act on chemicals that pose safety concerns. It separates the safety assessment and safety determination on high priority chemicals from the risk management process. I think that is a big step forward. Although it wisely, I think, leaves in place the current safety standard.

The challenge to the implementation of Section 6, to me, was never the safety standard. It was the "least burdensome" requirements that made Section 6 unmanageable. I think the bill addresses this by providing clear authority for the agency to separate those decisions.

However, I think as the bill goes through Congress, it will be important to both clarify and ensure that the provisions of the new Section 6 do not create the "paralysis by analysis" that has hindered EPA in the past.

I think the CBI improvements in this bill are significant. They do balance our need for CBI with the importance of being able to share data, particularly with State governments. I think opening up the ability for EPA and State governments to look at and analyze data at the same time will allow a much more collaborative approach to setting standards. I don't think that should be underappreciated.

We understand that there are stakeholders that you noticed earlier, who have concerns about the bill. We would be happy to work with everybody to address some of the changes that need to be made to get this bill through Congress.

We do have a very unique opportunity before us to pass comprehensive TSCA reform. I would really hate to see this opportunity pass. So I look forward to working with you, Madam Chairman, and other members of the Committee, so that we can make the improvements to TSCA that are so necessary.

[The prepared statement of Ms. Fisher follows:]

STATEMENT OF LINDA J. FISHER

VICE PRESIDENT AND CHIEF SUSTAINABILITY OFFICER, DUPONT

BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

JULY 31, 2013

Chairwoman Boxer, Ranking Member Senator Vitter, and Members of the Committee, my name is Linda Fisher, and I am Vice President and Chief Sustainability Officer for DuPont. I want to thank you for the opportunity to testify today on the importance of reforming the Toxic Substances Control Act. At DuPont, one of my responsibilities is to oversee our global product stewardship and product regulatory programs which ensure that our products are safe and in compliance with the various product regulatory programs around the world.

DuPont is a broadly diverse 211 year old company. In addition to our agricultural seed and crop protection businesses, we use a wide variety of chemicals to make products for markets that include buildings, transportation, electronic goods and consumer products. We operate in 90 countries around the world under a variety of chemical management regimes. We have 623 employees who work to ensure our compliance with those regulatory regimes and carry out our voluntary efforts to ensure our products are safe at a cost of roughly $85 million annually.

As you know, I served as the Assistant Administrator of the Office of Pollution Prevention and Toxic Substances at EPA during the Presidency of George H.W. Bush, and then as Deputy Administrator under President George W. Bush, where I had the privilege of working with the talented staff of EPA who administer TSCA . I have had the opportunity to experience TSCA as a government regulator and as a regulated entity, and I must acknowledge it is a difficult statute to implement no matter where you sit.

Three years ago, I was asked to testify before this committee on the need to modernize U.S. chemical management policies. I emphasized then that in the more than three decades since the Toxic Substances Control Act was signed into law, many things had changed rendering the statute outdated, especially in terms of how it treated existing chemicals. Scientific understanding and public awareness of exposure to chemicals have changed significantly since enactment. Countries around the world have adopted and are implementing strong new programs to regulate the manufacture and use of chemicals. Although significant attention is given to REACH, the European product regulatory program which entered into force in 2007, since that time we have seen many regulatory programs springing up around the world in markets as diverse as Canada, China, Korea and Turkey.

And here at home, in the absence of federal legislation to reform TSCA, we continue to see an increasing number of actions by states to regulate chemicals. State-by-state chemical bans, restrictions, phase-outs and substitutions create tremendous uncertainty for businesses seeking to produce safe, reliable products that can be sold nationally and globally. In addition, consumers are demanding safer products and that is

having an impact on the market value chain. Many of our customers are responding to consumer concerns about chemical safety by imposing restrictions on the use of certain chemicals in products. Some have called this "private regulation" and it imposes additional stress and uncertainty in the marketplace, as these private sector limitations seldom have the scientific rigor and transparency that a regulatory process provides.

It is time to reform TSCA. The U.S. needs to be a global leader in chemicals management, and to do that we need a robust national framework for chemicals regulation, one that is predictable and manageable for industry while increasing consumers' confidence that the chemicals used to make products are safe. The Chemical Safety Improvement Act of 2013 gives us the vehicle to do just that.

I am personally, very grateful that the work begun under the late Senator Lautenberg has continued under your leadership of the committee, Senator Boxer. TSCA is a very important statute, at times forgotten by the Congress, but one that is critical to public safety and to economic innovation in the U.S. I also want to express my appreciation for the work of Senator Vitter, who with Senator Lautenberg introduced the Chemical Safety Improvement Act with a bipartisan group of cosponsors.

Over the years, considerable consensus has developed that several major changes to TSCA are needed in order to ensure that the U.S. has an effective chemical management regime going forward.

First, a modernized TSCA should require EPA to systematically assess existing chemicals. The statute's original drafters grandfathered existing substances, and placed significant burdens on EPA before it could identify chemical risks and take action. This has generated public concern about whether we know enough about the chemicals that we are exposed to every day.

Second, data gathering tools under TSCA should be less cumbersome and time consuming. A modernized TSCA should include a streamlined approach for EPA to gather the data they need. We believe that chemical producers and our value chain partners need to provide adequate data to allow EPA to assess the safety of chemicals in use and to develop suitable risk management approaches. EPA and companies should leverage existing data and data arising from other programs like REACH first, and then fill data gaps as necessary to complete assessments. For example, some nine thousand dossiers containing useful information have been submitted under REACH. Where more information is required we should strive to minimize animal testing where there are tools to get adequate data through other means.

Third, EPA's authorities to identify and act on chemicals that pose safety concerns should be streamlined. One of the biggest problems EPA faces in administering the current TSCA is the Agency's inability to achieve timely risk reductions under Section 6 when faced with the need to reduce or eliminate exposures to a specific chemical. Although well intended by its drafters in 1976, the process under Section 6 has proven next to impossible for the Agency to successfully implement

Fourth, more data should be available to the public while respecting legitimate confidential business information (CBI). Maintaining industry's ability to preserve CBI and prevent piracy of intellectual property is critical to encouraging the kind of innovation that will lead to safer and safer chemical alternatives. I think everyone agrees that there are some straightforward means to improve the CBI

process in ways that strike the right balance between the public's need for accurate information and the need to continue to incentivize innovation by American businesses.

Fifth, it is important that a modernized TSCA preserve the efficiency of the current PMN process for new chemicals. This is also critical to facilitating innovation, increasingly bringing green chemistry to market and allowing substitution where warranted.

The Chemical Safety Improvement Act effectively addresses each of these issues. First and perhaps most significantly, the Chemical Safety Improvement Act, if enacted, would for the first time direct EPA to systematically evaluate the safety of existing chemicals in use. This represents a significant and warranted change in federal chemical policy. No such requirement is present in the current TSCA.

Second, the bill streamlines EPA's authority to gather the data needed for the Agency to determine whether a chemical is safe for its intended use, including additional testing. EPA's current authorities require extensive findings and rulemakings simply to gather data. First and foremost by requiring EPA to assess and affirmatively determine the safety of existing chemicals, the CSIA creates a powerful motivation for industry to voluntarily bring forward hazard and exposure data associated with their chemicals to ensure those assessments are as well informed as they can be. The CSIA also gives EPA a wide range of tools to collect information, including consent agreements, orders and rulemakings and removes the current requirement that EPA make a risk finding simply to ask for information.

Third, the CSIA streamlines EPA's authorities to identify and act on chemicals that may pose safety concerns in their use. We support the separation of the safety assessment on high-priority substances from the risk management assessment and decisions. We believe the bill wisely leaves the current TSCA safety standard largely in place. The challenge to implementation of Section 6 was never the standard, rather it was encumbrances like the "least burdensome" requirement that have made section 6 unmanageable. The bill addresses this by removing that requirement and provides clear authority for the Agency to require a variety of risk management actions, from labeling to banning specific uses of a chemical. As the bill progresses it will be important to clarify and ensure that the provisions of the revised section 6 avoid the sort of "paralysis by analysis" that has hindered EPA's implementation of the current law.

Fourth, the CSIA ensures that more data will be made available to the public while respecting legitimate confidential business information (CBI). Let me start by pointing out that CBI designation has nothing to do with what information EPA sees – it relates solely to what information is made public, a public that includes not only US citizens and public interest groups but commercial competitors and foreign nations. We appreciate that a lot of thoughtful work has been done by all stakeholders to strike the right balance between the public availability of information and the protection of legitimate trade secrets that is so important to the US innovation economy. Borrowing from Senator Lautenberg's Safe Chemicals Act, the CSIA helpfully clarifies those categories of information which can and cannot receive CBI protections. It raises the bar on the rigor of substantiations of CBI claims. And it expressly provides otherwise CBI information to key interested parties, such as state governments which demonstrate the ability to protect such data.

We understand that many important stakeholders believe this bill needs changes. We have some changes that we would also like to see and that we believe will improve the bill. It is my personal belief that many of these issues can be addressed while still preserving the design, structure and key provisions of CSIA. I hope all interested stakeholders recognize just how much progress this bill represents, and the tremendous opportunity we have to move TSCA reform forward in a bipartisan way this year using this bill as a vehicle.

Madame Chair, we have before us a unique opportunity to pass comprehensive reform of the US chemical management programs, and once again place the US government in a leadership position on this important issue. Rarely does industry ask for EPA to be vested with more power, rarely do many members of the NGO community, the labor community and industry come to Congress supporting an environmental regulatory bill. We do so because the Chemical Safety Improvement Act represents much needed sweeping reform to an outdated and largely ineffective existing chemicals program. I urge you to seize this opportunity.

Again, thank you for the opportunity to share our views with you today. DuPont is committed to working with other stakeholders and with Members of this Committee as the process goes forward.

I look forward to your questions.

Senator BOXER. We look forward to that.
Mr. Owens, Of Counsel, Squire Sanders, LLP.

STATEMENT OF STEPHEN A. OWENS, SQUIRE SANDERS (US) LLP

Mr. OWENS. Good morning, Chairman Boxer, Ranking Member Vitter and members of the Committee. I appreciate the opportunity to be here with you today.

I want to thank you also for your leadership on this very important issue and for your efforts to reform the Toxic Substances Control Act.

As Linda mentioned, from July 2009 until late 2011, I served as the Assistant Administrator in charge of EPA's Office of Chemical Safety and Pollution Prevention, appointed by President Obama and confirmed by the U.S. Senate. I am now with the law firm of Squire Sanders, based in our Phoenix, Arizona office.

Although I am a former EPA official, my testimony represents my own personal views and not the views of EPA or any other organization or entity.

Prior to joining EPA, I served as Director of the Arizona Department of Environmental Quality in the cabinet of Governor Janet Napolitano. As DEQ director, I was active in the environmental counsel of the Environmental Council of the States, which is the national State environmental directors' association. I served as ECOS' president during my final year in office.

As the father of a child with asthma, protecting children from exposure to toxic chemicals and pollutants was one of my top priorities at both DEQ and EPA. As Assistant Administrator, I was responsible for EPA's implementation of TSCA. I helped develop the Obama administration's principles for TSCA reform.

During my time at EPA, we took a number of important actions to use the existing authority under TSCA more fully. While we made some progress using TSCA's authority, it was and is abundantly clear to me that TSCA is fundamentally flawed and must be fixed if the American people are going to be assured that the chemicals to which their families and children are exposed every day are in fact safe.

Simply put, it is time to bring TSCA into the 21st century. TSCA is 37 years old, and it is clearly showing its age and its limitations. When TSCA was enacted in 1976, it grandfathered roughly 62,000 chemicals without any evaluation whatsoever. Few of those chemicals have been evaluated since.

In fact, TSCA does not require EPA to conduct safety assessments or make safety determinations about any chemicals at all. It puts the burden on EPA to demonstrate essentially that a chemical is unsafe before the agency can take action on it.

In addition, TSCA does not give EPA adequate authority to require testing of chemicals or reevaluate existing chemicals as new concerns arise or science advances. As a result, as has been said here today, EPA has been able only to require testing on just a little more than 200 of nearly 85,000 chemicals that are now listed on the TSCA inventory.

It has also proven difficult to take action on chemicals found to cause unreasonable risk. EPA has significantly limited or banned

only five chemicals under TSCA because of the tough obstacles the law creates to quick and effective actions. Actually one of those five was asbestos, and we all know what happened there.

One reason for this is the requirement for EPA to use the least burdensome alternative to address a chemical risk. Indeed, the hurdles in TSCA are so high that EPA has not even attempted an action under TSCA Section 6 in the last 22 years.

Because of its many shortcomings, TSCA really should be called the Toxic Substances Conversation Act.

[Laughter.]

Mr. OWENS. There has been a lot of talk about regulating chemicals over the years, but not much real action, although EPA has certainly tried enough.

I believe that TSCA should be revised consistent with the Administration's TSCA reform principles. Chemicals should be prioritized and reviewed against a risk-based safety standard that is protective of human health and the environment, including vulnerable populations. Industry should be required to provide data to demonstrate that their chemicals meet the safety standard. EPA should have greater authority to obtain chemical data and to take action to address unreasonable risks. Requirements for confidentiality claims should be tightened, and EPA should be allowed to share critical data with States under appropriate safeguards.

The introduction of the Chemical Safety Improvement Act by a bipartisan group of Senators was a significant breakthrough in the effort to strengthen chemical regulation and protect the public from unreasonable chemical risks. As the EPA Assistant Administrator charged with TSCA's implementation, like Linda, I know first-hand the statute's many shortcomings. The Chemical Safety Improvement Act is, in my opinion, a significant improvement over the current outdated law.

Finally, Madam Chair if I may just take a moment, I would like to say that one of the great joys I had while I was at EPA was getting to know the late Senator Frank Lautenberg and having the opportunity to work with him on chemical safety issues. We all miss him very, very much, and I know that his presence is felt very much in this room.

Thank you again for the opportunity to be here, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Owens follows:]

Testimony of

Stephen A. Owens
Squire Sanders (US) LLP
Phoenix, Arizona

before the
Committee on Environment and Public Works
United States Senate

July 31, 2013

Good morning, Chairman Boxer, Ranking Member Vitter, and other members of the Committee. Thank you for the opportunity to be with you today to discuss the topic of chemical risk management in the United States.

I want to thank you, Senator Boxer and Senator Vitter, as well as other members of this Committee, for your leadership on this very important issue and for your efforts to bring about comprehensive reform of the Toxic Substances Control Act (TSCA).

I also want to add that one of the great joys I had in government was getting to know the late Senator Frank Lautenberg and working with him on chemical safety issues. We miss him very much.

From July 2009 until the end of November 2011, I had the privilege to serve as the Assistant Administrator in charge of the U.S. Environmental Protection Agency's (EPA) Office of Chemical Safety & Pollution Prevention (OCSPP). I was honored to have been nominated by President Obama, approved by this Committee and confirmed by the full United States Senate.

I am now with the law firm of Squire Sanders (US) LLP, based in our Phoenix, Arizona office. I received my undergraduate degree from Brown University, where I graduated with Honors, and my law degree from Vanderbilt Law School, where I was Editor in Chief of the Vanderbilt Law Review.

Although I am a former EPA official, my testimony represents my own personal views

and not the views of EPA or any other organization or entity.

Prior to joining EPA I served as Director of the Arizona Department of Environmental Quality (ADEQ) in the Cabinet of then-Governor Janet Napolitano. I am the longest serving Director in ADEQ's history.

As the father of a child with asthma, protecting children's health has always been very important to me. Reducing children's exposure to toxic chemicals and pollutants was one of my top priorities at both ADEQ and EPA. As ADEQ Director, I launched Arizona's Children's Environmental Health Project and established an Office of Children's Environmental Health at the agency. Among our many efforts, we worked with schools to protect children from potential exposure to lead in drinking water, reduce mercury-containing equipment in schools, and minimize the use of pesticides on school properties through Integrated Pest Management (IPM). We promoted environmentally healthy schools and "green" schools, and we required facilities with permits or approvals from ADEQ to ensure that their activities do not present environmental health risks to children. At EPA I worked closely with EPA's Office of Children's Health Protection and made children's health an important element in EPA's chemical regulatory efforts.

While serving as ADEQ Director, I also became very active in the Environmental Council of the States (ECOS), the national organization for state environmental agency directors. I held several leadership positions within ECOS and served as ECOS President during my last year in office.

When I came to EPA in 2009, there was broad consensus that TSCA needs to be modernized. There also was a widespread expectation that Congress would act quickly to pass TSCA reform legislation.

As the Assistant Administrator for OCSPP, I was responsible for EPA's implementation

of TSCA, and I helped develop the Obama Administration's principles for TSCA reform (called the "Essential Principles for Reform of Chemicals Management Legislation"). As you may recall, former EPA Administrator Lisa Jackson announced those principles in September 2009, and I testified about them before this Committee while I was at EPA. Attached to my testimony is a copy of the Administration's TSCA reform principles (downloaded from the EPA website).

Administrator Jackson made assuring the safety of chemicals a top priority for EPA. Under her leadership, we followed a three-part strategy on chemical safety: (i) use EPA's existing TSCA authority to the fullest extent possible to assess and manage chemical risks; (ii) increase public access to chemical data and information; and (iii) work with Congress to achieve TSCA reform.

During my time as Assistant Administrator, we took a number of important actions under TSCA. Among many other steps, we prepared Action Plans on several priority chemicals. We developed Significant New Use Rules (SNURs) under TSCA section 5 to limit risks presented by certain existing chemicals. We issued rules under TSCA section 4 to require testing on a number of High Production Volume (HPV) chemicals (produced in quantities of a million or more pounds). We also issued the new Chemical Data Reporting Rule (CDR Rule), which requires chemical manufacturers to provide more detailed and comprehensive data on the chemicals they make and the ways in which those chemicals are used. Further, before I left EPA, we developed a framework for prioritizing chemicals for review, which led to the plan, announced by the Agency last year, to conduct risk assessments on 83 "work plan" chemicals and a number of flame retardants.

We launched an effort to reduce confidential business information (CBI) claims and "declassify" information where confidentiality is no longer warranted, while recognizing the legitimate business need to protect certain chemical information. We also made the TSCA

Inventory available for free on the EPA website and created the Chemical Data Access Tool (CDAT), a searchable data base that gives the public access to thousands of chemical health and safety studies that have been submitted to EPA under TSCA.

While we made some progress using TSCA, it was – and is – abundantly clear to me that TSCA is fundamentally flawed and must be fixed if the American people are going to be assured that the chemicals to which their children and families are exposed every day are in fact safe. Simply put, it is time to bring TSCA into the 21st Century.

TSCA was an important step forward when it was passed in 1976. Over the years, however, TSCA has proved to be an inadequate tool for providing the protection against chemical risks that the public rightfully expects, especially as new developments in science and technology have come about. As has been noted often, TSCA is the only major environmental statute that has not been updated since its passage. TSCA is 37 years old, and it is clearly showing its age – and its limitations.

When TSCA was enacted in 1976, it grandfathered in, without any evaluation whatsoever, more than 60,000 chemicals that were in commerce in this country at that time, and few of those chemicals have been evaluated since. In fact, TSCA does not require EPA to conduct safety assessments or make safety determinations about any chemicals at all, and it puts the burden on EPA to demonstrate essentially that a chemical is unsafe before the Agency can take action on it.

In addition, TSCA places substantial legal and procedural requirements on EPA before the Agency can request the generation and submission of data on the potential health and environmental effects of existing chemicals, and it does not provide EPA adequate authority to reevaluate existing chemicals as new concerns arise or science advances. As a result, in the 37 years since TSCA became law, EPA has only been able to require testing on just a little more

than 200 of the nearly 85,000 chemicals now listed on the TSCA Inventory.

It also has proven difficult to take action under TSCA to limit or ban chemicals found to cause unreasonable risks to human health or the environment. In 37 years, EPA has significantly limited or banned only five chemicals under TSCA. Even if EPA has substantial data and wants to protect the public against known risks, TSCA creates significant obstacles to quick and effective regulatory action, including requiring EPA to use the "least burdensome" alternative to address a chemical risk.

For example, in 1989, after years of study and nearly unanimous scientific opinion about the risks posed by asbestos, EPA issued a rule phasing out most uses of asbestos in products. Yet, in 1991 in the *Corrosion Proof Fittings* case, a federal court overturned most of this action because it found that the rule had failed to comply with the complicated requirements of TSCA. The hurdles in TSCA are so high that EPA has not even attempted to take action on a chemical under TSCA section 6 in the last 20-plus years since that decision.

While I am no longer at EPA, I believe that TSCA should be revised consistent with the principles announced by the Administration in 2009. Chemicals should be reviewed against a safety standard that is based on sound science and reflects risk-based criteria protective of human health and the environment, including vulnerable populations. Chemicals should be prioritized for safety reviews, and industry should be required to provide data to demonstrate that their chemicals meet the safety standard. EPA should be given greater authority to require any data necessary to assess the safety of chemicals and to take action on chemicals that present unreasonable risks. Requirements should be set for confidentiality claims, and EPA should be allowed to share critical data with states under appropriate safeguards.

The introduction of S. 1009, the Chemical Safety Improvement Act (CSIA), in May by a bipartisan group of Senators was a major breakthrough in the years-long effort to strengthen

chemical regulation and protect the public from unreasonable chemical risks. As the EPA Assistant Administrator charged with TSCA's implementation, I had first-hand experience with TSCA's many shortcomings. The CSIA is a significant improvement over the current outdated law.

Thank you again for the opportunity to testify today. I will be happy to answer any questions you may have.

http://www.epa.gov/oppt/existingchemicals/pubs/principles.html
Last updated on 12/20/2012

Existing Chemicals

Essential Principles for Reform of Chemicals Management Legislation

Download in PDF format. (2 pp, 28 kb)

The U.S. Environmental Protection Agency (EPA) is committed to working with the Congress, members of the public, the environmental community, and the chemical industry to reauthorize the Toxic Substances Control Act (TSCA). The Administration believes it is important to work together to quickly modernize and strengthen the tools available in TSCA to increase confidence that chemicals used in commerce, which are vital to our Nation's economy, are safe and do not endanger the public health and welfare of consumers, workers, and especially sensitive sub-populations such as children, or the environment.

The following Essential Principles for Reform of Chemicals Management Legislation (Principles) are provided to help inform efforts underway in this Congress to reauthorize and significantly strengthen the effectiveness of TSCA. These Principles present Administration goals for updated legislation that will give EPA the mechanisms and authorities to expeditiously target chemicals of concern and promptly assess and regulate new and existing chemicals.

Principle No. 1: Chemicals Should be Reviewed Against Safety Standards that are Based on Sound Science and Reflect Risk-based Criteria Protective of Human Health and the Environment.

EPA should have clear authority to establish safety standards that are based on scientific risk assessments. Sound science should be the basis for the assessment of chemical risks, while recognizing the need to assess and manage risk in the face of uncertainty.

Principle No. 2: Manufacturers Should Provide EPA with the Necessary Information to Conclude That New and Existing Chemicals are Safe and Do Not Endanger Public Health or the Environment.

Manufacturers should be required to provide sufficient hazard, exposure, and use data for a chemical to support a determination by the Agency that the chemical meets the safety standard. Exposure and hazard assessments from manufacturers should be required to include a thorough review of the chemical's risks to sensitive subpopulations

Where manufacturers do not submit sufficient information, EPA should have the necessary authority and tools, such as data call in, to quickly and efficiently require testing or obtain other information from manufacturers that is relevant to determining the safety of chemicals. EPA should also be provided the necessary authority to efficiently follow up on chemicals which have been previously assessed (e.g., requiring additional data or testing, or taking action to reduce risk) if there is a change which may affect safety, such as increased production volume, new uses or new information on potential hazards or exposures. EPA's authority to require submission of use and exposure information should extend to downstream processors and users of chemicals.

Principle No. 3: Risk Management Decisions Should Take into Account Sensitive Subpopulations, Cost, Availability of Substitutes and Other Relevant Considerations.

EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns.

Principle No. 4: Manufacturers and EPA Should Assess and Act on Priority Chemicals, Both Existing and New, in a Timely Manner.

EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the Agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations.

Principle No. 5: Green Chemistry Should Be Encouraged and Provisions Assuring Transparency and Public Access to Information Should Be Strengthened.

The design of safer and more sustainable chemicals, processes, and products should be encouraged and supported through research, education, recognition, and other means. The goal of these efforts should be to increase the design, manufacture, and use of lower risk, more energy efficient and sustainable chemical products and processes.

TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI). Manufacturers should be required to substantiate their claims of confidentiality. Data relevant to health and safety should not be claimed or otherwise treated as CBI. EPA should be able to negotiate with other governments (local, state, and foreign) on appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety.

Principle No. 6: EPA Should Be Given a Sustained Source of Funding for Implementation.

Implementation of the law should be adequately and consistently funded, in order to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is meeting that goal. To that end, manufacturers of chemicals should support the costs of Agency implementation, including the review of information provided by manufacturers.

Environment and Public Works Committee Hearing
July 31, 2013
Follow-Up Questions for Written Submission

Responses by

Stephen A. Owens

Questions from:

Senator Barbara Boxer

1. Do you agree that TSCA reform legislation should contain an industry fee provision to ensure that EPA has a sustained source of funding for implementation?

   Yes.

2. Do you believe that TSCA reform legislation should ensure that both the process of assessing the risks of toxic chemicals and the actions taken to address such risks should protect pregnant women, infants, children, the elderly and workers?

   Yes.

Questions from:

Senator David Vitter

1. You attached EPA's Essential Principles for Reform of Chemicals Management Legislation put forth by the Obama Administration to your testimony and you helped to develop those principles. Does the Lautenberg-Vitter bill align with those principles and, if so, how?

The Chemical Safety Improvement Act (CSIA) is broadly consistent with the Administration's TSCA reform principles, except that it does not set clear deadlines for EPA reviews of chemicals or provide a sustained source of funding for EPA's chemical management program. The principles are set forth below with brief comments and some examples regarding how the CSIA aligns with them.

Principle No. 1: Chemicals Should Be Reviewed Against Safety Standards That Are Based on Sound Science and Reflect Risk-based Criteria Protective of Human Health and the Environment.

EPA should have clear authority to establish safety standards that are based on scientific risk assessments. Sound science should be the basis for the assessment of chemical risks, while recognizing the need to assess and manage risk in the face of uncertainty.

The CSIA establishes a risk-based safety standard for chemicals and requires EPA to use the best available science in assessing chemical risks.

The safety standard is defined in Section 3 of the CSIA. The process for conducting safety assessments and making safety determinations is set forth in Section 6 of the CSIA.

Section 6 of the CSIA requires EPA to "conduct a risk-based safety assessment" of each chemical substance listed as high-priority by the Agency.

Section 6 of the CSIA also requires that the safety assessment must be based "solely on considerations of risk to human health and the environment."

Section 6 of the CSIA requires EPA to make a safety determination on each high priority chemical substance.

Section 6 of the CSIA also requires that the safety determination must be based "solely on considerations of risk to human health and the environment."

Section 6 of the CSIA further requires EPA to use the best available science in conducting safety assessments and making safety determinations.

Principle No. 2: Manufacturers Should Provide EPA With the Necessary Information to Conclude That New and Existing Chemicals Are Safe and Do Not Endanger Public Health or the Environment.

Manufacturers should be required to provide sufficient hazard, exposure, and use data for a chemical to support a determination by the Agency that the chemical meets the safety standard. Exposure and hazard assessments from manufacturers should be required to include a thorough review of the chemical's risks to sensitive subpopulations

Where manufacturers do not submit sufficient information, EPA should have the necessary authority and tools, such as data call in, to quickly and efficiently require testing or obtain other information from manufacturers that is relevant to determining the safety of chemicals. EPA should also be provided the necessary authority to efficiently follow up on chemicals which have been previously assessed (e.g., requiring additional data or testing, or taking action to reduce risk) if there is a change which may affect safety, such as increased production volume, new uses or new information on potential hazards or exposures. EPA's authority to require submission of use and exposure information should extend to downstream processors and users of chemicals.

Section 2 of the CSIA declares that "adequate data and information should be available with respect to the effect of and exposure to chemical substances and mixtures on health and the environment, to the extent necessary for safety assessments and determinations, and that, where necessary, the development of such test data and information should be the primary responsibility of those who manufacture or process such chemical substances and mixtures."

Section 4 of the CSIA gives EPA express authority to "require the development of new test data and information related to a chemical substance or mixture" to "perform a safety assessment" or "make a safety determination." EPA is authorized to require development of such test data and information by promulgating a rule, entering into a testing consent agreement, or issuing an order.

Section 4 of the CSIA further expressly empowers EPA to require manufacturers and processors of chemical substances and mixtures to develop test data and information.

Section 6 of the CSIA requires that safety assessments "shall evaluate existing hazard, use, and exposure information for the chemical substance under the intended conditions of use of the chemical substance" and that the safety assessments must take into consideration "the vulnerability of exposed subpopulations."

Section 8 of the CSIA specifically authorizes EPA to promulgate rules requiring processors, in addition to manufacturers, to report chemical information to the Agency.

Principle No. 3: Risk Management Decisions Should Take into Account Sensitive Subpopulations, Cost, Availability of Substitutes and Other Relevant Considerations

EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns.

> *Section 6 of the CSIA requires EPA to "conduct a risk-based safety assessment" of each chemical substance listed as high-priority by the Agency and further requires that the safety assessment must be based "solely on considerations of risk to human health and the environment."*
>
> *Section 6 of the CSIA also expressly requires that safety determinations must be based "solely on considerations of risk to human health and the environment."*
>
> *Section 6 of the CSIA requires that safety assessments must take into consideration "the vulnerability of exposed subpopulations."*
>
> *Section 6 of the CSIA requires that safety assessments also consider "exposures or significant subsets of exposures" as well as "exposure duration, intensity, frequency, and number."*
>
> *Section 6 of the CSIA provides that if EPA determines that a chemical substances does not meet the safety standard, the Agency shall consider and publish a statement on "the availability of technically and economically feasible alternatives for the chemical substance under the intended conditions of use" and the economic and social risks and benefits presented by such available alternatives.*

Principle No. 4: Manufacturers and EPA Should Assess and Act on Priority Chemicals, Both Existing and New, in a Timely Manner

EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the Agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations

> *Section 4 of the CSIA requires EPA to prioritize existing chemicals for safety assessments and safety determinations and sets forth the general process that EPA should follow in prioritizing chemicals.*
>
> *The CSIA requires EPA to establish schedules and deadlines for completion of safety reviews and safety determinations, but it does not set actual deadlines.*

Principle No. 5: Green Chemistry Should Be Encouraged and Provisions Assuring Transparency and Public Access to Information Should Be Strengthened

The design of safer and more sustainable chemicals, processes, and products should be encouraged and supported through research, education, recognition, and other means. The goal of these efforts should be to increase the design, manufacture, and use of lower risk, more energy efficient and sustainable chemical products and processes.

> *Section 2 of the CSIA declares that "innovation in the development of new chemical substances, especially safer chemical substances, should be encouraged," although no other provision in the CSIA explicitly encourages Green Chemistry or the design of safer and sustainable chemicals, processes, and products. Section 6 of the CSIA does provide that if EPA determines that a chemical substances does not meet the safety standard, the Agency shall consider and publish a statement on "the availability of technically and economically feasible alternatives for the chemical substance under the intended conditions of use" and the economic and social risks and benefits presented by such available alternatives.*

TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI). Manufacturers should be required to substantiate their claims of confidentiality. Data relevant to health and safety should not be claimed or otherwise treated as CBI. EPA should be able to negotiate with other governments (local, state, and foreign) on appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety.

> *Section 14 of the CSIA establishes several new requirements for confidential business information (CBI) claims, including requiring substantiation of CBI claims for chemical identity (and certain other information) ond setting time limits on CBI claims. Section 14 also gives EPA the authority to require re-substantiation of CBI claims for chemical identity "at any time," as well require re-substantiation of CBI claims for certain other information once a chemical substance has been placed on the Agency's high-priority list.*
>
> *Section 2 of the CSIA declares that EPA "should have the authority to share confidential business information with States and political subdivisions of the States, subject to appropriate safeguards against inappropriate disclosure."*
>
> *Section 14 of the CSIA authorizes EPA to disclose information claimed as CBI to a state or political subdivision if the state or political subdivision hos on agreement in place with EPA that will "ensure that the recipient government will take appropriate steps, and has adequate authority, to maintain the confidentiality of the information."*

Principle No. 6: EPA Should Be Given a Sustained Source of Funding for Implementation

Implementation of the law should be adequately and consistently funded, in order to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is

meeting that goal. To that end, manufacturers of chemicals should support the costs of Agency implementation, including the review of information provided by manufacturers.

The CSIA does not change the current TSCA fee provision.

2. You testified that current TSCA places substantial legal and procedural burdens on EPA to request the generation and submission of data on the potential health and environmental effects of existing chemicals. Would the Lautenberg-Vitter bill improve EPA's ability to get what it needs to evaluate chemicals, and if so, how?

Yes. As noted above, Section 2 of the CSIA declares that "adequate data and information should be available with respect to the effect of and exposure to chemical substances and mixtures on health and the environment, to the extent necessary for safety assessments and determinatians, and that, where necessary, the develapment of such test data and information should be the primary responsibility of thase who manufacture or process such chemical substances and mixtures."

Section 4 of the CSIA gives EPA express authority to "require the development of new test data and information related to a chemical substance or mixture" to "perform a sofety assessment" or "make a safety determination." EPA is authorized to require development af such test dato and information by promulgating a rule, entering into a testing consent agreement, or issuing an order.

Under the current TSCA EPA can require testing of chemical only through a lengthy, resource-intensive formal rulemaking process or through a consent agreement. The CSIA would give EPA new authority to issue orders requiring chemicol testing. This authority will significantly enhance EPA's ability to require testing without having to engage in formal rulemaking, as well as ensure that the Agency obtains test data in a more timely fashion.

Section 4 of the CSIA also eliminates the current TSCA requirement that EPA must find that a chemical substance may present an unreasonable risk of injury to health or the environment before requiring testing.

Section 4 of the CSIA further expressly empowers EPA to require manufacturers and processors of chemical substances and mixtures to develop test data and information. Section 8 of the CSIA specifically authorizes EPA to promulgate rules requiring processors, in addition to manufacturers, to report chemical information to the Agency. While EPA currently has some authority under TSCA to require processors to provide information, the CSIA clarifies and enhances the Agency's authority, which, omong other things, will improve EPA's ability to obtain use ond exposure data.

3. During your testimony you made a comment similar to Ms. Fisher's, to the effect that the "least burdensome" risk management requirement that is the problem for EPA to implement under current TSCA, but not the "unreasonable risk" standard. Why is it that the "least burdensome" requirement, and not the "unreasonable risk" standard, poses the difficulty for EPA?

In 1989, EPA issued a rule under TSCA section 6 prohibiting the manufacture, importation, processing, and distribution in commerce of most asbestos-containing products. That rule was overturned in 1991 in the case of Corrosion Proof Fittings v. EPA, 947 F.2d 1201 (5th Cir. 1991). The principal basis for the court's decision was that EPA had failed to meet TSCA's requirement that it select the "least burdensome" regulatory alternative. EPA has not even attempted an action under TSCA section 6 since the Corrosion Proof decision in light of the stringent standord articulated by the court for satisfying the "least burdensome" requirement.

The "unreasonable risk" requirement appears in several sections in TSCA, and EPA has implemented this requirement in connection with other provisions of the statute, such as TSCA section 5. Below are excerpts from the Corrosion Proof decision that make clear that it is the "least burdensome" requirement that creates the problem for EPA in managing chemical risks under TSCA section 6:

"TSCA requires that the EPA use the least burdensome regulation to achieve its goal of minimum reasonable risk. This statutory requirement can create problems in evaluating just what is a "reasonable risk." Congress's rejection of a no-risk policy, however, also means that in certain cases, the least burdensome yet still adequate solution may entail somewhat more risk than would other, known regulations that are far more burdensome on the industry and the economy. The very language of TSCA requires that the EPA, once it has determined what an acceptable level of non-zero risk is, choose the least burdensome method of reaching that level.

In this case, the EPA banned, for all practical purposes, all present and future uses of asbestos--a position the petitioners characterize as the "death penalty alternative," as this is the most burdensome of all possible alternatives listed as open to the EPA under TSCA. TSCA not only provides the EPA with a list of alternative actions, but also provides those alternatives in order of how burdensome they are. The regulations thus provide for EPA regulatian ranging from labeling the least toxic chemicals to limiting the total amount of chemicals an industry may use. Total bans head the list as the most burdensome regulatory option.

By choosing the harshest remedy given to it under TSCA, the EPA assigned to itself the toughest burden in satisfying TSCA's requirement that its alternative be the least burdensome of all those offered to it. Since, both by definition and by the terms of TSCA, the complete ban of manufacturing is the most burdensome alternative--for even stringent regulation at least allows a manufacturer the chance to invest and meet the new, higher standard--the EPA's regulation cannot stand if there is any other regulation that would achieve an acceptable level af risk as mandated by TSCA." 947 F.2d at 1215-16.

.....

"Under TSCA, the EPA was required to evaluote, rather than ignore, less burdensome regulatory alternatives. TSCA imposes a least-to-most-burdensome hierarchy. In order to impose a regulation at the top of the hierarchy--a total ban of asbestos--the EPA must show not only that its proposed action reduces the risk of the product to an adequate level, but also that the actions Congress identified as less burdensome also would not do the job. The failure of the EPA to do this constitutes a failure to meet its burden of showing that its actions not only reduce the risk but do so in the Congressionally-mandated least burdensome fashion." 947 F.2d at 1217.

.....

"Upon an initial showing of product danger, the proper course for the EPA to follow is to consider each regulatory option, beginning with the least burdensome, and the costs and benefits of regulation under each option. The EPA cannot simply skip several rungs, as it did in this case, for in doing so, it may skip a less-burdensome alternative mandated by TSCA. Here, although the EPA mentions the problems posed by intermediate levels of regulation, it takes no steps to calculate the costs and benefits of these intermediate levels.... Without doing this it is impossible, both for the EPA and for this court on review, to know that none of these alternatives was less burdensome than the ban in fact chosen by the agency." 947 F.2d at 1217.

.....

"The EPA's offhand rejection of these intermediate regulatory steps is 'not the stuff of which substantial evidence is made.' ... While it is true that the EPA considered five different ban options, these differed solely with respect to their effective dates. The EPA did not calculate the risk levels for intermediate levels of regulation, as it believed that there was no asbestos exposure level for which the risk of injury or death was zero. Reducing risk to zero, however, was not the task that Congress set for the EPA in enacting TSCA. The EPA thus has failed "cogently [to] explain why it has exercised its discretion in a given manner" ... by failing to explore in more than a cursory way the less burdensome alternotives to a total ban." 947 F.2d at 1217.

4. You stated that the CSIA is a big improvement over TSCA. Can you please expand on that and provide some specific examples of how it is an improvement over TSCA?

The CSIA is a significant improvement over the current TSCA for many reasons. Here are some examples:

- *For the first time, the CSIA establishes a safety standard for chemical substances and requires EPA to conduct safety assessments of and make safety determinations about chemical substances.*

- *The CSIA requires EPA to take risk management action on any chemical substance that does not meet the safety standard.*

- *Safety assessments and safety determinations under the CSIA would be based "solely on considerations of risk to human health and the environment."*

- *The CSIA requires EPA to prioritize chemicals and to conduct safety assessments of and make safety determinations about high-priority chemicals.*

- *The CSIA gives EPA new authority to issue orders requiring testing of chemical substances.*

- *The CSIA eliminates the current TSCA section 4 requirement that EPA must find that a chemical substance may present an unreasonable risk of injury to health or the environment before requiring testing.*

- *The CSIA enhances EPA's ability to obtain chemical information from processors.*

- *The CSIA puts the burden for providing informotion on chemical substances on manufacturers and processors.*

- *The CSIA requires that chemical substances be designated as "active" or "inactive," with "active" chemicals subject to review by EPA. Manufacturers and processors would have to give notice to EPA before making ar using any "inactive" chemical substance. (The current TSCA Inventory contains roughly 85,000 chemical substances, and it is unclear how many of these substances presently are being manufactured and/or in use.)*

- *The CSIA eliminates the requirement in TSCA section 6 that EPA select the "least burden" alternative when regulating chemical risks.*

- *The CSIA requires substantiation of CBI claims for chemical identity (and certain other infarmation) and sets time limits on CBI claims.*

- *The CSIA gives EPA the authority to require re-substantiation of CBI claims for chemical identity "at any time," as well require re-substantiation of CBI claims for certain other information ance a chemical substance has been placed on the*

Agency's high-priority list.

- *The CSIA authorizes EPA to disclose information claimed as CBI to a state or political subdivision under certain safeguards.*

- *The CSIA gives states the ability to petition EPA to put chemicals of concern on the Agency's "high priority" list for safety reviews.*

Senator BOXER. Thank you. Our next witness, Ms. Linda Reinstein, Executive Director and Co-Founder, Asbestos Disease Awareness Organization. She took action after suffering a grievous loss, and we are very honored that you are here with us.

STATEMENT OF LINDA REINSTEIN, PRESIDENT, CO-FOUNDER, ASBESTOS DISEASE AWARENESS ORGANIZATION

Ms. REINSTEIN. Thank you very much for giving me the honor and the opportunity to testify.

I know far too well that toxic chemicals are not just threats. They are a real part of life and death for many Americans. I want to make it clear: I am neither an attorney nor a lobbyist. I am a mesothelioma widow and the co-founder of the Asbestos Disease Awareness Organization, ADAO. Founded in 2004, we are now the largest independent, non-profit organization dedicated to eliminating asbestos-caused disease. This is about people.

I would like to dedicate my testimony to Janelle and Michael. Tragically, Janelle lost her mesothelioma battle just last month at the age of 37, and leaves behind a husband and a son, age 10. Michael is 29 years old, fighting for his life with limited treatment options.

Neither Janelle nor Michael worked with asbestos. Not at all. No longer is it just workers that are being diagnosed, but it is their families. It is children who have hugged their parents or spouses who have washed their clothing.

My husband Alan was diagnosed with pleural mesothelioma in 2003. We had never heard of the disease and thought asbestos had been banned. We shortly learned Alan's disease was incurable. He chose to have an extrapleural pneumonectomy. They removed a rib, his left lung, stripped off his periocardium and surgically replaced his diaphragm in hopes for more time.

When mesothelioma attacked his remaining lung, it felt to Alan that he was breathing through a pinched straw every breath, every day. When his oxygen levels became critically low, he was then tethered to supplemental oxygen in hopes for more time.

In 2006, Alan lost his fierce battle. His breath ceased in front of my daughter, who was then 13, and me by his side. TSCA has failed to protect public health and our environment. Asbestos is a known carcinogen, and has caused one of the worst man-made disasters in history. The facts are irrefutable. Thirty Americans die every day from these preventable diseases. The WHO, ILO, EPA, our Surgeon General all agree there is no safe level of asbestos. The fibers are odorless, indestructible, nearly invisible and can be 700 times smaller than human hair.

It is clear all forms of asbestos can cause cancer or respiratory diseases. Yet it remains legal and lethal in the U.S. today. Ships dock in our ports and unload asbestos in the States of Louisiana, Texas, California and New Jersey, just to name a few. USGS keeps us informed and it is reported that over 1,000 metric tons of asbestos was used in 2012. And the chloralkali industry is actually using more in the last 2 years. There are viable and affordable substitutes that indeed exist.

Without regulation, Americans cannot manage the risk of asbestos or any other toxic chemicals. I ask you, do you know where the

asbestos is in your home, in your cars? In Washington, and maybe on consumer shelves? We know consumer, environmental and occupational exposure continues. We identified five consumer products on the store shelves, one was a child's toy. Thanks to Prop 65, we were able to remove that toxic toy from commerce.

It was reported that 2,600 tons of asbestos debris was removed after the Joplin, Missouri tornado. Toxic debris, tons of it, litters the coastline after Hurricane Sandy. Right here under the Capitol, 10 AOC employees were exposed to asbestos. It was so thick they could write their name on the pipe. Each year, an estimated 10,000 Americans die from these preventable diseases. And I am here to tell you that for each life lost, a shattered family is left behind. Prevention is the only cure.

Americans need and deserve legislation to prevent toxic exposure. But S. 1009 is worse than the current law. It is fatally flawed. It would be nearly impossible to ban asbestos. The lack of deadlines would definitely compromise safety. And we do not need to lose Prop 65 and have preemption impact laws.

Congress should draft and pass meaningful TSCA reform that truly strengthens the protection for our families and the environment by preventing further use of asbestos. One life lost to a preventable disease is tragic. Hundreds of thousands of lives lost is unconscionable. I have attached a petition with over 2,500 signatures in support of a U.S. ban of asbestos. I would welcome any of your questions.

Thank you very much.

[The prepared statement of Ms. Reinstein follows:]

ADAO
Asbestos Disease Awareness Organization™
Voice of the Victims

UNITED STATES SENATE ENVIRONMENT AND PUBLIC WORKS HEARING
"Strengthening Public Health Protections by Addressing Toxic Chemical Threats"
Linda Reinstein
Asbestos Disease Awareness Organization (ADAO)
President/Co-founder and Mesothelioma Widow
Wednesday, July 31, 2013

I would like to thank Chairman Boxer, Ranking Member Vitter and the entire EPW committee for the honor and opportunity to testify at this hearing, "Strengthening Public Health Protections by Addressing Toxic Chemical Threats." I know far too well that toxic chemicals are not just "threats." They are a very real part of the life and death of many people, including my husband.

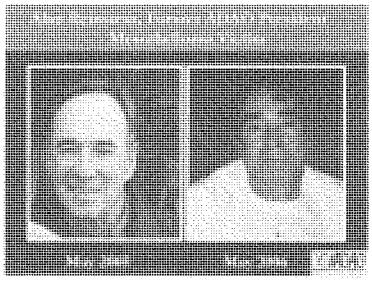
My name is Linda Reinstein. I am neither a lobbyist nor an attorney. I am a mesothelioma widow and Co-founder of the Asbestos Disease Awareness Organization (ADAO). Founded in 2004, ADAO is the largest independent non-profit organization in the U.S. dedicated to preventing exposure to eliminate asbestos-caused diseases.

Since EPA Deputy Administrator John R. Quarles testified about the "Need for Toxic Substances Act"[1] in 1975, science and technology have advanced exponentially. Asbestos, a human carcinogen, has caused one of the worst man-made disasters in history. The facts are irrefutable, yet, each day, 30 Americans die from a preventable asbestos-caused disease.

Honoring our ADAO tradition, I'd like to dedicate my testimony today to two asbestos victims, Janelle and Michael. Tragically, last month, Janelle lost her life to mesothelioma at the age of 37, leaving behind her husband and 11-year-old son. Michael, a 29-year-old mesothelioma patient, continues to fight for his life and faces limited treatment options. Neither Janelle nor Michael ever worked with asbestos. The asbestos victim's profile has changed; once a blue-collar worker in his mid-sixties, now there is a new, younger patient profile emerging with no known occupational exposure – people like Janelle and Michael. It is no longer only at-risk workers being diagnosed; it's also their families: children who hugged their parents and spouses who washed their clothes.

[1] http://www2.epa.gov/aboutepa/quarles-testifies-need-toxic-substances-act

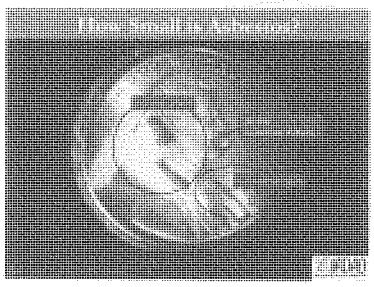
MES-O-THE-LI-O-MA – CAN'T PRONOUNCE IT – CAN'T CURE IT



My husband, Alan, was diagnosed with pleural mesothelioma in 2003. We had never heard of the asbestos-caused cancer, mesothelioma, and shortly learned it was incurable. Alan chose to have an extrapleural pneumonectomy, a radical surgery which removed a rib and his left lung, stripped off his pericardium and surgically replaced his diaphragm – all in hopes of more time with us. In 2005, the cancer came back on his remaining lung. Alan felt like he was breathing through a pinched straw, every breath, every minute, every day. When his oxygen levels became critically low, he was tethered to supplemental oxygen. He fought a hard battle with chemotherapy for nearly a year. In 2006, Alan took his last breaths with our then 13-year-old daughter and me by his side. Alan paid the ultimate price for his job – his life. Our daughter was only ten years old when we began our arduous family battle to fight mesothelioma and work with Congress to ban asbestos.

Today, I somberly represent Alan, Janelle, Michael and hundreds of thousands of other victims whose voices have been silenced by asbestos. I use the word "victim" because it is the only word that appropriately describes an individual exposed to asbestos; a patient, living or deceased, who was diagnosed with an asbestos-related disease; or a family member of those exposed or diagnosed. For each life lost, a shattered family is left behind.

FROM MAGIC MINERAL TO DEADLY DUST



Asbestos was once considered a "magic mineral" due to its light weight, tensile strength, heat resistance, and low cost. All six types of asbestos – chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite – are carcinogenic. Asbestos fibers can be nearly 700 times smaller than a human hair and are odorless, tasteless, and indestructible. All forms of asbestos can cause mesothelioma and lung, gastrointestinal, laryngeal, and ovarian cancers, as well as non-malignant lung and respiratory diseases.

The World Health Organization[2], International Labor Organization[3], U.S. Environmental Protection Agency[4] and Surgeon General[5] all agree that there is no safe level of exposure to asbestos. Asbestos-related diseases are often misdiagnosed and under-reported. Exacerbated by a latency period of 10–50 years, late stage diagnosis often limits patients' treatment options. Most patients die within 6–12 months after diagnosis. Each death is preventable.

[2] http://www.who.int/occupational_health/publications/asbestosrelateddiseases.pdf
[3] http://www.ilo.org/safework/WCMS_144446/lang--en/index.htm
[4] http://www2.epa.gov/asbestos/learn-about-asbestos#effects
[5] http://www.surgeongeneral.gov/news/2013/04/pr20130401.html

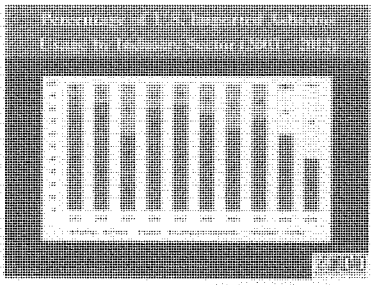
Most Americans trust that their air, soil and water are safe from toxic contaminants; however, the Toxic Substances Control Act (TSCA)[6] has failed to protect public health and our environment. In 1989, the EPA issued a final rule under Section 6 of TSCA, banning most asbestos-containing products. In 1991, however, this rule was vacated and remanded by the Fifth Circuit Court of Appeals. As a result, most of the original ban on the manufacture, importation, processing, or distribution in commerce of asbestos-containing products was overturned.

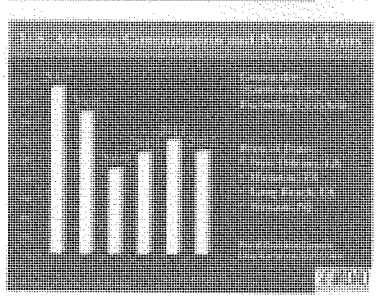
There were only five asbestos-containing products banned by TSCA in 1976:

1. Corrugated paper
2. Rollboard
3. Commercial paper
4. Specialty paper
5. Flooring felt

We cannot identify the toxic asbestos fibers nor manage the risk in products or places.

ASBESTOS: STILL LEGAL AND LETHAL IN THE UNITED STATES





Asbestos is still legal and lethal in the United States. The asbestos industry put profits before people -- dollars before lives.

The collateral damage of asbestos consumption is staggering. The U.S. Geological Survey (USGS) reported that from 1900 to 2012, we have produced or used more than 31 million tons[7] and imports continue. Ships docked in U.S. ports still unload asbestos in the states of Louisiana, Texas, California and New Jersey.

The United States remains dependent on imports to meet so-called manufacturing needs. USGS reported that in 2012, asbestos consumption in the "United States was estimated to be 1,060 tons. [...] The chloralkali industry accounted for an estimated 57% of U.S. consumption; roofing products, about 41%; and unknown applications, 2%."[8] For the past two years, we have seen an increase in asbestos consumption in the chloralkali industry, even though viable and affordable asbestos substitutes exist.

In 2012, the US imported all of the chrysotile asbestos from Brazil, the world's third largest asbestos producer.

In response to this continued public health crisis, 18 months ago, I began my inquiry about the toxic asbestos import trade by asking three questions via a Freedom of Information Act request:

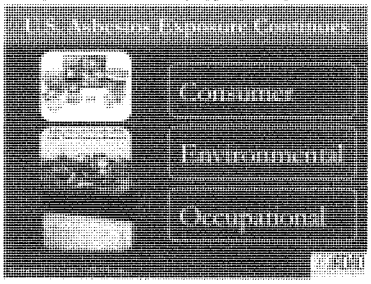
- Who are the U.S. companies and/or government agencies importing asbestos?

[6] http://www.epa.gov/oppt/newchems/pubs/chem-pmn/appendix.pdf
[7] http://pubs.usgs.gov/circ/2006/1298/c1298.pdf
[8] http://minerals.usgs.gov/minerals/pubs/commodity/asbestos/mcs-2013-asbes.pdf

- What asbestos-containing products are being manufactured in the U.S.?
- Where are the asbestos-containing products being used in or exported from the U.S.?

I have been unable to get answers to any of my questions due to U.S. Code Title 13, Chapter 9, Section 301(g), which protects the confidentiality of export data collected by the U.S. Census Bureau. This roadblock led me to different questions: Why is the United States "dependent on imports to meet manufacturing needs," as USGS states?

According to the Center for Public Integrity, the American Chemistry Council released a statement saying, "Diaphragms made of asbestos are a critical separation medium in the chlorine manufacturing process. Chlorine is essential for manufacturing life-saving medicines, producing solar cells, and providing safe drinking water." The statement asserted that chlorine producers "work to manage the risks and potential adverse effects to human health and the environment" and "workers potentially exposed to asbestos are protected by wearing appropriate personal protective equipment and following strict work processes."[9]

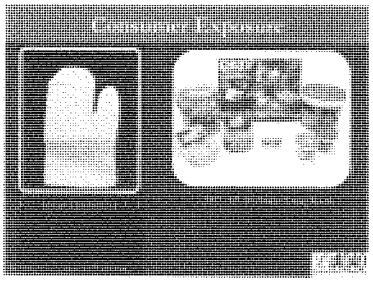


Despite the irreversible, harmful health effects of asbestos exposure, the American Chemistry Council statement continues: "Employees in the chlor-alkali industry are given annual medical examinations to determine whether an employee has incurred any adverse effects due to any possible exposure." If a medical examination results in an asbestos-disease diagnosis, the health effects are irreversible.

We have ignored the WHO Resolution stating: "The most efficient way to eliminate asbestos-related diseases is to stop using all types of asbestos."

ASBESTOS CAN TAKE YOUR BREATH AWAY, FOREVER

The facts are clear: the tons of asbestos that have been mined in and imported to the U.S. have created a public health crisis. Asbestos remains in our homes, schools, and buildings, and even on consumer shelves. Workers and consumers cannot adequately identify the toxic fibers nor manage the risks of consumer, environmental and occupational asbestos exposure in products or places.



Do you know where these nearly invisible, deadly fibers are in your home, in your car, on consumer shelves, or here on The Hill?

Consumer, environmental and occupational exposure continues.

CONSUMER EXPOSURE:

- In 2007, ADAO identified 5 consumer products, including a child's toy, that were contaminated with asbestos.

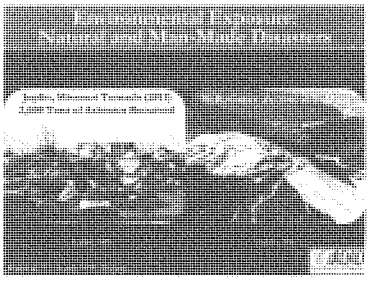
[9] http://www.publicintegrity.org/health/public-health/asbestos

- In 2012, a colleague of mine sent me a mitt that was made of 97% chrysotile asbestos.

ENVIRONMENTAL EXPOSURE:

- Natural and man-made environmental disasters have plagued us. It was reported that 2,600 tons of asbestos was collected after the Joplin, Missouri tornado and tons of toxic debris littered the coastline after Hurricane Sandy.

- W.R. Grace Vermiculite Mine, a man-made disaster in Libby, MT, has been costly in dollars and lives. The federal government has spent more than $450 million to remediate the toxic areas in Libby, MT and treat the residents.

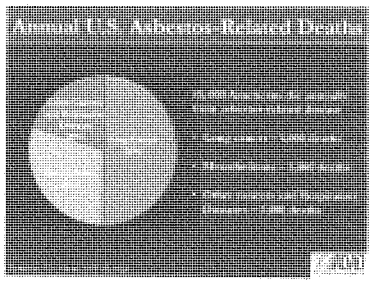


OCCUPATIONAL EXPOSURE:

Although we have laws and regulations, workers are still being exposed on the job and take-home exposure threatens their families with deadly hugs and chores. Occupational exposures can occur during maintenance, construction, abatement, and hazardous debris removal.

- The medical journal *The Lancet* reported that 9/11 first responders are now suffering from a variety of diseases and are 19% more likely to have cancer than other first responders. Due to the long latency period of asbestos-caused diseases, it will be decades before we can accurately calculate collateral damage from 9/11. [10]

- Right here under the Capitol, 10 federal employees were exposed and sickened from maintaining the tunnels. Asbestos dust was so thick that a worker was able to write his name on the pipe. One of their wives now has pleural thickening from washing her husband's contaminated clothes.

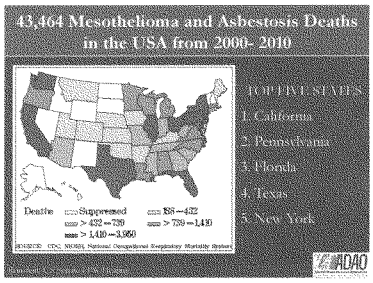


AMERICANS REMAIN AT RISK TODAY

Each year, an estimated 10,000 Americans die from asbestos-related disease. Many colleagues agree that this estimate is likely low due to underreporting and a focus limited to occupational surveillance. Annually, about 3,000 Americans die from mesothelioma, 5,000 from asbestos-related lung cancer, and 2,000 from other asbestos-related cancers or respiratory diseases.

[10] http://www.thelancet.com/themed-911

NIOSH statistics from 2000 – 2012 reveal that 43,464 Americans died from mesothelioma and asbestosis – just two of the asbestos-caused diseases. The top five states with the highest mortality were California, Pennsylvania, Florida, Texas, and New York.



The Occupational Safety and Health Administration states that in the United States, "Asbestos is well recognized as a health hazard and is highly regulated. An estimated 1.3 million employees in the construction and general industry face significant asbestos exposure on the job." In May 2010, the United States President's Cancer Panel (PCP) released the landmark 200-page report entitled, ***"Reducing Environmental Cancer Risk: What We Can Do Now"***[11]. The panel reported, "Construction workers were found to be 11 times more likely to develop mesothelioma, due to asbestos exposures at the site."

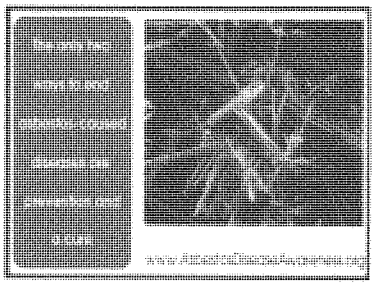
HISTORY IS A GREAT TEACHER TO THOSE WHO LISTEN

We cannot alter history or bring back the dead, but we can learn from the past to save lives. Every day, 30 Americans will die from preventable asbestos-caused diseases, yet asbestos continues to be legal and lethal in the United States. We know so much and have done so little to mitigate this disaster. Human, environmental, and civil rights have all been compromised because of asbestos, and patients like Janelle, Michael, and Alan pay the price.

The only two ways to end asbestos-caused diseases are prevention and a cure.

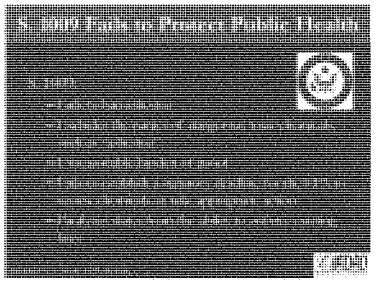
THE FIVE IRREFUTABLE ASBESTOS FACTS ARE:

1. Asbestos is a known human carcinogen and there is no safe level of exposure.
2. 54 countries have banned asbestos, but the United States has not.
3. Asbestos imports and exposure continue. In 2012, the United States imported over 1,060 tons of asbestos.
4. An estimated 10,000 Americans die each year from preventable asbestos-caused diseases.
5. Americans cannot determine or manage consumer, environmental, and occupational asbestos risk.



[11] http://deainfo.nci.nih.gov/advisory/pcp/annualReports/pcp08-09rpt/PCP_Report_08-09_508.pdf

"SAFE CHEMICALS ACT OF 2013" (S. 1009) IS CRITICALLY FLAWED AND JEOPARDIZES PUBLIC HEALTH AND OUR ENVIRONMENT



In April 2013, ADAO applauded congressional efforts on the "Safe Chemicals Act of 2013" (S. 696)[12], which would adequately protect American families from toxic exposures. However, since then, CSIA, the Chemical Safety Improvement Act of 2013 (S. 1009)[13], was introduced in May. While the chemical industry is pleased with this new bill, ADAO and the majority of other environmental and public health organizations do not support the current language.

Specifically, CSIA has the following critical flaws:

- Next to Impossible to Phase Out or Ban Harmful Chemicals. CSIA would make it impossible for EPA to ban or phase out tbe worst of the worst toxic chemicals on the market.

- Grossly Inadequate Safety Standard. CSIA's safety standard would place a heavy burden on EPA to find rhat a chemical such as asbestos is unsafe, rather than shifting the burden to chemical companies to show chemicals are safe.

- Lack of Deadlines to Ensure Safety. CSIA is virtually devoid of any deadlines that would require EPA to act quickly to assess and restrict the use of harmful cbemicals such as asbestos.

- Unworkable Standard of Court Review. CSIA would retain the unworkable standard of court review found in TSCA, which ultimately prevented EPA from being able to ban asbestos in 1989.

- Freeze on State Efforts to Protect People from Chemicals. CSIA contains far-reaching language that would paralyze states from being able to enforce existing laws or pass new ones, to increase protections against harmful chemicals such as asbestos.

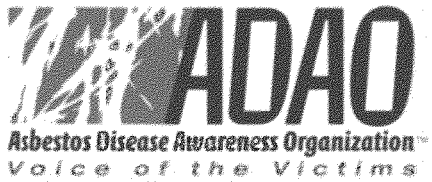
Americans have lost confidence in the chemical industries' ability to protect us from toxins. Congress should draft and pass meaningful TSCA reform legislation that truly strengthens protections for our families and environment and expedites action to ban asbestos.

Americans need and deserve legislation to:

1. Expedite action to prohibit asbestos imports
2. Ban the manufacture, sale and export of asbestos-containing products
3. Protect each state's ability to maintain or pass stronger laws to regulate chemicals

I have attached to this testimony a petition signed by over 2,500 people who support a U.S. asbestos ban. One life lost to a preventable asbestos-caused disease is tragic; hundreds of thousands of lives lost is unconscionable.

[12] http://www.govtrack.us/congress/bills/113/s696
[13] http://www.govtrack.us/congress/bills/113/s1009



U.S. Senate Environment and Public Works Full Committee

"Strengthening Public Health Protections by Addressing Toxic Chemical Threats"
Hearing

July 31, 2013

LINDA REINSTEIN
Asbestos Disease Awareness Organization (ADAO)
President/CEO and Co-Founder
Lreinstein@adao.us

ADAO Dedication
Janelle 1976 - 2015
Michael 1954
ADAO

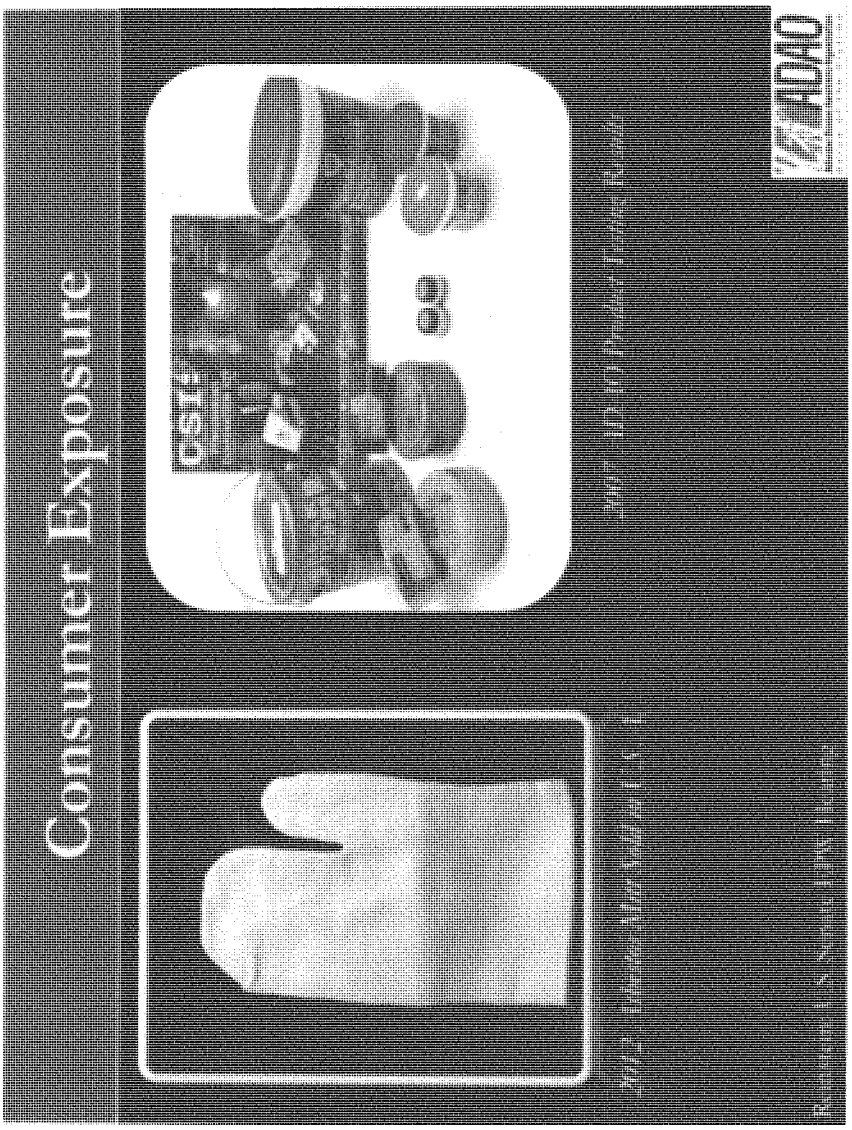
Alan Reinstein, Former ADAO President
Mesothelioma Victim
May 2005
May 2006
ADAO

How Small is Asbestos?
Asbestos Fibers
Pleural Mesothelioma
Lung Cancer
Asbestosis
Asbestos Fibers
Asbestos Fibers
Asbestos Fibers

Percentage of U.S. Imported Asbestos
Usage by Industry Sector (2008 – 2012)
GAO

U.S. Asbestos Consumption and Ports of Entry
Commodity:
25210 Asbestos,
Excluding Crocidolite
Ports of Entry:
• New Orleans, LA
• Houston, TX
• Long Beach, CA
• Newark, NJ
Brazil Port-Level Imports
Data Retrieved 04/02/2013
2007
2008
2009
2010
2011
2012
ADAD

U.S. Asbestos Exposure Continues
Consumer
Environmental
Occupational

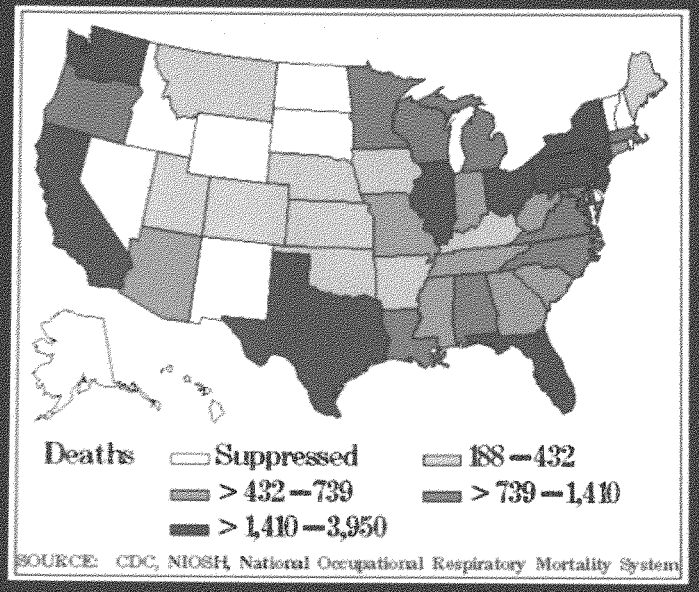

Consumer Exposure
CS
ESTE
LEADAD

Environmental Exposure:
Natural and Man-Made Disasters
Joplin, Missouri Tornado (2011)
2,660 Tons of Asbestos Removed
U.S. EPA

Occupational Exposure
VEADAO

Annual U.S. Asbestos-Related Deaths
10,000 Americans die annually
from asbestos-related disease
• Lung cancer – 5,000 deaths
• Mesothelioma – 3,000 deaths
• Other cancers and Respiratory
Diseases – 2,000 deaths
Other Cancers
and Respiratory
Diseases
20%
Lung Cancer
50%
Mesothelioma
30%
ASBESTOS

43,464 Mesothelioma and Asbestosis Deaths in the USA from 2000- 2010



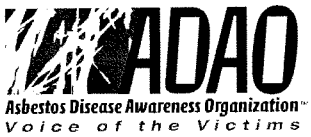
TOP FIVE STATES

1. California
2. Pennsylvania
3. Florida
4. Texas
5. New York

Reinstein: U.S. Senate EPW Hearing

The only two
ways to end
asbestos-caused
diseases are
prevention and
a cure
www.AsbestosDiseaseAwareness.org

S. 1009 Fails to Protect Public Health
S. 1009:
– Fails to ban asbestos
– Excludes thousands of pharmaceutical chemicals
such as asbestos
– Unreasonable burden of proof
– Fails to establish a statutory deadline for the EPA to
review chemicals or take administrative action
– Prohibits States from the ability to enforce existing
laws
ADAO



To:

The President of the United States
The U.S. Senate
The U.S. House of Representatives

Ban Asbestos, Save Lives. Sign the Petition to the United States Congress.

The World Health Organization, the International Agency for Research on Cancer, the United States Environmental Protection Agency, the United States Public Health Service and the U.S. Surgeon General agree: asbestos is a human carcinogen and there is no safe level of asbestos exposure. Asbestos-related diseases claim the lives of more than 10,000 Americans every year, and occupational, environmental, and consumer asbestos exposure continues. The facts are irrefutable, yet the United States has failed to ban asbestos and continues to import asbestos to manufacture asbestos-containing products, even though safe substitutes exist.

THEREFORE, we join with the Asbestos Disease Awareness Organization (ADAO) in urging Congress to:

- Expedite action to ban asbestos imports
- Ban the manufacture, sale and export of asbestos and asbestos-containing products
- Enforce existing Environmental Protection Agency (EPA), Consumer Product Safety Commission (CPSC), Occupational Safety and Health Administration (OSHA), and Mine Safety and Health Administration (MSHA) regulations designed to protect men, women, and children from asbestos exposure
- Direct research funding to the United States Department of Health and Human Services to identify those at risk for asbestos-related disease, develop better treatments, and find a cure

We, the undersigned, support the petition to urge the United States Congress to take immediate action to protect public health and ban asbestos.

Name	City	State	Zip Code	Country	Signed On
Linda Reinstein	Redondo Beach,	California	90266		7/8/13
Cortney Segmen	West Bloomfield	Michigan	48322	United States	7/8/13
Dominique Clark	Redondo Beach	California	90278	United States	7/8/13
Victoria Crowder	Rushville	Indiana	46173	United States	7/8/13
Epifania Aurora Costanzo			35030	Italy	7/8/13
claire tewson	Beeston		NG9 2ED	United Kingdom	7/8/13
laura auciello	San Tan Valley	Arizona	85143	United States	7/8/13
Robin Kuhn	Rushville	Indiana	46173	United States	7/8/13
Michael McAlister	Shelbyville	Indiana	46176	United States	7/8/13
Aimee Lykins	Rushville	Indiana	46173	United States	7/8/13
Erika Ferrell	Shelbyville	Indiana	46176	United States	7/8/13
mavis nye	Canterbury			United Kingdom	7/8/13
Cindy Fee	Rushville	Indiana	46173	United States	7/8/13
Hannah Clifford	Rushville	Indiana	46173	United States	7/8/13
Nigel Williams	Ystradgynlais		SA9 1EL	United Kingdom	7/8/13
Tina Bailey	Rushville	Indiana	46173	United States	7/8/13
Vickie Davis	Rushville	Indiana	46173	United States	7/8/13
carissa cameron	Rushville	Indiana	46173	United States	7/8/13
Denise Payne	Rushville	Indiana	46173	United States	7/8/13
Danniella Banks	Rushville	Indiana	46173	United States	7/8/13
sandy singleton	Indianapolis	Indiana	46254	United States	7/8/13
angela caulfield	London			United Kingdom	7/8/13
Carrie McNamara	Manchester	Iowa	52057	United States	7/8/13
Melinda Thompson	Rushville	Indiana	46173	United States	7/8/13
Carol Meckes	Rushville	Indiana	46173	United States	7/8/13
sheri mccane	Rushville	Indiana	46173	United States	7/8/13
Kylena Browning	Rushville	Indiana	46173	United States	7/8/13
Trevor Hofer	Noblesville	Indiana	46060	United States	7/8/13
Shirley McNamara	Cedar Rapids	Iowa	52402	United States	7/8/13
April Abrams	Rushville	Indiana	46173	United States	7/8/13
Daisha Abdulnoor	West Bloomfield Township	Michigan	48322	United States	7/8/13
Jennifer Gelsick	Saint Marys	Pennsylvania	15857	United States	7/8/13
Rosalie healey	Wallsal				7/8/13
Mark Catlin	Columbia	Maryland	21044	United States	7/8/13
Rebecca Shearburn	Fort Smith	Arkansas	72901	United States	7/8/13

Teresa Dea	Center Point	Iowa	52213	United States	7/8/13
Amanda Wiley	Holton	Indiana	47023	United States	7/8/13
Regina Sharp	Arlington	Indiana	46104	United States	7/8/13
Adam Buckley	Rushville	Indiana	46173	United States	7/8/13
Megan Stewart	Carthage	Indiana	46115	United States	7/8/13
Torrie Murphy	Waynesville	North Carolina	28785	United States	7/8/13
Sarah Schlechtweg	Rushville	Indiana	46173	United States	7/8/13
Ann Samuelson	Seaside	Oregon	97138	United States	7/8/13
Leonna Fox-Reinhardt	Shelbyville	Indiana	46176	United States	7/8/13
Bennie Cameron	Rusville	Indiana	46173	United States	7/8/13
joanne lippert	west mifflin	Pennsylvania	15122	United States	7/8/13
Joann miller	Glenwood	Indiana	46133	United States	7/8/13
Gloria Long	Anderson	Indiana	46012	United States	7/8/13
Kimberly Withrow	Louisville	Kentucky	40210	United States	7/8/13
Stephanie Glickman	Richmond	Indiana	47374	United States	7/8/13
Daniel Bedel	Rushville	Indiana	46173	United States	7/8/13
Krista Tanksley	Indianapolis	Indiana	46203	United States	7/8/13
Steven Morgan	Glenwood	Indiana	46133	United States	7/8/13
annie browder	greensburg	Indiana	47240	United States	7/8/13
Jan Faust	OR	Oregon	97103	United States	7/8/13
Joyce Morrell	Arlington	Indiana	46104	United States	7/8/13
Lori Jacobs	Shelbyville	Indiana	46176	United States	7/8/13
bob reecer	sarasota	Florida	34203	United States	7/8/13
Lydia Porter	Rushville	Indiana	46173	United States	7/8/13
katrinna schacht	alexandria	Indiana	46001	United States	7/8/13
Jean Engle	New Castle	Indiana	47362	United States	7/8/13
Kevin Shook	Rushville	Indiana	46173	United States	7/8/13
sara smith	rushville	Indiana	46173	United States	7/8/13
Lillo Mendola			70126	Italy	7/8/13
Bryn Baggaley	Derby		De21 4gx	United Kingdom	7/8/13
Amanda Horn	Shelbyville	Indiana	46176	United States	7/8/13
Jaime Montgomery	Rushville	Indiana	46173	United States	7/8/13
Kristin Massa	Fishers	Indiana	46037	United States	7/8/13
Heidi Morris	Rushville	Indiana	46173	United States	7/8/13
Christine McKitrick	Franklin	Indiana	46131	United States	7/8/13
wayne sharp	nottingham		ng11 8js	United Kingdom	7/8/13
Darlene Garrison	Gray	Kentucky	40734	United States	7/8/13
Rebecca Schutt	Rushville	Indiana	46173	United States	7/8/13

Lisa Grattidge	england				7/8/13
Pam Steed	Milroy	Indiana	46156	United States	7/8/13
Anne-Marie Cameron	Glenwood	Indiana	46133	United States	7/8/13
Shawna Pierce	Rushville	Indiana	46173	United States	7/8/13
Angie Bane	Rushville	Indiana	46173	United States	7/8/13
Marie Godar	Waldron	Indiana	46182	United States	7/8/13
Tonya Ervine	Rushville	Indiana	46173	United States	7/8/13
Richard Mosca	West Nyack	New York	10994	United States	7/8/13
Johnna Arnett	Greensburg	Indiana	47240	United States	7/8/13
Charles Stout	Arlington	Indiana	46104	United States	7/8/13
ANN WATERS	Derbyshire		SK23 0LH	United Kingdom	7/8/13
Rebecca Gattis	Shelbyville	Indiana	46176	United States	7/8/13
Candice Kennedy	Greensburg	Indiana	47240	United States	7/8/13
Kim Hill	Arlington	Indiana	46104	United States	7/8/13
Kristina Curtis	Rushville	Indiana	46173	United States	7/8/13
Brian Cain	Rushville	Indiana	46173	United States	7/8/13
Tonya Burris	Greenwood	Indiana	46143	United States	7/8/13
Frieda Byrd	Macon	Georgia	31210	United States	7/8/13
CHRISTINE WINTER	Darlington			United Kingdom	7/8/13
Stacie Padgett	Rushville	Indiana	46173	United States	7/8/13
Michelle Neuman	Rushville	Indiana	46173	United States	7/8/13
Leucreta Denney	cincinnati	Ohio	45248	United States	7/8/13
Raya Bodnarchuk	Glen Echo	Maryland	20812	United States	7/8/13
Penny McElfresh	Rushville	Indiana	46173	United States	7/8/13
Brooke Huskins	Rushville	Indiana	46173	United States	7/8/13
Angela Leisure	Indianapolis	Indiana	46250	United States	7/8/13
christina goveia	bloomington	Indiana	47404	United States	7/8/13
susan macy	spiceland	Indiana	47385	United States	7/8/13
Erica Watson	Greenfield	Indiana	46140	United States	7/8/13
Levi Yager	Rushville	Indiana	46173	United States	7/8/13
April Bennett	Rushville	Indiana	46173	United States	7/8/13
Michelle Trail	Orange	California	92867	United States	7/8/13
terry britton	bradford				7/8/13
Leanna Rennekamp	Rushville	Indiana	46173	United States	7/8/13
Amy Newbold	Madisonville	Tennessee	37354	United States	7/8/13
Mike Remy	Indianapolis	Indiana	46203	United States	7/8/13
Marjie Giffin	Indianapolis	Indiana	46226	United States	7/8/13
Michelle Duffy	Rushville	Indiana	46173	United States	7/8/13
angela turner	Shelbyville	Indiana	46176	United States	7/8/13

Jennifer Gossett	Rushville	Indiana	46173	United States	7/8/13
Beth Sparks	Rushville	Indiana	46173	United States	7/8/13
Susan Arnold	Mendocino	California	95460	United States	7/8/13
Brenda Elliott	Shelbyville	Indiana	46176	United States	7/8/13
Michael Carsey	Westerville	Ohio	43081	United States	7/8/13
Tracy Boyd	yukon	Oklahoma	73099	United States	7/8/13
Heather Nash	Carlsbad	California	92011	United States	7/8/13
Andrew Bedel	Rushville	Indiana	46273	United States	7/8/13
Jennifer Miller	Rushville	Indiana	46173	United States	7/8/13
Kelly Pandoli	Greenwood	Indiana	46143	United States	7/8/13
angela stark	muncie	Indiana	47303	United States	7/8/13
joseph mcnamara	ryan	Iowa	S2330	United States	7/8/13
Guadalupe Aguilar Madrid			6760	Mexico	7/8/13
Karen Giesting	Hurst	Illinois	62949	United States	7/8/13
Christine Whitaker	Indianapolis	Indiana	46240	United States	7/8/13
Sandra Taylor	montreal		h8y 3l7	Canada	7/8/13
Connie Martin	Rushville	Indiana	46173	United States	7/8/13
Carina Cameron	Rushville	Indiana	46173	United States	7/8/13
Marissa Coffin	Rushville	Indiana	46173	United States	7/8/13
Jean Barrow	Rushville	Indiana	46173	United States	7/8/13
amber beard	rushville	Indiana	46173	United States	7/8/13
Nona Adams	Rushville	Indiana	46173	United States	7/8/13
Callie Young	Waldron	Indiana	46182	United States	7/8/13
Marcia Cameron	Rushville	Indiana	46173	United States	7/8/13
Tammy Jackman	Milroy	Indiana	46156	United States	7/8/13
Kimberly Hunt	Homer	Indiana	46146	United States	7/8/13
Todd Click	Rushville	Indiana	46173	United States	7/8/13
Chris Rupp	Indianapolis	Indiana	46240	United States	7/8/13
sandy leising	rushville	Indiana	46173	United States	7/8/13
Allison Blind	Plainfield	Illinois	60585	United States	7/8/13
Lora Frymoyer	Mohnton	Pennsylvania	19540	United States	7/8/13
Brad Morgan	Rushville	Indiana	46173	United States	7/8/13
Brian Hawkins	Springville	Indiana	47462	United States	7/8/13
Bernice Meyer	Rushville	Indiana	46173	United States	7/8/13
Erica Bedel	Auburn	Kentucky	42206	United States	7/8/13
Billie Koger	Rushville	Indiana	46173	United States	7/8/13
Krisi Cregar	Rushville	Indiana	46173	United States	7/8/13
Justin Tague	columbus	Ohio	43202	United States	7/8/13
Marcos Machado	Costa Rica				7/8/13
Sam Teague	Counce	Tennessee	38326	United States	7/8/13
Candice McDaniel	Rushville	Indiana	46173	United States	7/8/13
Jerry Haynes	Rushville	Indiana	46173	United States	7/8/13

Kylie Markley	Shelbyville	Indiana	46176	United States	7/8/13
Rick Cameron	Rushville	Indiana	46173	United States	7/8/13
Vicky Walker	Rushville	Indiana	46173	United States	7/8/13
nicole frye	Rushville	Indiana	46173	United States	7/8/13
Vilma Lopez	Carolina	Puerto Rico	987	United States	7/8/13
Lorena Tacco			20037	Italy	7/8/13
Janet Graeff	Murphysboro	Illinois	62966	United States	7/8/13
Jaymie Bedel	Seguin	Texas	78155	United States	7/8/13
Kelley Reynolds	Shelbyville	Indiana	46176	United States	7/8/13
Doreen Bunt	Rockford	Illinois	61114	United States	7/8/13
mary hepton	Sunderland			United Kingdom	7/8/13
Bobbi Jones	Rushville	Indiana	46173	United States	7/8/13
Alisha Boley	Russellville	Kentucky	42276	United States	7/8/13
Jordan Wadle	Connersville	Indiana	47331	United States	7/8/13
Warren Shuppert	Shelbyville	Indiana	46176	United States	7/8/13
Danielle Kadri	Rushville	Indiana	46173	United States	7/8/13
Melissa Cameron	Clayton	Indiana	46118	United States	7/8/13
Shenia Schlosser	Indianapolis	Indiana	46219	United States	7/8/13
Jaime Moore	Rushville	Indiana	46173	United States	7/8/13
Karena Binder	Rushville	Indiana	46173	United States	7/8/13
Susan Owen	Halesowen		B63 2LB	United Kingdom	7/8/13
Tracey Mawdsley	cumbria		la13 9hw	United Kingdom	7/8/13
Terri Vanover	Rushville	Indiana	46173	United States	7/8/13
keitha miller	Rushville	Indiana	46173	United States	7/8/13
Floyd Cameron	Rushville	Indiana	46173	United States	7/8/13
Joni Degner	Columbus	Indiana	47201	United States	7/8/13
Sue Howell	Manchester			United Kingdom	7/8/13
Pam Stewart	Indpls	Indiana	46229	United States	7/8/13
Emily Cain	Rushville	Indiana	46173	United States	7/8/13
Lou (Louise) Williams			3441	Australia	7/8/13
Daly Jones	Shelbyville	Indiana	46176	United States	7/8/13
Cathy Chandler	thousand oaks	California	91360	United States	7/8/13
Aylissa Miller	Rushville	Indiana	46173	United States	7/8/13
Linda Neeley	Shelby	Ohio	44875	United States	7/8/13
Stephanie Moore	Rushville	Indiana	46173	United States	7/8/13
nicci Tracy	Rushville	Indiana	46173	United States	7/8/13
Bruce Griffey	Booneville	Arkansas	72927	United States	7/8/13
Rebecca Sallee	Rushville	Indiana	46173	United States	7/8/13

Ellen Patton	Millersville	Maryland	21108	United States	7/8/13
Polly Boore	Tyrone	Pennsylvania	16686	United States	7/8/13
misty shearburn	fort smith	Arkansas	72901	United States	7/8/13
Victoria Stone	New Palestine	Indiana	46163	United States	7/8/13
Christina Cappel	Mechanicsville	Virginia	23116	United States	7/8/13
Heather Pennabaker	New Paris	Pennsylvania	15554	United States	7/8/13
Karen Krambeck	Davenport	Iowa	52804	United States	7/8/13
Tonya Buckley	Rushville	Indiana	46173	United States	7/8/13
Bonnie Anderson	Berkeley Heights,	New Jersey	7922	United States	7/8/13
Adonna Bailey	Freeland	Washington	98249	United States	7/8/13
Rebecca Lewington	Oxford		Ox29 4ns	United Kingdom	7/8/13
Carly Moore	Connersville	Indiana	47331	United States	7/8/13
Connie Cameron	Rushville	Indiana	46173	United States	7/8/13
Melinda Dora	Rushville	Indiana	46173	United States	7/8/13
Shelly Kozicki	Grosse Ile Township	Michigan	48138	United States	7/8/13
Polly ean Sturgeon	Rushville	Indiana	46173	United States	7/8/13
amanda henderson	Rushville	Indiana	46173	United States	7/8/13
linda yates	russellville	Kentucky	42276	United States	7/8/13
JOHN YARBOROUGH	texarkana	Texas	75501	United States	7/8/13
April Todd	Rushville	Indiana	46173	United States	7/8/13
mardena Good	rushville	Indiana	46173	United States	7/8/13
Edye Freeman	Kalona	Iowa	52247	United States	7/8/13
Jackie Dickson	Rushville	Indiana	46173	United States	7/8/13
cora ortiz	rushville	Indiana	46173	United States	7/8/13
Amanda Scheiderer	Camby	Indiana	46113	United States	7/8/13
Alisha Luckenbill	Carmel	Indiana	46033	United States	7/8/13
Jeremy Allison	New Castle	Indiana	47362	United States	7/8/13
Melissa Gregory	Franklin	Kentucky	42134	United States	7/8/13
Audrey Neuman	Rushville	Indiana	46173	United States	7/8/13
Allison Hughes	Indianapolis	Indiana	46202	United States	7/8/13
Kristy Miller	Westport	Indiana	47283	United States	7/8/13
jennifer kuhn	rushville	Indiana	46173	United States	7/8/13
Phyllis Beal	Shelbyville	Indiana	46176	United States	7/8/13
Monique Haselwood	Nicholasville	Kentucky	40356	United States	7/8/13
Kate Kuhn	Milroy	Indiana	46156	United States	7/8/13
michelle messer	franklin	Indiana	46131	United States	7/8/13
Suzanne Wickham			6111	Australia	7/8/13
Jennifer Wilson	Muncie	Indiana	47304	United States	7/8/13

herman hamilton	walkersville	Maryland	21793	United States	7/8/13
denea Jenkins	Rushville	Indiana	46173	United States	7/8/13
Christy Gray	Clinton	Tennessee	37716	United States	7/8/13
jill hornaday	wahiawa	Hawaii	96786	United States	7/8/13
Tammy Morgan	Rushville	Indiana	46173	United States	7/8/13
Amber Wyrick	Greensburg	Indiana	47240	United States	7/8/13
jolanda rankin	Rushville	Indiana	46173	United States	7/8/13
Amy DeMartino	Shelbyville	Indiana	46176	United States	7/8/13
Amy Richey	Shelbyville	Indiana	46176	United States	7/8/13
Jackie Baehrel	Mount Vernon	Ohio	43050	United States	7/8/13
Brian Vanover	Rushville	Indiana	46173	United States	7/8/13
Amanda Jones	Greensburg	Indiana	47240	United States	7/8/13
Loni Best-Pollitt	connersville	Indiana	47331	United States	7/8/13
Fernando Bejarano			56121	Mexico	7/8/13
Brent Beaver	Connersville	Indiana	47331	United States	7/8/13
Kristy Barnes	Rushville	Indiana	46173	United States	7/8/13
Edoardo Baldini			27100	Italy	7/8/13
cheryl wise	Greenwood	Indiana	46143	United States	7/8/13
Nita Fields	Rushville	Indiana	46173	United States	7/8/13
janet loveless	Shelbyville	Indiana	46176	United States	7/8/13
Casey Forsyth	Rushville	Indiana	46173	United States	7/8/13
Bryan Monroe	Indianapolis	Indiana	46234	United States	7/8/13
Shanah Nichols	Rushville	Indiana	46173	United States	7/8/13
Mark Wells	Mechanicville	New York	12118	United States	7/8/13
Opal Bradford	Strawberry Plains	Tennessee	37871	United States	7/8/13
Casey Beisel	Greensburg	Indiana	47240	United States	7/8/13
Tracy Simpkins	Rushville	Indiana	46173	United States	7/8/13
ann thomas	Pittsburgh	Pennsylvania	1S23S	United States	7/8/13
Annemarie Cloud	Green Bay	Wisconsin	S4303	United States	7/8/13
susan lampione	burns	Oregon	97720	United States	7/8/13
Susana Mühlmann			1176	Argentina	7/8/13
Kristin Cooley	Cincinnati	Ohio	45231	United States	7/8/13
summer young	Manilla	Indiana	46150	United States	7/8/13
Brandon Jenkins	Rushville	Indiana	46173	United States	7/8/13
Aaron Reid	Indianapolis	Indiana	46217	United States	7/8/13
Shannon Sauerbry	Manchester	Iowa	52057	United States	7/8/13
Andrew Fuller	North Liberty	Iowa	52317	United States	7/8/13
Gina Martucci	Montreal		H1M 3C6	Canada	7/8/13
Craig Click	Indianapolis	Indiana	46237	United States	7/8/13
Leesa Alexander	Indianapolis	Indiana	46254	United States	7/8/13
gena elan	Indianapolis	Indiana	46280	United States	7/8/13

Amy Balting	Shelbyville	Indiana	46176	United States	7/8/13
Brittany Peters	Rushville	Indiana	46173	United States	7/8/13
Angela Pelkey	Orange city	Florida	32723	United States	7/8/13
Missy Bowles	Buffalo	West Virginia	25033	United States	7/8/13
casey beisel	Greensburg	Indiana	47240	United States	7/8/13
Amanda Tompkins	Shelbyville	Indiana	46176	United States	7/8/13
lindsey hensley	Rushville	Indiana	46173	United States	7/8/13
Shelvia Nelson	Mooresville	North Carolina	28117	United States	7/8/13
esther odriscoll	London			United Kingdom	7/8/13
chastity brown	Floyds Knobs	Indiana	47119	United States	7/8/13
patti drexler	cedar rapids	Iowa	52404	United States	7/8/13
Courtney Floyd	Ft. Wayne	Indiana	46814	United States	7/8/13
Carri Flannery	Rushville	Indiana	46173	United States	7/8/13
Elizabeth Kennedy	Rushville	Indiana	46173	United States	7/8/13
Janelle Brewer	Rushville	Indiana	46173	United States	7/8/13
Wendy Roberts	Chattanooga	Tennessee	37421	United States	7/8/13
maria gil-beroes	Caracas		1040	Venezuela, Bolivarian Republic of	7/8/13
Todd Snyder	San Francisco	California	94115	United States	7/8/13
Kimbriana Workman	Rushville	Indiana	46173	United States	7/8/13
Rebekah Mackey	Danville	Indiana	46122	United States	7/8/13
Linda Cropper	Lewisburg	Kentucky	42256	United States	7/8/13
Tracie Hacker	Sunman	Indiana	47041	United States	7/8/13
marguerite stewart	toledo	Ohio	43615	United States	7/8/13
Lydia Saccone			1623	Argentina	7/8/13
Danielle Mason	Channelview	Texas	77530	United States	7/8/13
Darlene Sullivan	Greensburg	Indiana	47240	United States	7/8/13
Janet Creason	New York	New York	11104	United States	7/8/13
Kenya Robbins	Rushville	Indiana	46173	United States	7/8/13
josh keeton	Florence	Kentucky	41042	United States	7/8/13
SHANNON MEEK	RUSHVILLE	Indiana	46173	United States	7/9/13
Kimberly Milan	palos hills	Illinois	60465	United States	7/9/13
Lori Hoop	Tinley Park	Illinois	60477	United States	7/9/13
Gisela Gil	Fairfield	Connecticut	6824	United States	7/9/13
Cristy McNamara	Cedar Rapids	Iowa	52402	United States	7/9/13
kathryn yeager	summit	New Jersey	7901	United States	7/9/13
Rebecca Matthias	Van Dyne	Wisconsin	54979	United States	7/9/13
keith bennett	new castle	Indiana	47362	United States	7/9/13
fernanda core			20132	Italy	7/9/13

Barbara Green	Indianapolis	Indiana	46228	United States	7/9/13
Jennifer Palmer	West Plains	Missouri	65775	United States	7/9/13
Karen Fultz	Rushville	Indiana	46173	United States	7/9/13
Christy Naylor (Donoghue)	Westport	Indiana	47283	United States	7/9/13
linda eller	chatta.	Tennessee	37419	United States	7/9/13
Dawn Hankins	Greensburg	Indiana	47240	United States	7/9/13
Linda Nagy	west lorne		n0l2p0	Canada	7/9/13
andrew raniowski	pierrefonds		h8y3l7	Canada	7/9/13
Brenda Bryant	rshville	Indiana	46173	United States	7/9/13
Roberta House	Andersonville	Tennessee	37705	United States	7/9/13
ANNE BISHOPP	shelbyville	Indiana	46176	United States	7/9/13
sandra mansavage	cass lake	Minnesota	56633	United States	7/9/13
Doris Sanders	Edinburgh	Indiana	46124	United States	7/9/13
Gina Gawienczuk	Lutz	Florida	33548	United States	7/9/13
Allana Edwards	Richmond Hill	Georgia	31324	United States	7/9/13
Mark Cain	Shelbyville	Indiana	46176	United States	7/9/13
Todd Reynolds	Greenfield	Indiana	46140	United States	7/9/13
Christine Case	Rushville	Indiana	46173	United States	7/9/13
Mary Ann Kauffman	Osterburg	Pennsylvania	16667	United States	7/9/13
Jayshree Chander	berkeley	California	94703	United States	7/9/13
Miguel Gil	Hollywood	Florida	33024	United States	7/9/13
Candice Heinz	Knoxville	Tennessee	37921	United States	7/9/13
Beth Silcox	Westfield	Indiana	46062	United States	7/9/13
Jenna Tackett	Ashland	Kentucky	41102	United States	7/9/13
Jane Hawley	Morristown	Indiana	46161	United States	7/9/13
Rossana Tepper			5073	Australia	7/9/13
Jeff Miller	Shelbyville	Indiana	46176	United States	7/9/13
Kathy Rankin	Greensbrg	Indiana	47240	United States	7/9/13
William Ziegler	Warren	Michigan	48092	United States	7/9/13
Brenda Short	Troy	Illinois	62294	United States	7/9/13
Myriah Markley	Rushville	Indiana	46173	United States	7/9/13
Carla Sharpe	Rushville	Indiana	46173	United States	7/9/13
chris faulconer	Shelbyville	Indiana	46176	United States	7/9/13
Janet Hicks	connersville	Indiana	47331	United States	7/9/13
Lynda Considine			5008	Australia	7/9/13
Sharon Dorsey	Buffalo	West Virginia	25033	United States	7/9/13
Angela Baker	indianapolis	Indiana	46227	United States	7/9/13
Dra. Elena Kahn			11560	Mexico	7/9/13
carla neuman	Rushville	Indiana	46173	United States	7/9/13
Jennifer Lyles-	Anderson	Indiana	46017	United States	7/9/13

Dishman					
michel sweet	Rushville	Indiana	46173	United States	7/9/13
Brenda Tillison	Connersville	Indiana	47331	United States	7/9/13
Laurie Meckes	Rushville	Indiana	46173	United States	7/9/13
Monica Frazier	shelbyville	Indiana	46173	United States	7/9/13
Joseph Shaw	Munising	Michigan	49862	United States	7/9/13
Heidi von Palleske	Cobourg		k9a3h4	Canada	7/9/13
Loretta Naylor	Bucthel	Ohio	45716	United States	7/9/13
beverly york	Auburn	Kentucky	42206	United States	7/9/13
Theresa A. Rzepka	Erie	Pennsylvania	16510	United States	7/9/13
stephanie dimett	Greensburg	Indiana	47240	United States	7/9/13
DEbbie Sellers	Norris	Tennessee	37828	United States	7/9/13
Carrie Graunke	Fishers	Indiana	46038	United States	7/9/13
Chontelle Hockenbery	Poolesville	Maryland	20837	United States	7/9/13
melany smith	Milroy	Indiana	46156	United States	7/9/13
vinnie thomas	Shelbyville	Indiana	46176	United States	7/9/13
Lisa Selby	Adamstown	Maryland	21710	United States	7/9/13
Ashley Gonzalez	Irving	Texas	75063	United States	7/9/13
Juli Drake	Troy	Michigan	48098	United States	7/9/13
joyce norvell	Milroy	Indiana	46156	United States	7/9/13
Angela Gammon	Indianapolis	Indiana	46235	United States	7/9/13
Patricia lauderdale	arlington	Indiana	46104	United States	7/9/13
marc macaluso	North Ridgeville	Ohio	44039	United States	7/9/13
Brooke Lawson	Franklin	Indiana	46131	United States	7/9/13
Gianpiero Zuliani	São Bernardo do Campo			Brazil	7/9/13
brandi caldwell	Rushville	Indiana	46173	United States	7/9/13
Sugio Furuya			1360071	Japan	7/9/13
Lenny Goldberg	Ashland	Oregon	97520	United States	7/9/13
Al Dewey	sarnia		n7 t4 w4	Canada	7/9/13
Becky Youngdale	Albany	Indiana	47320	United States	7/9/13
samantha glover	Rushville	Indiana	46173	United States	7/9/13
Regena Oliver	Knoxville	Tennessee	37938	United States	7/9/13
Susan Beaver	New Market	Virginia	22844	United States	7/9/13
billy swank	rushville	Indiana	46173	United States	7/9/13
carl glover jr	rushville	Indiana	46173	United States	7/9/13
bobbi bice	rushville	Indiana	46173	United States	7/9/13
Jennifer Bedel	Russellville	Kentucky	42276	United States	7/9/13
Jose Manuel Arias Rodriguez			86000	Mexico	7/9/13
mindy glover	rushville	Indiana	46173	United States	7/9/13
George Koerner	Sacramento	California	95822	United States	7/9/13
cara moran	rushville	Indiana	46173	United States	7/9/13

Darcy Hope	Beallsville	Maryland	20839	United States	7/9/13
Kathy Oberreuter	Ryan	Iowa	52330	United States	7/9/13
Whitney Boyer	Rushville	Indiana	46173	United States	7/9/13
Emily Kelchen	Manchester	Iowa	52057	United States	7/9/13
Sharri Wenger	Masonville	Iowa	50654	United States	7/9/13
Sandra Kinart	Sarnia		N7W 1B7	Canada	7/9/13
CeAnn McNamara	Austin	Texas	78748	United States	7/9/13
Morales Martha	San José			Costa Rica	7/9/13
Catherine Lewis	Hendersonville	Tennessee	37075	United States	7/9/13
joel shufro	Brooklyn	New York	11218	United States	7/9/13
Traci Chandler	Rushville	Indiana	46173	United States	7/9/13
Myra Bowles	Rushville	Indiana	46173	United States	7/9/13
Cathy Hankins	Greensburg	Indiana	47240	United States	7/9/13
Tamara Santiago	lewisburg	Kentucky	42256	United States	7/9/13
Luis Tuninetti			5900	Argentina	7/9/13
Kim Hunt	Burlington	Vermont	5408	United States	7/9/13
Lee Murphy	Powell	Tennessee	37849	United States	7/9/13
Jean Picone	Pittsburgh	Pennsylvania	15218	United States	7/9/13
Kelly Griffith	Rushville	Indiana	46173	United States	7/9/13
Andrea Spriggs	Shelbyville	Indiana	46176	United States	7/9/13
melissa hellyer	burlington	Vermont	5408	United States	7/9/13
Terry Smiley	San Antonio	Texas	78258	United States	7/9/13
Leah Nielsen	Lewiston	Utah	84320	United States	7/9/13
Susan Houston	Rushville	Indiana	46173	United States	7/9/13
melani ferrer	norfolk	Virginia	23504	United States	7/9/13
Amanda Paugh	Rushville	Indiana	46173	United States	7/9/13
Chris Laidley	Washington	District Of Columbia	20036	United States	7/9/13
Angela Schwier	Shelbyville	Indiana	46176	United States	7/9/13
Lawrence Gorman	Rushville	Indiana	46173	United States	7/9/13
Jennifer Isaac	Celina	Ohio	45822	United States	7/9/13
julia willis	cardiff		cf14 1dq	United Kingdom	7/9/13
Brian Mundy	Rushville	Indiana	46173	United States	7/9/13
Patrick Campbell	Hagerstown	Indiana	47346	United States	7/9/13
Leonard Seymour	Osgood	Indiana	47037	United States	7/9/13
Bennie Cameron	Rushville	Indiana	46173	United States	7/9/13
Casey Breese	Knightstown	Indiana	46148	United States	7/9/13
Rebecca Bedel-Dukes	Lewisburg	Kentucky	42256	United States	7/9/13
sadra norman	rushville	Indiana	46173	United States	7/9/13

Janice Wright	Greensburg	Indiana	47240	United States	7/9/13
Shannon funke	Manchester	Iowa	52057	United States	7/9/13
April Zunun	Rushville	Indiana	46173	United States	7/9/13
Amanda Bowhall	Wake Village	Texas	75501	United States	7/9/13
Jennifer Novek	Goodhue	Minnesota	55027	United States	7/9/13
Amanda hornaday	Rushville	Indiana	46173	United States	7/9/13
Terri Lombardi	Rosedale	Maryland	21237	United States	7/9/13
Bonita Moore	Fayette	Alabama	35555	United States	7/9/13
Sandy long	franklin	Kentucky	42134	United States	7/9/13
Carole Colca	Chino	California	91710	United States	7/9/13
Katie Bailey	Rosedale	Maryland	21237	United States	7/9/13
Robert Giiam	Clinton	Tennessee		United States	7/9/13
Roxie Pryor	Madisonville	Kentucky	42431	United States	7/9/13
Tina Melford	Westwego	Louisiana	70094	United States	7/9/13
janet hankins	Milroy	Indiana	46156	United States	7/9/13
Heather Von St James	Roseville	Minnesota	55113	United States	7/9/13
Angle Jones	Canyon Lake	California	92587	United States	7/9/13
Pam Heisler	Spearfish	South Dakota	57783	United States	7/9/13
tony asuncion	Baltimore	Maryland	21225	United States	7/9/13
Tiffany woods	Troy Mills	Iowa	52344	United States	7/9/13
Laura coelho	overland park	Kansas	66215	United States	7/9/13
Mohit Gupta			110068	India	7/9/13
Susan Tebbe	Rushville	Indiana	46173	United States	7/9/13
Amber Myers	New Castle	Indiana	47362	United States	7/9/13
Christine Livingston	Clay Center	Kansas	67432	United States	7/9/13
Adam Weber	Hood River	Oregon	97031	United States	7/9/13
Alexis Hernandez	Crofton	Maryland	21114	United States	7/9/13
Lindsey Volk	Crofton	Maryland	21114	United States	7/9/13
Emily Simmer	Scituate	Massachusetts	2066	United States	7/9/13
Julie Marlatt	Rushville	Indiana	46173	United States	7/9/13
Samantha Creach	Paola	Kansas	66071	United States	7/9/13
Sandra Estes	Worthington	Indiana	47471	United States	7/9/13
Lila Ellison	Lemmon	South Dakota	57638	United States	7/9/13
Andrew Hodson	Overland Park	Kansas	66212	United States	7/9/13
Latisha Meyer	Westport	Indiana	47283	United States	7/9/13
Jagdish Patel			390007	India	7/9/13
Kathy maiocco	Queensbury	New York	12804	United States	7/9/13
Tony Rich	Livonia	Michigan	48150	United States	7/9/13
Lisa LaFary	Milroy	Indiana	46156	United States	7/9/13
Consultoría Técnica Comunitaria AC			31290	Mexico	7/9/13
Yasiu Kruszynski	Chicago	Illinois	60613-	United States	7/9/13

			0011		
Jay Spencer			2640	Australia	7/9/13
Shelly Meadows	Springfield	Missouri	65803	United States	7/9/13
Laura Baker	St Louis	Missouri	63137	United States	7/9/13
Daniel Knapp	Overland Park	Kansas	66212	United States	7/9/13
Antoinette Bonsignore	Kirkland	Washington	98034	United States	7/9/13
Brenda Cowan	Simi Valley	California	93065	United States	7/9/13
Wilson Plain	Sarnia		N7T7H5	Canada	7/9/13
Margaret Sharkey	London, UK				7/9/13
Bob Stoker	London		SW1Y 5JH	United Kingdom	7/9/13
md catlin	Washington	District Of Columbia	20036	United States	7/9/13
Kat Burge			5000	Australia	7/9/13
Jayme Tunis	Whiteland	Indiana	46184	United States	7/9/13
Larissa Deuser	Chandler	Arizona	85286	United States	7/9/13
Tara Griffith	Shelbyville	Indiana	46176	United States	7/9/13
patty Duncan	Eureka	Missouri	63025	United States	7/9/13
Blaec Morgan	Rushville	Indiana	46173	United States	7/9/13
Jim teWaterNaude	Cape Town			South Africa	7/9/13
Jamie Bezdek	Lenexa	Kansas	66215	United States	7/9/13
Terry McIntosh	Johnstown	Pennsylvania	15905	United States	7/9/13
gail baggaley	derby		de22 4ju	United Kingdom	7/9/13
cavalli gianpaolo			15033	Italy	7/9/13
Jeff Crowe			7322	Australia	7/9/13
Edward miller	Rushville	Indiana	46173	United States	7/9/13
Ryan Darrow	Olathe	Kansas	66204	United States	7/9/13
Donita Davis	Rushville	Indiana	46173	United States	7/9/13
Shevin Hill	Arlington	Indiana	46104	United States	7/9/13
Karla Dell	Douglassville	Texas	75560	United States	7/9/13
Daniel López Marijuán			11011	Spain	7/9/13
Arturo Juarez Aguilar			6760	Mexico	7/9/13
Julie Clifford (Harr)	Rushville	Indiana	46173	United States	7/9/13
Joanne Gordon	Chesterfield			United Kingdom	7/9/13
Alejandro Moreno Sánchez			29400	Spain	7/9/13
Brandy McClaughry	Albany	Indiana	47320	United States	7/9/13
George Cantu	Austin	Texas	78746	United States	7/9/13
Ford Cruz	Crofton	Maryland	21114	United States	7/9/13
Debbie Porter	Greensburg	Indiana	47240	United States	7/9/13

Alexandra Williams	Glen Allen	Virginia	23059	United States	7/9/13
Jesús Pérez			28905	Spain	7/9/13
Kimberly Lombardi	Agawam	Massachusetts	1001	United States	7/9/13
Holly Harmon	Shelbyville	Indiana	46176	United States	7/9/13
Tom Laubenthal	Marietta	Georgia	30066	United States	7/9/13
Penny Keller	Manilla	Indiana	46150	United States	7/9/13
buffy maricle	nj	New Jersey	8512	United States	7/9/13
Carol Dorrough	Poolesville	Maryland	20837	United States	7/9/13
Marijo Peterman	Duncansville	Pennsylvania	16635	United States	7/9/13
Jasmin P	Austin	Texas	78753	United States	7/9/13
Deborah Ripberger	Glenwood	Indiana	46133	United States	7/9/13
Cathy Creech	Liberty	Indiana	47353	United States	7/9/13
Pam Peggs	Rushville	Indiana	46173	United States	7/9/13
Stacy Miller	IN - Indiana	Indiana	46173	United States	7/9/13
Kristin Sue	Fishers	Indiana	46038	United States	7/9/13
Pedro Belmonte			30001	Spain	7/9/13
Mark Hedrick	Glen Burnie	Maryland	21061	United States	7/9/13
Alexandra Thompson	Belfast			United Kingdom	7/9/13
Guillermo Foladori	Zacatecas			Mexico	7/9/13
David Tackett	Ashland	Kentucky	41102	United States	7/9/13
Tephanie Runge	Davenport	Iowa	52804	United States	7/9/13
Dixie Meyer	Rushville	Indiana	46173	United States	7/9/13
Lynn Spiro	Philadelphia	Pennsylvania	19128	United States	7/9/13
Ronda Tylka	Greensburg	Indiana	47240	United States	7/9/13
Penne Sims	Middleton	Tennessee	38052	United States	7/9/13
Bill Springman	Connersville	Indiana	47331	United States	7/9/13
Lauren Mahan	Indianapolis	Indiana	46227	United States	7/9/13
Roi Seoage Mouriño			36201	Spain	7/9/13
Tarah Yates	Lenexa	Kansas	66215	United States	7/9/13
Michael Dennen	Sagamore	Massachusetts	2561	United States	7/9/13
Ricardo Coelho	Lenexa	Kansas	66215	United States	7/9/13
Hilary Miller	Farmington	Pennsylvania	15437	United States	7/9/13
Nicole McElligott	Coggon	Iowa	52218	United States	7/9/13
Jenny Woods	Ryan	Iowa	52330	United States	7/9/13
Leandro del Moral Ituarte			41003	Spain	7/9/13
Marianne Volk	Munhall	Pennsylvania	15120	United States	7/9/13
Elizabeth Poland	Kansas City	Missouri	64118	United States	7/9/13
Carolyn Ewens	Shawnee	Kansas	66203	United States	7/9/13
Anthony Manzi	Berlin	Connecticut	6037	United States	7/9/13
Cindy Newkirk	Falmouth	Indiana	46127	United States	7/9/13
Ryan Grinstead	Greenwood	Indiana	46143	United States	7/9/13

Stefanie Phillips	Fishers	Indiana	46037	United States	7/9/13
Jeffer Castelo Branco	Santos		1107S-220	Brazil	7/9/13
Helen DeRito	Berlin	Connecticut	6037	United States	7/9/13
Melissa Holder	La Vergne	Tennessee	37086	United States	7/9/13
Angela Macedo	Wellesley	Massachusetts	2482	United States	7/9/13
Janice Couch	Olathe	Kansas	66061	United States	7/9/13
Janet Bolan	New Albany	Indiana	47150	United States	7/9/13
Megan Chandler	Rushville	Indiana	46173	United States	7/9/13
Pamela LaChance	Plainville	Connecticut	6062	United States	7/9/13
Amy Montague	Prairie Village	Kansas	66208	United States	7/9/13
Dave DeMichele	Wethersfield	Connecticut	6109	United States	7/9/13
Margaret Nichols	Lebanon	New Hampshire	3766	United States	7/9/13
Natalia Rodriguez	Bogot			Colombia	7/9/13
Tonya Bowen	St. Paul	Indiana	47272	United States	7/9/13
Melinda Kulpinski	Greensburg	Indiana	47240	United States	7/9/13
Leslie Mastin	Indianapolis	Indiana	46205	United States	7/9/13
Mary Langley	Knightstown	Indiana	46148	United States	7/9/13
FERNANDA GIANNASI	São Paulo		01050-000	Brazil	7/9/13
leah heinauer	Overland Park	Kansas	66213	United States	7/9/13
Vickie COLLYER	Lisle	Illinois	60532	United States	7/9/13
Mary Stites	McCordsville	Indiana	46055	United States	7/9/13
Kelly Schmidt	Overland Park	Kansas	66221	United States	7/9/13
Lisa Holloman	Rushville	Indiana	46173	United States	7/9/13
Cheri Haskett	Olathe	Kansas	66062	United States	7/9/13
Patti Cameron Tremper	King George	Virginia	22485	United States	7/9/13
Carissa Williams	Rushville	Indiana	46173	United States	7/9/13
Linae Smith	Marion	Iowa	52302	United States	7/9/13
David Roberts	Fulton	Missouri	65251	United States	7/9/13
Mindy Kuhn	Rushville	Indiana	46173	United States	7/9/13
Krystal Darrow	Olathe	Kansas	66062	United States	7/9/13
Shannon Hornsby	Rushville	Indiana	46173	United States	7/9/13
Jesus Ardila	Bogota		110911	Colombia	7/9/13
Shannon Thurman	Knoxville	Tennessee	37918	United States	7/9/13
April Ehrler	Greeley	Iowa	52050	United States	7/9/13
Stephanie Rice	Shelbyville	Indiana	46176	United States	7/9/13
valerie brazzell	Greensburg	Indiana	47240	United States	7/9/13
Peg McNamara	Ryan	Iowa	52330	United States	7/9/13
Vicky LeVasseur	Saint Paul	Minnesota	55106	United States	7/9/13

Lisa Marois	brooklyn	Connecticut	6234	United States	7/9/13
Kellie Rollins	Altoona	Iowa	50009	United States	7/9/13
Brenda Stamper	Lakeside	Montana	59922	United States	7/9/13
Luke Cantu	Carrollton	Texas	75006	United States	7/9/13
Luis Garcia	Alajuela			Costa Rica	7/9/13
Rafael Contreras	Cali			Colombia	7/9/13
Lori Minor	Kalona	Iowa	52247	United States	7/9/13
susan wilson	overland Park	Kansas	66221	United States	7/9/13
Amy Whetstine	Franklin	Indiana	46231	United States	7/9/13
carol robinson	dunbar	West Virginia	25064	United States	7/9/13
Stacy House	Greensburg	Indiana	47240	United States	7/9/13
Aaron Gilliam	glenwood	Indiana	46133	United States	7/9/13
Heather Branson	Shelbyville	Indiana	46176	United States	7/9/13
david bedel	Auburn	Kentucky	42206	United States	7/9/13
Heather Coelho	Lenexa	Kansas	66215	United States	7/9/13
Jamie Coles	Pasadena	Maryland	21122	United States	7/9/13
Mary Gilbertson	Mesa	Arizona	85201	United States	7/9/13
Alicia Hirsch	prairie Village	Kansas	66208	United States	7/9/13
Robin Bartlett	Olathe	Kansas	66061	United States	7/9/13
Doug Turner	Richmond	Indiana	47374	United States	7/9/13
BELENICE BARBOSA SANTOS	SÃO PAULO, BRASIL		5417020	Brazil	7/9/13
David C.	Sacramento	California	95825	United States	7/9/13
Julie Gregory	Annapolis	Maryland	21403	United States	7/9/13
Oscar Adan Herrera	Tegucigalpa			Honduras	7/9/13
Mariah MacKinney	Overland Park	Kansas	66212	United States	7/9/13
Donnie Hauk	Rushville	Indiana	46173	United States	7/9/13
John Bennett	Islington			United Kingdom	7/9/13
Cheryl Redmon	lenexa	Kansas	66216	United States	7/9/13
Charles Newbold	Rushville	Indiana	46173	United States	7/9/13
Mary Elizabeth Esposito	Bradford	Vermont	5033	United States	7/9/13
Rosemary Hiland	Little Canada	Minnesota	55117	United States	7/9/13
Diana Melchert	Arlington	Texas	76011	United States	7/9/13
Angel Carlson	Warren	Massachusetts	1083	United States	7/9/13
Danielle Clevenger	Rushville	Indiana	46173	United States	7/9/13
Danielle Ruegg	Boring	Oregon	97009	United States	7/9/13
Annessa Wilson	Jessup	Maryland	20794	United States	7/9/13
Melody Rice	Rushville	Indiana	46173	United States	7/9/13
Rosalba Altopiedi	Torino		10155	Italy	7/9/13
DIANA PAGE	NORWICH	Vermont	5055	United States	7/9/13

Billie Jean Falish	Millbury	Massachusetts	1527	United States	7/9/13
Alejandra Fernandez	San Jose			Costa Rica	7/9/13
KENDRA ARMEL	des moines	Iowa	50315	United States	7/9/13
lori strickland	myrtle beach	South Carolina	29588	United States	7/9/13
Debbie Johnson	Johns Creek	Georgia	30097	United States	7/9/13
Jackie Mullins	Glade Hill	Virginia	24092	United States	7/9/13
Cris Johnson	Rushville	Indiana	46173	United States	7/9/13
Meredith Beery	Overland Park	Kansas	66213	United States	7/9/13
Liza Martz	Rushville	Indiana	46173	United States	7/9/13
Joan Sauvageau	N. Grafton	Massachusetts	1536	United States	7/9/13
Melissa Williams	Huntsville	Alabama	35811	United States	7/9/13
John Caron	San Pedro	California	90274	United States	7/9/13
Andy Turner	Greenfield	Indiana	46140	United States	7/9/13
Martha Swango	Greensburg	Indiana	47240	United States	7/9/13
Bill Montgomery	Rushville	Indiana	46173	United States	7/9/13
Kelley Kirby	Marengo	Iowa	52301	United States	7/9/13
Hilda Palmer	Salford		m7 3pg	United Kingdom	7/9/13
Jessica Turner	Rushville	Indiana	46173	United States	7/9/13
carolyn black	Plymouth		Pl4 7PX	United Kingdom	7/9/13
Eric Linthicum	Washington	District Of Columbia	20017	United States	7/9/13
Kelly Firenze	Belmont	Massachusetts	2478	United States	7/9/13
jbeth holt	London			United Kingdom	7/9/13
John Richard Young	East Norriton Township, Norristown, Montgomery Co.	Pennsylvania	19401-1531	United States	7/9/13
Jackie Coulbeck	Mooretown		N0N 1M0	Canada	7/9/13
Heather Gettinger	Connersville	Indiana	47331	United States	7/9/13
Tonya mottau	danville	Indiana	46122	United States	7/9/13
Beverly Manzi	Kensington	Connecticut	6037	United States	7/9/13
Jennifer Goodman	Knoxville	Tennessee	37934	United States	7/9/13
Charlene Storey	Roselle Park	New Jersey	7204	United States	7/9/13
Kathy Bowen	Burnsville	Minnesota	55306	United States	7/9/13
James Volk	Ocean Pines	Maryland	21811	United States	7/9/13
Edward Laurson	Denver	Colorado	8023S	United States	7/9/13
Lauren Ross	Manchester		M20 6EU	United Kingdom	7/9/13

Alice Tolsma	Roselle Park	New Jersey	7204	United States	7/9/13
Joyce Stevens	Hueysville	Kentucky	41640	United States	7/9/13
Wilma Smith	Indianapolis	Indiana	46221	United States	7/9/13
CUAUHTEMOC ARTURO Juarez Perez			6760	Mexico	7/9/13
Melody Kaster	Rushville	Indiana	46173	United States	7/9/13
Stacy Cattran	Guelph		N1H 8K2	Canada	7/9/13
MARDEL KNIGHT	ROSEDALE	Maryland	21237	United States	7/9/13
Maranda Mullis	Rushville	Indiana	46173	United States	7/9/13
Cecilia Bianco			2000	Argentina	7/9/13
Judith Volk	ocean pines	Maryland	21811	United States	7/9/13
Patrizia Dinisi	Milano		20161	Italy	7/9/13
victor perez	Oxnard	California	93033	United States	7/9/13
mary zanger	Shelbyville	Indiana	46176	United States	7/9/13
Jodi Goldman	West Mifflin	Pennsylvania	15122	United States	7/9/13
Lilian Uber			2200	Argentina	7/9/13
Anda Bailey	San Diego	California	92101	United States	7/9/13
Anita Engle	New Castle	Indiana	47362	United States	7/9/13
DEBRA Farnsworth	Scottsdale	Arizona	85255	United States	7/9/13
Tina Gray	Maplewood	Minnesota	55119	United States	7/9/13
Janice Zagorski	Berlin	Connecticut	6037	United States	7/10/13
Anne Dygus	Kensington	Connecticut	6037	United States	7/10/13
Joyce Thompson	Rushville	Indiana	46173	United States	7/10/13
Barbara Denehy	Bristol	Connecticut	6010	United States	7/10/13
Pamela Kiniry	New Britain	Connecticut	6037	United States	7/10/13
Alice Gilliam	Clinton	Tennessee	37716	United States	7/10/13
Angie Barton	Rushville	Indiana	46173	United States	7/10/13
Bernadette Schreiner	Berlin	Connecticut	6037	United States	7/10/13
Margie Payne	Olathe	Kansas	66061	United States	7/10/13
Rick Carnicle	Manchester	Iowa	52057	United States	7/10/13
Irene Klingemann	Mauston	Wisconsin	53948	United States	7/10/13
Robin Sanzo	Kensington	Connecticut	6037	United States	7/10/13
Melissa Coleridge	Fort Worth	Texas	76109	United States	7/10/13
Catherine Benson	Tottenham		LoG 1W0	Canada	7/10/13
lisa gugliemini	bradenton	Florida	34205	United States	7/10/13
Meagan Jensen	Davis	California	95616	United States	7/10/13
Linda Guillot	Westwego	Louisiana	70094	United States	7/10/13
candi hatin	bradford	Vermont	5033	United States	7/10/13
Kristin Samuelson	Portland	Oregon	97229	United States	7/10/13
Christine VanderWal	Oakland	New Jersey	7436	United States	7/10/13

Christine Smith Oxford	Leesburg	Virginia	20176	United States	7/10/13
Michael Shaneyfelt	Birmingham	Alabama	35235-2115	United States	7/10/13
Kimberly Babin	Nashville	Tennessee	37211	United States	7/10/13
Marilyn Amento	Ambler	Pennsylvania	19002	United States	7/10/13
emily peterson	Lake Saint Louis	Missouri	63367	United States	7/10/13
Julie Key	Alma	Arkansas	72921	United States	7/10/13
Stephanie Byrd	Prattville	Alabama	36067	United States	7/10/13
Rachel Shaneyfelt	Trussville	Alabama	35173	United States	7/10/13
Cindy Burke	Cumming	Georgia	30041	United States	7/10/13
nick Matthews	Riva	Maryland	21140	United States	7/10/13
Joan Lichterman	Oakland	California	94609	United States	7/10/13
Sandra Vella	Springfield	Massachusetts	1108	United States	7/10/13
Margaret Sharkey	LONDON			United Kingdom	7/10/13
Dianna Pavey	Rushville	Indiana	46173	United States	7/10/13
Kerry Glass	Odenville	Alabama	35120	United States	7/10/13
Stephen Embry	Lyme	Connecticut	6371	United States	7/10/13
Christine Manzi	Berlin	Connecticut	6037	United States	7/10/13
Barbara Niedzwiecki	Kensington	Connecticut	6037	United States	7/10/13
silvana buján			7600	Argentina	7/10/13
Carlos Vicente			1727	Argentina	7/10/13
deanna griffey	booneville	Arkansas	72927	United States	7/10/13
catherine devitt	tiverton	Rhode Island	2878	United States	7/10/13
Alex Stokely	Zionsville	Indiana	46077	United States	7/10/13
Yasuyo Maeda			6650841	Japan	7/10/13
Melinda Hokey	Rushville	Indiana	46229	United States	7/10/13
Dan Somenauer	Southgate	Michigan	48195	United States	7/10/13
Jamie Miller	Berlin	Pennsylvania	15530	United States	7/10/13
Angel Llerena			9/1/71	Ecuador	7/10/13
Niccolò Bruna			10153	Italy	7/10/13
Jill Cagle	Pekin	Illinois	61554	United States	7/10/13
carla sharp	springville	Alabama	35146	United States	7/10/13
chris casebolt	Rushville	Indiana	46173	United States	7/10/13
Tracy Roe	Napoleon	Indiana	47034	United States	7/10/13
rebecca wilburn	mansfield	Ohio	44903	United States	7/10/13
SHIRLEY AMTHAUER	MOUNT VERNON	Iowa	S2314	United States	7/10/13
Bonnie walden	indianapolis	Indiana	46234	United States	7/10/13
Carole Neal	Indianapolis	Indiana	46220	United States	7/10/13

Annemarie Rossmell	Vero Beach	Florida	32962	United States	7/10/13
rachel roberts	Fairland	Indiana	46126	United States	7/10/13
Marisa Jacott			3020	Mexico	7/10/13
A L	Prairie Village	Kansas	66208	United States	7/10/13
Peggy Jones	Southaven	Mississippi	38671	United States	7/10/13
veronica odriozola			1602	Argentina	7/10/13
Denise Broadus	Magnolia	Kentucky	42757	United States	7/10/13
Jimmy Rodgers	Chattanooga	Tennessee	37402-2913	United States	7/10/13
Marie Reynolds	Coventry	Connecticut	6238	United States	7/10/13
Juana Junca			29010	Spain	7/10/13
Cathy Dalton	Grapevine	Texas	76051	United States	7/10/13
John Boulton	Indianapolis	Indiana	46221	United States	7/10/13
Laura M	Overland Park	Kansas	66212	United States	7/10/13
Mindy Hertzon	Fort Lauderdale	Florida	33312	United States	7/10/13
Janet Hayden	Odenville	Alabama	35210	United States	7/10/13
Carrie Martin	McKinney	Texas	75070	United States	7/10/13
Judy Tatro	Worcester	Massachusetts	1606	United States	7/10/13
Jane Meulink	Westmont	Illinois	60559	United States	7/10/13
Susan Mann	Decatur	Georgia	30030	United States	7/10/13
Anthony Bromley	Crest Hill	Illinois	60403	United States	7/10/13
Seth Isander Wahlberg			06 000	France	7/10/13
Karen Kenngott, RN, BSN. CCRN	Gowanda	New York	14070	United States	7/10/13
Aline Win	Rio de Janeiro			Brazil	7/11/13
Jordan Zevon	Los Angeles	California	90025	United States	7/11/13
Lisa Dixon	Fort Worth	Texas	76244	United States	7/11/13
Wendy Dean	Bristol	Connecticut	6010	United States	7/11/13
Brad Broussard	Baton Rouge	Louisiana	70808-5411	United States	7/11/13
Jim Gordon	Mineville		B2Z 1K2	Canada	7/11/13
Angie Shroyer	Bethelridge	Kentucky	42516	United States	7/11/13
Phil Thompson	Papillion	Nebraska	68046	United States	7/11/13
Chandra Abston	Shelbyville	Indiana	46176	United States	7/11/13
Valarie Dixon	Okemah	Oklahoma	74859	United States	7/11/13
Rhona Schwartz	Gaithersburg	Maryland	20878	United States	7/11/13
DIANNE BURKHART-KUNKEL	Pittsburgh	Pennsylvania	15236	United States	7/11/13
Amy Lyness	North Liberty	Iowa	52317	United States	7/11/13
Alex Messinger	burlington	Vermont	5408	United States	7/11/13

Jessica Blazina	Phoenix	Arizona	85029	United States	7/11/13
Robert Thames	Ormond Beach	Florida	32174	United States	7/11/13
Susan Hutson	columbus	Indiana	47201	United States	7/11/13
Markus Strobl	Rushville	Indiana	IN 46173	United States	7/11/13
fabian alvarez			980	Mexico	7/11/13
Erika Ferrell	shelbyville	Indiana	46176	United States	7/11/13
Jorge Bielsa			50007	Spain	7/11/13
Linda Allen	Rushville	Indiana	46173	United States	7/11/13
SALVADOR RUIZ			29009	Spain	7/11/13
Sebas Jimenez			51	Germany	7/11/13
Brenda Lara Markus	Guatemala			Guatemala	7/11/13
Paco Puche			29012	Spain	7/11/13
Shelley Gompers	Dayton	Ohio	45424	United States	7/11/13
Genezareth Miranda	Ciudad de México		15820	Mexico	7/11/13
Kelly Gerloff	Burleson	Texas	76028	United States	7/11/13
Charlene Strohmeyer	Goose Creek	South Carolina	29445	United States	7/11/13
Enrico Ferraris			16000	France	7/11/13
Jennifer Davsion	Lomita	California	90717	United States	7/11/13
Anne Davison	Redondo Beach	California	90277	United States	7/11/13
Jennifer Brown	Columbia Fls	Montana	S9912	United States	7/11/13
Carina Zuniga	San José			Costa Rica	7/11/13
Tina Jones-Monroy	Lakewood	California	90713	United States	7/11/13
Jil Vaughn	Kemah	Texas	77565	United States	7/11/13
Matthew Davison	Redondo Beach	California	90277	United States	7/11/13
natalie woodward	united kingdom				7/11/13
Eddie Wong	Chester	Maryland	21619	United States	7/11/13
Michael Laidley	Brooklyn	New York	11222	United States	7/11/13
Russell DiDona	Brooklyn	New York	11217	United States	7/11/13
Tabetha Jones	Lakewood	California	90713	United States	7/11/13
Sonia Carrasco	Gardena	California	90248	United States	7/11/13
Franklyn Dahzy	union city	New Jersey	7087	United States	7/11/13
Jemma Walker	Derby		De39lu	United Kingdom	7/11/13
LENA GRIFFITH	SAN PEDRO	California	90731	United States	7/11/13
Geralynn Loomis	Santa Rosa	California	95404	United States	7/11/13
Fred Victoria	Los Angeles	California	90731	United States	7/11/13
Minda Harrison	Carson	California	90745	United States	7/11/13
Teri Scroggins	Plano	Texas	75024	United States	7/11/13

Ruth Bridges	Derby		DE3 9GS	United Kingdom	7/11/13
zoe froget	Guatemala			Guatemala	7/11/13
Bernardo López-Acevedo	San Juan, Puerto Rico				7/11/13
Diana Vindas	St Mary		#31	Jamaica	7/12/13
Wendy Monroy Stavros	Lomita	California	90717	United States	7/12/13
Christopher Monroy	Long Beach	California	90815	United States	7/12/13
Amy Holt	Indianapolis	Indiana	46217	United States	7/12/13
Gary Stain	Lakewood	California	90713	United States	7/12/13
Cristina Perez			3020	Mexico	7/12/13
Jenna Stain	Seal Beach	California	90740	United States	7/12/13
Don Bunt	Rockford	Illinois	61114	United States	7/12/13
Erika Hidalgo	San Jose			Costa Rica	7/12/13
Elena Ferrarese			20142	Italy	7/12/13
Pam Boland	Grovetown	Georgia	30813	United States	7/12/13
ALVARO OLMOS	Cochabamba, Cochabamba, Bolivia				7/12/13
sherryann pardee	riverside	California	92503	United States	7/12/13
Brandon Manning	Shelbyville	Indiana	46176	United States	7/12/13
Angelica Valente	São Paulo			Brazil	7/12/13
Jody Dyerfox	Dallas	Texas	75214	United States	7/12/13
Brittany WIGGINGTON	Indianapolis	Indiana	46202	United States	7/12/13
lorraine garcia	Long Beach	California	90807	United States	7/12/13
matt davison	Lomita	California	90717	United States	7/12/13
Sarah Marchisin	Noblesville	Indiana	46062	United States	7/12/13
Deborah Carpe	East Brookfield	Massachusetts	1515	United States	7/12/13
Kelli Esposito	Lancaster	California	93534	United States	7/12/13
Susan gauthier	Denham Springs	Louisiana	70706	United States	7/13/13
Becky Borgerding	Fishers	Indiana	46037	United States	7/13/13
Renee Barlow	Indianapolis	Indiana	46203	United States	7/13/13
Marci Ping	Rushville	Indiana	46173	United States	7/14/13
Suzan Alparslan	Santa Monica	California	90403	United States	7/14/13
Deborah Schechter	Chicago	Illinois	60645	United States	7/14/13
Nancy Grocox	Columbus	Indiana	47201	United States	7/15/13
Elisha Skeen	Rushville	Indiana	46173	United States	7/15/13
Angela Shah	Indianapolis	Indiana	46268	United States	7/15/13
Linda Ingrid Lundgren	Elgin	Illinois	60123	United States	7/15/13
Amy Martin	Rushville	Indiana	46173	United States	7/15/13

michael riley	quincy	Massachusetts	2171	United States	7/15/13
Sharon S Bailey	Richardson	Texas	75081	United States	7/15/13
rhonda lawford	morris	Illinois	60450-7373	United States	7/15/13
john Rivera	cliffside Park	New Jersey	7010	United States	7/15/13
L. Glasner	New York	New York	10025-6515	United States	7/15/13
Britt Butler	Pittsburgh	Pennsylvania	15201	United States	7/15/13
marly Wexler	San Diego	California	92103	United States	7/15/13
PAUL Turner	Kingsport	Tennessee	37664	United States	7/15/13
Maureen Ogden	Davie	Florida	33325	United States	7/15/13
Samantha Viau	Lebanon	Connecticut	6249	United States	7/15/13
Rita Moran	Largo	Florida	33750	United States	7/15/13
Kathy Bentley	Baltimore	Maryland	21234	United States	7/15/13
Frank Louvis	Montclair	New Jersey	7043	United States	7/15/13
Jeri Zerr	SAINT PETERS	Missouri	63376	United States	7/15/13
Rachel Cowan	NY	New York	10001	United States	7/15/13
Kenneth Green	Somers	New York	10589-1802	United States	7/15/13
alaa mohammed	Palos Hills	Illinois	60465	United States	7/15/13
Walt Daniels	Mohegan Lake	New York	10547	United States	7/15/13
Steven Schroeder	Warren	Michigan	48092	United States	7/15/13
Tabatha S.	Warren	Michigan	48089	United States	7/15/13
V.S. Anderson	Candler	North Carolina	28715	United States	7/15/13
Kathryn Vitek	Oakland	Maryland	21550	United States	7/15/13
Heather Correa	Falmouth	Maine	4105	United States	7/15/13
roger wiesmeyer	nashville	Tennessee	37206	United States	7/15/13
K Holmdahl	Durango	Colorado	81301-3999	United States	7/15/13
Gloria Christal	Los Angeles	California	90024	United States	7/15/13
David Perkins	Wilkesboro	North Carolina	28697	United States	7/15/13
Pamela CURRAN	London	Michigan	N5W 2J2	United States	7/15/13
Stephanie Gardner	Ypsilanti	Michigan	48197	United States	7/15/13
Sara Lucinda Rohrs	Columbia	Missouri	65203	United States	7/15/13
Rod Hughes	Gainesville	Florida	32608	United States	7/15/13
Michele Shave	Newport News	Virginia	23608	United States	7/15/13
Paola Natale	Morganville	New Jersey	7751	United States	7/15/13
Beverly J Shatteen	Los Angeles	California	90020	United States	7/15/13
Deborah Baker	Brighton	Massachusetts	2135	United States	7/15/13
Brit Hying	Menomonie	Wisconsin	54751	United States	7/15/13
kat deyamert	Eclectic	Alabama	36024	United States	7/15/13

Philip Cheng	New York	New York	10038	United States	7/15/13
Elizabeth Grainger	Claremont	California	91711	United States	7/15/13
Jason Harris	Hartselle	Alabama	35640	United States	7/15/13
Richard Wilkins	Winter Park	Florida	32792	United States	7/15/13
Brenda Crowe	Nevada	Ohio	44849	United States	7/15/13
mary bost	hempstead, ny	Alabama	11550	United States	7/15/13
Sarah M	Shepherdstown	West Virginia	25443	United States	7/15/13
Anne Carpenter	Ann Arbor	Michigan	48105	United States	7/15/13
Joanne Wagner	Madison	Wisconsin	53711	United States	7/15/13
Roxanna Djifroudi	Davis	California	95618-7132	United States	7/15/13
Brian Buckely	Columbia	Maryland	21044	United States	7/15/13
Stephen VoPava	Long Beach	California	90853	United States	7/15/13
Douglas McCreadie	Wakefield	Rhode Island	2880	United States	7/15/13
Thomas Lee	Carrboro	North Carolina	27510	United States	7/15/13
wanda kelley	michigan city	Indiana	46360	United States	7/15/13
Kerri Magee	Rockville Centre	New York	11570	United States	7/15/13
Paul Horne	Boynton Beach	Florida	46217	United States	7/15/13
Erika Bales	Hillsborough	North Carolina	27278	United States	7/15/13
Tracy Fox	Gaylord	Michigan	49735	United States	7/15/13
E.S. SCHLOSS	NY	New York	10128-3768	United States	7/15/13
Kim Grondin	Springvale	Maine	4083	United States	7/15/13
Tim McNemar	Hesperia	California	92345	United States	7/15/13
Mary Jean Cunningham	Philadelphia	Pennsylvania	19129	United States	7/15/13
Muhammad Ali Abbasi	Ballerup	Alabama	2750	United States	7/15/13
Ramiz MacBale	West Linn	Oregon	97068	United States	7/15/13
Jon Powell	Chapel Hill	North Carolina	27514	United States	7/15/13
Louise Fishman	New York	New York	10011	United States	7/15/13
Natalie Agliata	Jacksonville	Florida	32256	United States	7/15/13
Matt Shand	Marietta	Georgia	30067	United States	7/15/13
Anna Engdahl	Hankins	New York	12741	United States	7/15/13
Michael VanScyoc	Lynnwood	Washington	98037	United States	7/15/13
Wynne Corson	Chicago	Illinois	60657-3221	United States	7/15/13
Sharon Chartier	Hammond	New York	13646	United States	7/15/13
Kimberly White	Oakland	California	94609	United States	7/15/13
Kelly Sutton	Anahiem	California	92804	United States	7/15/13
Debbie Nelson	Timonium	Maryland	21093	United States	7/15/13
Lisa Kasperski	branford	Connecticut	6405	United States	7/15/13

Chris Casper	Madison	Wisconsin	53719	United States	7/15/13
Bill Henry	Angola	New York	14006-9251	United States	7/15/13
JPatrick McClure	Santa Cruz	California	95060	United States	7/15/13
Elizabeth Katz	South Salem	New York	10590	United States	7/15/13
Janie Carey	Aiken	South Carolina	29803	United States	7/15/13
Ellen Hecht	Albany	California	94706	United States	7/15/13
Pam Scoville	Hewitt	New Jersey	7421	United States	7/15/13
michael bugbee	battle creek	Michigan	49017	United States	7/15/13
Timothy Shelley	Kennett Square	Pennsylvania	19348	United States	7/15/13
Frank Hill	North Hollywood	California	91601	United States	7/15/13
shanitka jones	Montgomery	Alabama	36105	United States	7/15/13
Mark Jenkins	Piscataway	New Jersey	08854-3410	United States	7/15/13
desiree milheiser	north babylon	New York	11703	United States	7/15/13
Dorothy Kethler	Ranchos de Taos	New Mexico	87557	United States	7/15/13
Linda Jones	Ontario	California	91762	United States	7/15/13
Cory Rahmberg	New Orleans	Louisiana	70117	United States	7/15/13
Gloria Picchetti	Chicago	Illinois	60657-5753	United States	7/15/13
Linda Boyle	Redding	California	96002	United States	7/15/13
Ellen Hall	Mount Prospect	Illinois	60056	United States	7/15/13
Deborah Love	Asheville	North Carolina	28806-9074	United States	7/15/13
Charlotte Grillot	New York	New York	10019	United States	7/15/13
Michael Klausing	Nitro	West Virginia	25143	United States	7/15/13
Dana Loew	Leominster	Massachusetts	1453	United States	7/15/13
Robin Lorentzen	Caldwell	Idaho	83607	United States	7/15/13
Linda Cross	Las Vegas	Nevada	89121	United States	7/15/13
Jennifer Byrnes	Minoa	New York	13116	United States	7/15/13
Eric Guimbellot	New Orleans	Louisiana	70123	United States	7/15/13
michael andrade	san jose	California	95138	United States	7/15/13
Dennis Ledden	Rancho Murieta	California	95683	United States	7/15/13
Elizabeth F.	Round Rock	Texas	78683	United States	7/15/13
Lesley Pleasant	Evansville	Indiana	47714	United States	7/15/13
Linda Sullivan	chicago	Illinois	60640	United States	7/15/13
Helen Hanna	Sacramento	California	95864	United States	7/15/13
A Burrows	Boulder	Colorado	80301	United States	7/15/13
Jackie Demarais	Granbury	Texas	76049	United States	7/15/13
Curtorim Union			403709	United States	7/15/13
Greg Collins	Coopersville	Michigan	49404	United States	7/15/13
Sally Benbasset	Cambridge	Massachusetts	2139	United States	7/15/13

Christina Bueno	Chicago	Illinois	60625	United States	7/15/13
Phil King	Redondo Beach	California	90287	United States	7/15/13
leslie caplan	tybee island	Georgia	31328	United States	7/15/13
Sharon Johnson	Osceola	Wisconsin	54020	United States	7/15/13
cheryl Scaccio	venice	California	90291	United States	7/15/13
Daniel Goldman	Huntington	New York	11743	United States	7/15/13
Dan Danziger	Garland	Texas	75044	United States	7/15/13
Julia Kim	Porter ranch	California	91326	United States	7/15/13
Amy Perez	Germantown	Maryland	20874	United States	7/15/13
David Stetler	Everett	Washington	98208	United States	7/15/13
Bruce Anderson	Jamestown	Pennsylvania	16134	United States	7/15/13
Jonelle Ringnalda	Saint Paul	Minnesota	55104	United States	7/15/13
Arthur Firth	Salisbury	North Carolina	28146-1586	United States	7/15/13
Joan Braun	Garfield Heights	Ohio	44125	United States	7/15/13
Daniel Lipson	New Paltz	New York	12561	United States	7/15/13
Alan bixler	Sandia Park	New Mexico	87047	United States	7/15/13
David Peebler	Montclair	New Jersey	7042	United States	7/15/13
Melissa Wise	Benbrook	Texas	76132	United States	7/15/13
Marija Kovacevic	Evanston	Illinois	60202	United States	7/15/13
Dan Miner	Northridge	California	91325	United States	7/15/13
Steve Schueth	Chicago	Illinois	60657-5545	United States	7/15/13
Don White	Houston	Texas	77096	United States	7/15/13
Tina Risley	Westfield	Indiana	46062	United States	7/15/13
Joan Weaver	Chatsworth	California	91311	United States	7/15/13
Karen von Clef	Strasburg	Pennsylvania	17579	United States	7/15/13
Debbie Nelson	Spring	Texas	77373	United States	7/15/13
Paul Campbell	Nashville	Tennessee	37206	United States	7/15/13
Holly Rollins	Smyrna	Georgia	30080	United States	7/15/13
James Kehoe	Windsor		N9B 2W9	Canada	7/15/13
Alice Corson	Locustville	Virginia	23404	United States	7/15/13
wendy russell	idaho falls	Idaho	83404	United States	7/15/13
Joyce DeLutis	Englewood	Florida	34223	United States	7/15/13
Phillip Bernhardt-House	Anacortes	Washington	98221	United States	7/15/13
Jan Lee Sproat	Scottsdale	Arizona	85254	United States	7/15/13
Joanna Gill	Sunnyvale	California	94087	United States	7/15/13
Robert Aiken	Sabillasville	Maryland	21780	United States	7/15/13
Linda Davis	Sparks	Nevada	89441	United States	7/15/13
Carol Collins	Dover	Delaware	19904	United States	7/15/13

jeff duflon	clermont	Florida	34712	United States	7/15/13
BOB ROLSKY	SUQUAMISH	Washington	98392	United States	7/15/13
Soretta Rodack	New York	New York	190003	United States	7/15/13
Steve Kugler	Flagstaff	Arizona	86001	United States	7/15/13
Emily Moore	Minneapolis	Minnesota	55409	United States	7/15/13
Holly Jorgensen	Ridgefield	Connecticut	6877	United States	7/15/13
Kim Cooke	Silver Spring	Maryland	20901	United States	7/15/13
Marlene Raitt	Libby	Montana	59923	United States	7/15/13
James Cook	Waterloo	Iowa	50702	United States	7/15/13
Sarah Cole	Santa Monica	California	90404	United States	7/15/13
Joy Chambers	Worcester	Massachusetts	1603	United States	7/15/13
Sarah Hafer	Sacramento	California	95864-2639	United States	7/15/13
Chip Henneman	Layton	Utah	84040	United States	7/15/13
Winnona Gaviglio	Laguna Hills	California	92653	United States	7/15/13
Bret Polish	Los Angeles	California	90034	United States	7/15/13
Deborah Duley	Mechanicsville	Maryland	20659	United States	7/15/13
Nancy Thompson	Buena Vista	Colorado	81211	United States	7/15/13
l sherwood	bham	Washington	98229	United States	7/15/13
Jaitee Pitts	Cedar City	Utah	84720	United States	7/15/13
b p	Voluntari	Iowa	77190	United States	7/15/13
Arthur Foster	Albany	New York	12202	United States	7/15/13
Michael von Sacher-Masoch	Everett	Washington	98206-5273	United States	7/15/13
Mary Khan	Austin	Texas	78704	United States	7/15/13
terry schreiber	millersburg	Pennsylvania	17061	United States	7/15/13
Jennifer Willis	San Francisco	California	94117	United States	7/15/13
Connie North	Takoma Park	Maryland	20912	United States	7/15/13
Scott Tedford	Spring Valley	California	91978	United States	7/15/13
Markie Remien	andover	New Jersey	7821	United States	7/15/13
Lisa Stone	Houston	Texas	77096	United States	7/15/13
Lisa Campeau-Fenzel	Sanford	North Carolina	27332	United States	7/15/13
K Lawson	Iowa City	Iowa	52240	United States	7/15/13
SPENCER ADAMS	LOS ANGELES	California	90034	United States	7/15/13
Ralph Zelman	Hightstown,	New Jersey	8520	United States	7/15/13
Deborah Lee Chill	Burbank	California	91506	United States	7/15/13
David Kessler	Phoenix	Arizona	85027	United States	7/15/13
Sharon Rodrigues	Fremont	California	94539	United States	7/15/13
corey fecher	marion	Indiana	46953	United States	7/15/13
Dawn Wilczek	Monee	Illinois	60449	United States	7/15/13
Horst Pfand	Port Orford	Oregon	97465	United States	7/15/13

Alexandra Corey	Buford	Georgia	30519	United States	7/15/13
Paul Ordway	Eugene	Oregon	97402	United States	7/15/13
Michael Pacholski34	Toledo	Ohio	43607	United States	7/15/13
Kirsten Larsen Mhoja	Copenhagen, DK	District Of Columbia	-	United States	7/15/13
Gloria Morotti	Bradenton	Florida	34205	United States	7/15/13
Rachael Martin	Beacon Falls	Connecticut	6403	United States	7/15/13
Caryn Cowin	South Pasadena	California	91030-3517	United States	7/15/13
Ralph Hitchcock	Berlin	Maryland	21811	United States	7/15/13
Stephanie Farkash	Aurora	Colorado	80014	United States	7/15/13
Christine Boles	Aptos	California	95003	United States	7/15/13
Maureen Barillaro	Somerville	Massachusetts	2143	United States	7/15/13
Richard Laubhan	Galena	Illinois	61036	United States	7/15/13
Leslie Kuch	Greenville	Texas	75401	United States	7/15/13
Sara J	fh	North Carolina	0	United States	7/15/13
María Niculescu	New York	New York	11373	United States	7/15/13
Linda McFadden	Gibsonia	Pennsylvania	15044	United States	7/15/13
Eric Ranvig	Acton	Massachusetts	1720	United States	7/15/13
Paul Armstrong	Frederick	Maryland	21701	United States	7/15/13
Graham Braun	Chicago	Illinois	60647	United States	7/15/13
Carl Oerke	River Edge	New Jersey	7661	United States	7/15/13
Caryn Graves	Berkeley	California	94702	United States	7/15/13
gina wiese	Minneapolis	Minnesota	55407	United States	7/15/13
Connor Williams	Grand rapids	Michigan	49503	United States	7/15/13
Sonya Sanford	Big Lake	Minnesota	55309	United States	7/15/13
Pegeen George	Norfolk	Virginia	23513	United States	7/15/13
Siobhan Grantham	Garland	Texas	75042	United States	7/15/13
Sandra Riggs	Clyde	North Carolina	28721	United States	7/15/13
Emily Sturiale	Baird	Texas	79504	United States	7/15/13
Ashley K	San Francisco	California	94122	United States	7/15/13
Morris Sandel	Austin	Texas	78702	United States	7/15/13
DEBRA CARTER	RUSHVILLE	Indiana	46173	United States	7/15/13
Eugene Labovitz	San Diego	California	92102	United States	7/15/13
Joy Barkley	Mount Airy	Maryland	21771	United States	7/15/13
phoebe wickliff	arlington	Indiana	46104	United States	7/15/13
Shannon Cowett	Chantilly	Virginia	20151	United States	7/15/13
Gabrielle Duszak	Philadelphia	Pennsylvania	19144	United States	7/15/13
Larry Baker	Camas	Washington	98607	United States	7/15/13
Lisa Pfeffer	Hayward	California	94542	United States	7/15/13
Christine Huston	Chester Springs	Pennsylvania	19425	United States	7/15/13

Robert Frey	Mamaroneck	New York	10543	United States	7/15/13
Ronald Broder	Kenmore	New York	14217	United States	7/15/13
Barbara K.	Niles	Michigan	49120	United States	7/15/13
Marie Colette Chevrier	North Gower		K0A 2T0	Canada	7/15/13
FRANN HEDGES	INDIANAPOLIS	Indiana	46217	United States	7/15/13
Kristen Goble	Danville	Illinois	61832	United States	7/15/13
Michael Tutt	Colorado Springs	Colorado	80909	United States	7/15/13
Richard Arrindell	Melbourne	Florida	32935	United States	7/15/13
Doug Nelson	Broomfield	Colorado	80020	United States	7/15/13
Carl Nylund	Grandview	Missouri	64030	United States	7/15/13
David Hurwitz	Randolph	Vermont	5060	United States	7/15/13
Latosha Cosby	Twin City	Georgia	30471	United States	7/15/13
Jamie Thomas	Sandston	Virginia	23150-2122	United States	7/15/13
Art Green	Ypsilanti	Michigan	48197	United States	7/15/13
George Slovinski	Anoka	Minnesota	55303	United States	7/15/13
Linda Jenkins	Madison	Wisconsin	53716	United States	7/15/13
Christine Ackerson, LMT CST	SLC	Utah	84107	United States	7/15/13
elizabeth custer	doylestown	Pennsylvania	18902	United States	7/15/13
Laurel Gardner	Cedar City	Utah	84720	United States	7/15/13
C. LaBrecque	SF	California	94114	United States	7/15/13
Hans Huang	San Francisco	California	94112	United States	7/15/13
ursula majoube	sablé sur sarthe		72300	France	7/15/13
robert cote	kankakee	Illinois	60901	United States	7/15/13
Jean Wiant	Philipsburg	Pennsylvania	16866	United States	7/15/13
Angela Shroyer	Orlando	Florida	32831	United States	7/15/13
Laura Dickey	Waldwick	New Jersey	7463	United States	7/15/13
Kristi McNaulty	Morrisville	Vermont	5661	United States	7/15/13
Casey Williams	Augusta	Georgia	30909	United States	7/15/13
Sarah Gallagher	Mountville	Pennsylvania	17554	United States	7/15/13
Wendy Burks	Huntington Park	California	90255	United States	7/15/13
Denise Steen-Scully	Redmond	Washington	98052	United States	7/15/13
Jennifer Direnzo	Elk Creek	Missouri	65464	United States	7/15/13
T C	Crest Hill	Illinois	60403	United States	7/15/13
Jeff Stark	Ft. Collins	Colorado	80524	United States	7/15/13
Donia Lilly	Kapaa	Hawaii	96746	United States	7/15/13
Ilan Sandberg	new york	New York	10028	United States	7/15/13
Dennis Huppertz	Clarkston	Michigan	48348	United States	7/15/13
Hilary Herron	Littleton	Colorado	80128	United States	7/15/13
LANNA Reed	Deer Park	Texas	77536	United States	7/15/13

Linda Faulhaber	New York	New York	10024	United States	7/15/13
CHris McGinn	NY	New York	10025	United States	7/15/13
jessica miller	miami	Florida	33173	United States	7/15/13
Saralyn Sarandis	Newark	New Jersey	7106	United States	7/15/13
Christine Sepulveda	Anaheim	California	92802-4778	United States	7/15/13
June Stepansky	Woodland Hills	California	91367	United States	7/15/13
Debbie Ellis	Waleska	Georgia	30183	United States	7/15/13
Mauria McClay	Portland	Oregon	97213	United States	7/15/13
Michael Gary	Bronx	New York	10463	United States	7/15/13
Linda Burke	Clearwater	Florida	33761	United States	7/15/13
Pamela Meier	Kanab	Utah	84741	United States	7/15/13
Juanita Dawson-Rhodes	South Salem	New York	10590	United States	7/15/13
bob stonebraker	n.hills	California	91343	United States	7/15/13
Martina Nelson	Spokane Valley	Washington	99216	United States	7/15/13
John Harvey	Lebanon	Pennsylvania	17046	United States	7/15/13
Jeannie Beach	Scottsdale	Arizona	85251	United States	7/15/13
Rhonda Thomas	Winnabow	North Carolina	28479	United States	7/15/13
mike witt	Fords	New Jersey	8863	United States	7/15/13
Thomas Rummel	Los Angeles	California	90046	United States	7/15/13
Sarah Dwyer	Granger	Indiana	46530	United States	7/15/13
Esther Lee	Braintree	Massachusetts	2184	United States	7/15/13
Vanessa Morgan	Portland	Oregon	97203	United States	7/15/13
vicki ginoli	springfield	Illinois	62703	United States	7/15/13
Cecilia Kraft	Bartlett	Tennessee	38134	United States	7/15/13
Reese Forbes	Saint Louis	Missouri	63108-2869	United States	7/15/13
Marjorie Miller	snellville	Georgia	30078	United States	7/15/13
Eric Hasselman	Mullica Hill	New Jersey	8062	United States	7/15/13
Erica Wills	Independence	Oregon	97351	United States	7/15/13
Eric Bottomly	Magdalena	New Mexico	87825	United States	7/15/13
Katherine Connor McKee	Shelby	North Carolina	28150	United States	7/15/13
Richard Brown	Syracuse	Utah	84075	United States	7/15/13
Ram Busanna	Lufkin	Texas	75904	United States	7/15/13
Ryan Bradley	Greenbelt	Maryland	20770	United States	7/15/13
Dolores Gokey	Prattsburgh	New York	14873-0173	United States	7/15/13
Anne Becker	Saratoga	California	95070	United States	7/15/13
Larry Wood	Las Vegas	Nevada	89131	United States	7/15/13
Mary Schulz	Glendale Hts.	Illinois	60139-	United States	7/15/13

			3325		
Monty Hall	San Diego	California	92128	United States	7/15/13
Jacob R. Raitt	Laurel	Maryland	20707	United States	7/15/13
Erica Bettwy	Springfield	Virginia	22153	United States	7/15/13
Darley Adare	Charlotte	North Carolina	28207	United States	7/15/13
Phyllis Herbert	Bradenton	Florida	34205	United States	7/15/13
Sharona Wollman	Kansas City	Missouri	64106	United States	7/15/13
M. Dan McKirnan	San Diego	California	92109	United States	7/15/13
Ken Lucas	Gibraltar	Kentucky	GX11 1AA	Gibraltar	7/15/13
John Moszyk	St Louis	Missouri	63129	United States	7/15/13
Guy Perkins	Reno	Nevada	89519	United States	7/15/13
Jim & Lee Blanford	Wyanet	Illinois	61379	United States	7/15/13
HEIDI RAMIREZ	LOS ANGELES	California	90037	United States	7/15/13
William Nusbaum	Saint Louis Park	Minnesota	55426	United States	7/15/13
kim Garren	huntington beach	California	92649	United States	7/15/13
gaile carr	mtshasta	California	96067	United States	7/15/13
paul rasmussen	san diego	California	92104	United States	7/15/13
Ann Stickel	Whitesboro	New York	13492	United States	7/15/13
Cori Simonsen	Honolulu	Hawaii	96826	United States	7/15/13
Julia Johnson	Columbus	Ohio	43221	United States	7/15/13
walter weissman	New York	New York	10014-2031	United States	7/15/13
Nancy Juskowich	Waynesburg	Pennsylvania	15370	United States	7/15/13
Savannah Gouvea	Eureka	California	95501	United States	7/15/13
Andrew Olsen	Culver City	California	90232	United States	7/15/13
Martin Hall	muskegon	Michigan	49441	United States	7/15/13
Brian Jones	Newport			United Kingdom	7/15/13
stephanie bass	PV	Arizona	86314	United States	7/15/13
Bill & Marilyn Voorhies	West Tremont	Maine	4612	United States	7/15/13
Gunhild Ellerbe	Stockton	California	95206	United States	7/15/13
Rachel Brazelton	Waynesburg	Pennsylvania	15370	United States	7/15/13
valarie elise stengle	san francisco	California	94127	United States	7/15/13
Rebekah Allen	Kings Mills	Ohio	45034	United States	7/15/13
Tammy Swoboda	Portland	Oregon	97206	United States	7/15/13
Josette Baysdell	Chantilly	Virginia	20152	United States	7/15/13
Karen Stickney	Lewiston	Maine	4240	United States	7/15/13
Carol Marsh	Brooklyn	New York	11215	United States	7/15/13
Edward Nattenberg	San Rafael	California	94901-1411	United States	7/15/13

Dallas Towns	Danville	California	94526	United States	7/15/13
Glenn Staub	White Plains	New York	10601	United States	7/15/13
Debra Farbo	Sparta	New Jersey	7871	United States	7/15/13
victoria katherine	Brawley	California	92227	United States	7/15/13
Wendy Oser	Berkeley	California	94702	United States	7/15/13
Dana Smoker	Vicksburg	Michigan	49097	United States	7/15/13
Robin Brown	Katy	Texas	77450	United States	7/15/13
Martha Mattes	Tulsa	Oklahoma	74114	United States	7/15/13
JEREMY SPENCER	PORTLAND	Oregon	97212	United States	7/15/13
Lori Bei Durst	Lakeport	California	95453	United States	7/15/13
carol jagiello	bloomingdale	New Jersey	07403-1426	United States	7/15/13
Louise Viegas	Sparta Township	New Jersey	7871	United States	7/15/13
SHARON FIEBEL	CLIFTON	New Jersey	7012	United States	7/15/13
Kylie Gallegos	Cottage Grove	Minnesota	55016	United States	7/15/13
Dagny SanMiguel	Sacramento	California	95814	United States	7/15/13
Lee Margulies	Stony Brook	New York	11790	United States	7/15/13
Matt Smiley	Manchester	Maryland	21102	United States	7/15/13
Kay Cargile	Maryville	Tennessee	37804	United States	7/15/13
William Sablove	Brookline	Massachusetts	2446	United States	7/15/13
ken price	bloomfield	New Jersey	7003	United States	7/15/13
Don Omer	The Sea Ranch	California	95497	United States	7/15/13
Marius Borca	King City	Oregon	97224	United States	7/15/13
Antonia Chianis	Blue Jay	California	92317	United States	7/15/13
Elizabeth Coley	Somerville	Massachusetts	2143	United States	7/15/13
Theresa O'toole	Shoreview	Minnesota	55126	United States	7/15/13
Bryan R Johnson	Marinette	Wisconsin	54143	United States	7/15/13
sraddha durand	bainbridge island	Washington	98110	United States	7/15/13
Alex Reverman	Bellevue	Washington	98005	United States	7/15/13
janet maker	los angeles	California	90024	United States	7/15/13
trish kendall	Gardner	Massachusetts	1440	United States	7/15/13
Kelly Arellanes	Bryant	Arkansas	72022	United States	7/15/13
Denise Brennan	Auburn Hills	Michigan	48326	United States	7/15/13
Joanna Kling	Urbana	Illinois	61801	United States	7/15/13
JACOB W JONES	Grantsville	Utah	84029-9576	United States	7/15/13
Judy Whitehouse	Phoenix	Arizona	85008	United States	7/15/13
Alisienda Guastella	Valencia	California	91354	United States	7/15/13
Christine M.C.Money	Long Valley	New Jersey	7853	United States	7/15/13
Sarah Haworth	Denver	Colorado	80237	United States	7/15/13
Georgia Terp	Clifton	New Jersey	7011	United States	7/15/13

James Zalba	East Lansing	Michigan	48823	United States	7/15/13
Donya Lucas	High Point	North Carolina	27265	United States	7/15/13
Heather Lipinski	Roslyn	New York	19001	United States	7/15/13
MARCO GETO	CHESTER	Vermont	5143	United States	7/15/13
Tonya McDuell	East Point	Georgia	30344	United States	7/15/13
Athena Batsios	Nassau	New York	12123	United States	7/15/13
Felicity Hohenshelt	Jacksonville	Florida	32246	United States	7/15/13
Deborah Bratcher	Lubbock	Texas	79414	United States	7/15/13
Taaliba Rich	Raleigh	North Carolina	27609	United States	7/15/13
Nicholas Dimitriadis	NY	New York	10022	United States	7/15/13
Jesse Hudson	Santee	South Carolina	29142	United States	7/15/13
Richard Booth	Grosse Ile Township	Michigan	48138	United States	7/15/13
Margery Coffey	Rosalie	Nebraska	68055	United States	7/15/13
Kathleen Fiebel	Succasunna	New Jersey	7876	United States	7/15/13
tammarra walden	mesa	Arizona	85201	United States	7/15/13
David Brodnax	Oak Park	Illinois	60302	United States	7/15/13
Nicole Maschke	Cleveland	Ohio	44102	United States	7/15/13
Tim Ulrey	Portland	Oregon	97202	United States	7/15/13
Rachelle Shively	Shelley	Idaho	83274-1155	United States	7/15/13
Randall Tutterow	Indianapolis	Indiana	46227	United States	7/15/13
Marilyn Carse	Ann Arbor	Michigan	48103	United States	7/15/13
Letitia Noel	Chicago	Illinois	60610	United States	7/15/13
Gale Green	Madison	Wisconsin	53703	United States	7/15/13
Erin Brandon	Mill Spring	North Carolina	28756	United States	7/15/13
Nina Kinnear	Plymouth	Minnesota	55442	United States	7/15/13
David Dennis	Charlottesville,	Virginia	22903	United States	7/15/13
Jonathan Spencer	Clinton Township	Michigan	48038	United States	7/15/13
Richard Seeger	Cheboygan	Michigan	49721	United States	7/15/13
Alexandra Rooney	North Grafton	Massachusetts	01536-1821	United States	7/15/13
Anna Marie Kinney	Clifton	New Jersey	7013	United States	7/15/13
Merrilyn Zimbelmann	Saint Peters	Missouri	63376	United States	7/15/13
David English	Tillamook	Oregon	97141	United States	7/15/13
David Ruzicka	Santa Monica	California	90406	United States	7/15/13
Alice Freeman	Clay Center	Kansas	67432-1807	United States	7/15/13
joan golembiewski	rutherford	New Jersey	7070	United States	7/15/13
caroline good	sherman Oaks	California	91423	United States	7/15/13
Samuel	Milwaukee	Wisconsin	53211	United States	7/15/13

Morningstar					
Paul Chang	Glassboro	New Jersey	8028	United States	7/15/13
Keith Turner	Cave Creek	Arizona	85331	United States	7/15/13
Suzanne Pena	Fullerton	California	92835	United States	7/15/13
Diane Fiebel	Hackettstown	New Jersey	7840	United States	7/15/13
carrie franklin	sammamish	Washington	98075	United States	7/15/13
Robert W. Lukos	Watertown	Connecticut	6795	United States	7/15/13
max mensing	grand prairie	Texas	75050	United States	7/15/13
Melissa Hinderman	San Rafael	California	94901	United States	7/15/13
Willis Strickland	Southern Pines	North Carolina	28387-6651	United States	7/15/13
don somsky	castle rock	Colorado	80108	United States	7/15/13
Joan Levin Sacks	Scottsdale,	Arizona	85260	United States	7/15/13
Casey Redman	Clackamas	Oregon	97015	United States	7/15/13
Jordan Roegner	Greenwood	Indiana	46142	United States	7/15/13
Jessica McGuire	Indianapolis	Indiana	46201	United States	7/15/13
Joseph Burkett	Cary	North Carolina	27513	United States	7/15/13
Felicia Dale	Snohomish	Washington	98290-2625	United States	7/15/13
stephanie hensley	Greenwood	Indiana	46143	United States	7/15/13
Emil Scheller	Fort Lee	New Jersey	7024	United States	7/15/13
Phillip J Crabill	Highland Village	Texas	75077	United States	7/15/13
Gordon Johnston	Portland	Oregon	97217	United States	7/15/13
sayeda fazel	simi valley	California	93065	United States	7/15/13
Jared Stain	Lakewood	California	90713	United States	7/15/13
Linda Adsit	Weedsport	New York	13166	United States	7/15/13
Barbara Bennigson	Palo Alto	California	94301	United States	7/15/13
Simone Bailey	San Francisco	California	94188	United States	7/15/13
Debbie McDowell	Iowa City	Iowa	52246	United States	7/15/13
Tammi Pinckard	Aledo	Texas	76008	United States	7/15/13
Dean Ratliff	Watertown	South Dakota	57201	United States	7/16/13
Pamela Iannacone	sparta	New Jersey	7871	United States	7/16/13
Brenda Peterson	Marrero,	Louisiana	70072	United States	7/16/13
Chanda Tucker	Oklahoma City	Oklahoma	73146	United States	7/16/13
Danny Grantham	Biloxi	Mississippi	39532	United States	7/16/13
Phyllis Erwin	Guilford	Vermont	05301-7174	United States	7/16/13
Dale Hendel	Youngstown	Ohio	44511	United States	7/16/13
Christopher Koslovsky	Huntington	New York	11743	United States	7/16/13
Velibor Santic	Pittsburgh	Pennsylvania	15212	United States	7/16/13

Ernie G	Guadalupe	California	93434	United States	7/16/13
Joshua Wallman	NY	New York	10009	United States	7/16/13
Patrick Kerwin	Goldendale	Washington	98620	United States	7/16/13
Yvette Taptico	Santa Fe	New Mexico	87506	United States	7/16/13
Laura Kupczyk	Gilbert	Arizona	85298	United States	7/16/13
Doreen Catuara	tinley park	Illinois	60487	United States	7/16/13
Stephen Johnson	San Diego	California	92117	United States	7/16/13
frank belcastro	dubuque	Iowa	52001	United States	7/16/13
Fran Clarida	Phoenix	Arizona	85044	United States	7/16/13
Mark Wrobel	Willowbrook	Illinois	60527	United States	7/16/13
Andrea Whitson	San Jose	California	95118	United States	7/16/13
Sandra Zylberman	Owings Mills	Maryland	21117	United States	7/16/13
Rhonda Bradley	Crossville	Tennessee	38555	United States	7/16/13
Shelly Wallman	New York	New York	10025	United States	7/16/13
Justin Graziano	New Port Richey	Florida	34653	United States	7/16/13
Kimberly Wiley	Rochester	New York	14612	United States	7/16/13
Kelley Steele	Greenfield	Indiana	46140	United States	7/16/13
Cathy Hampton	Washington	District Of Columbia	20003	United States	7/16/13
Douglas Larkin	Washington	District Of Columbia	20001	United States	7/16/13
David Mitchell Jr.	Worcester	Massachusetts	1604	United States	7/16/13
Keith Oline	Urbandale	Iowa	50322	United States	7/16/13
Devin Henry	Nichols	New York	13812	United States	7/16/13
Donald Basham	Cape Fear	North Carolina	28401-5209	United States	7/16/13
David Sherman	Santa Rosa	California	95405	United States	7/16/13
Dianora Niccolini	New York City	New York	10075	United States	7/16/13
Tripti Srivastava	Albuquerque	New Mexico	87108	United States	7/16/13
Cynthia Purcell	Entiat	Washington	98822	United States	7/16/13
Julie Unruh	Lawrence	Kansas	66046	United States	7/16/13
Ronnie Vincent	Gig Harbor	Washington	98335	United States	7/16/13
Rebecca Heath	Lakewood	Colorado	80465	United States	7/16/13
Michelle End-Alcabes	Fort Lee	New Jersey	7024	United States	7/16/13
Melody Lambert-Smith	Tacoma	Washington	98401	United States	7/16/13
Amy Lyness	Manchester	Iowa	52057	United States	7/16/13
Teresa Jaeger	Orlando	Florida	32824	United States	7/16/13
conor soraghan	san diego	California	92107	United States	7/16/13
Shaun Marie Levin	Redwood City	California	94065	United States	7/16/13
d estrada	oregon	Oregon	97402	United States	7/16/13

J S	New City	New York	10956	United States	7/16/13
Susan Blain	Gardner	Massachusetts	1440	United States	7/16/13
betty buchanan	bakersfield	California	93308	United States	7/16/13
Minnie Boothman	Libby	Montana	59923	United States	7/16/13
leo everett	madison	Wisconsin	53716	United States	7/16/13
Sarah Hartland	north providence	Rhode Island	2911	United States	7/16/13
MICHAEL TOOBERT	GRASS VALLEY	California	95945-5745	United States	7/16/13
Doncy Falvey	Colorado Springs	Colorado	80907	United States	7/16/13
John Crotty	Manchester	Missouri	63021	United States	7/16/13
Lani Hink	Vineburg	California	95487	United States	7/16/13
Ivor Schucking	Laguna Beach	California	92651	United States	7/16/13
Cherri Hardy	Upland	California	91786	United States	7/16/13
Caroline Darst	Somerville	Massachusetts	02144-2423	United States	7/16/13
Carroll Arkema	Pompton Lakes	New Jersey	7442	United States	7/16/13
David Grigsby	Wynne	Arkansas	72396	United States	7/16/13
Ben MacDonald	Mendon	Massachusetts	1756	United States	7/16/13
Peter Kraniotakis	Flushing	New York	11354	United States	7/16/13
Steven Pape	Wallingford	Connecticut	06492-6503	United States	7/16/13
Terrie Hall	Parker	Colorado	80138	United States	7/16/13
Mike Garcia	Redondo Beach	California	90278	United States	7/16/13
Jurate Stewart	Madison	Wisconsin	53705	United States	7/16/13
Kim Bigley	Houston	Texas	77009	United States	7/16/13
Andrew Kurzweil	Brooklyn	New York	11229	United States	7/16/13
Denise Jennings	Richmond	Indiana	47374	United States	7/16/13
Denise Jennings	Richmond	Indiana		United States	7/16/13
Chadwick Wright, M.D., Ph.D.	Lewis Center	Ohio	43035	United States	7/16/13
Tracy Rummler	Moses Lake	Washington	98837	United States	7/16/13
Rhonda Holt	Miamisburg	Ohio	45342	United States	7/16/13
Jennifer Truman	Spencer	Virginia	25276	United States	7/16/13
Riley Baird	Ardmore	Oklahoma	73401	United States	7/16/13
Jennifer Cline	Pittsburgh	Pennsylvania	15239	United States	7/16/13
Paul Sinacore	Tujunga	California	91042	United States	7/16/13
Michael W Evans	Los Angeles	California	90034	United States	7/16/13
Jeffrey Schmoyer	Waterloo	New York	13165	United States	7/16/13
Laurie Miner	Brattleboro	Vermont	5301	United States	7/16/13
Lauren Jennings	Stockton	California	995219	United States	7/16/13
Paul Zook	Cedar Park	Texas	78613	United States	7/16/13
Sharon Fetter	Puyallup	Washington	98371	United States	7/16/13

Wendy Shoup	Flint	Michigan	48507	United States	7/16/13
Erik Streeter	Salem	Massachusetts	1970	United States	7/16/13
Daniel Doran	Sault Sainte Marie	Michigan	49783	United States	7/16/13
Mary Barbosa	San Rafael	California		United States	7/16/13
Syreeta Batiste	Canoga Park	California	91304-2071	United States	7/16/13
Jonathan De Souza	London		N6K 1S1	Canada	7/16/13
Ashley Harris	Woodridge	New York	12789	United States	7/16/13
T. Bradley	Winston-Salem	North Carolina	27103	United States	7/16/13
Christianna Skoczek	Kittery Point	Maine	3905	United States	7/16/13
Marietta Gorman	Woodland Park	New Jersey	7424	United States	7/16/13
Kelli Sheftic	Murrells Inlet	South Carolina	29576	United States	7/16/13
Nina Aronoff	Jamaica Plain	Massachusetts	2130	United States	7/16/13
Gulbahar Donn	Bayside	New York	11360	United States	7/16/13
Karen Graham	Battle Creek	Michigan	49014	United States	7/16/13
Eva Bianchi	Oakland	California	94601	United States	7/16/13
Angie Gabriel	Miami	Florida	33174	United States	7/16/13
amanda levitt	hamden	Connecticut	6S17	United States	7/16/13
Christna Sanders	Bay City	Michigan	48708	United States	7/16/13
Phil Smith	Farmington	Michigan	48336	United States	7/16/13
Ray Mobley	Reston	Virginia	20191	United States	7/16/13
Kayla Sainato	Swampscott	Massachusetts	1907	United States	7/16/13
Douglas Waldroop	Landover	Maryland	20785	United States	7/16/13
Gabriela Lara	Bronx	New York	10460	United States	7/16/13
Paul Antony	silver spring	Maryland	20902	United States	7/16/13
olga hernandez-smith	clarksburg	Maryland	20871	United States	7/16/13
Curtis Hedges	Los Angeles	California	90042	United States	7/16/13
Bill Rosenthal	Colorado Springs	Colorado	80919	United States	7/16/13
Ryan Ricci	Annandale	Virginia	22003	United States	7/16/13
Johnny Ramirez	Peoria	Arizona	85382	United States	7/16/13
Lisa Snider	Quakertown	Pennsylvania	18951	United States	7/16/13
Margaret Silvers	Carrboro	North Carolina	27510	United States	7/16/13
Susan Ireland	Guilford	Connecticut	6437	United States	7/16/13
Nikki Bossert	North Fort Myers	Florida	33917	United States	7/16/13
Elite Wolf	Detroit	Michigan	10249	United States	7/16/13
Delores Hardin	Carrabelle,	Florida	32322	United States	7/16/13
Hans Krause	Houston	Texas	77036	United States	7/16/13
Erik Scott	Miami	Florida	33129	United States	7/16/13
steve gross	Amherst	Massachusetts	1002	United States	7/16/13
Alan Chesnutt	Chattanooga	Tennessee	37415	United States	7/16/13

Fela Richelle Eagan	NY	New York	10010	United States	7/16/13
Tamara Stanger	Glendale	Arizona	85303	United States	7/16/13
Laurel Facey	Millers Falls	Massachusetts	1349	United States	7/16/13
TJ Almerini	WG	Pennsylvania	19090	United States	7/16/13
JoAnn Diaferio	Mineola	New York	11501	United States	7/16/13
Amy Tupper	Morrisville	North Carolina	27560	United States	7/16/13
Daniel Alfafara	Warren	Michigan	48092	United States	7/16/13
Michele Cavey	Ellicott City	Maryland	21042	United States	7/16/13
Meg Kearns	Duluth	Minnesota	55803	United States	7/16/13
Nancy Soke	St. Louis	Missouri	63146	United States	7/16/13
Patrice Anita	L.A.	California	90034	United States	7/16/13
Rebecca Jacobsen	Portland	Oregon	97202	United States	7/16/13
Russell Skinner	Kimberly	Wisconsin	54136	United States	7/16/13
Susan Hathaway	Pico Rivera	California	90660	United States	7/16/13
barbara merrill	larkspur	California	94939	United States	7/16/13
Rich Giomundo	Odenton	Maryland	21113	United States	7/16/13
D S	Lecanto	Florida	34461	United States	7/16/13
Irena Calinescu	Los Angeles	California	90027	United States	7/16/13
Kira Flores	Orlando	Florida	32828	United States	7/16/13
Andreya Marks	Santa Barbara	California	93105	United States	7/16/13
shaahin bahmani	Gambrills	Maryland	21054-1770	United States	7/16/13
chris habgood	austin	Texas	78748	United States	7/16/13
Vicky Gray	la grande	Oregon	97850	United States	7/16/13
Sarah Person	jacksonville	North Carolina	28546	United States	7/16/13
Zoya Gesina	Minneapolis	Minnesota	55414	United States	7/16/13
Sami Signorino	Kokomo	Indiana	46902	United States	7/16/13
sally dorst	New York	New York	10023	United States	7/16/13
Cindy Marshall	Galveston	Texas	77551	United States	7/16/13
York Quillen	Knoxville	Tennessee	37923	United States	7/16/13
Nina Gregg	Washington	District Of Columbia	20009	United States	7/16/13
Barbara kepley	Graham	North Carolina	27253	United States	7/16/13
Donna Grossman	New York	New York	10011	United States	7/16/13
Pearl Schneider	Squires	Missouri	65755	United States	7/16/13
Denise Tomasini-joshi	Brooklyn	New York	11217	United States	7/16/13
Maria Teresa Martínez	Howell	New Jersey	7710	United States	7/16/13
Jeremy Botwinick	New York	New York	10023	United States	7/16/13
Velva Combs	Fairbanks	Alaska	99775	United States	7/16/13
Lisa Harrison	Brooklyn	New York	11209	United States	7/16/13

Samantha Latella	Rochester Hills	Michigan	48309	United States	7/16/13
Christian Hohensee	overland	Missouri	63043	United States	7/16/13
Bruce Eggum	Gresham	Wisconsin	54128-8979	United States	7/16/13
Jade Pitrucha	Baytown	Texas	77220	United States	7/16/13
Anne Curran	Sarasota	Florida	34231	United States	7/16/13
Shannon Gunter	Fallston	Maryland	21047	United States	7/16/13
Rachel Young	Grants Pass	Oregon	97527	United States	7/16/13
Avis Ogilvy	New Orleans	Louisiana	70118	United States	7/16/13
Gail Marcus	Denver	Colorado	80206	United States	7/16/13
sheila kilpatrick	virginia beach	Virginia	23454	United States	7/16/13
Meryl Pinque	Bangor	Maine	4401	United States	7/16/13
Kenneth Kroll	Port Saint Lucie	Florida	34987	United States	7/16/13
Allison Gritt	Coatesville	Pennsylvania	19320	United States	7/16/13
Kelsey Gibbons	Allentown	Pennsylvania	18104	United States	7/16/13
Jane Westlake	Center Barnstead	New Hampshire	3225	United States	7/16/13
Rita Webb	Shelton	Connecticut	6484	United States	7/16/13
Michael Ruddy	Royal Oak	Michigan	48067-1606	United States	7/16/13
Ruben Ayala	San Antonio	Texas	78261	United States	7/16/13
Gordon Rands	Macomb	Illinois	61455	United States	7/16/13
Ryan Webb	San Bernardino	California	92407	United States	7/16/13
Owen Gibbs	Westport	New York	12993	United States	7/16/13
Isaac Shamah	Nyack	New York	10960	United States	7/16/13
terri kelly	billings	Montana	59101	United States	7/16/13
Thierry Bonneville	Belfast	Maine	4915	United States	7/16/13
Ron Flesher	Reno	Nevada	89503	United States	7/16/13
tricia minter	ridgeway	Virginia	4148	United States	7/16/13
Brian Bourg	Pleasanton	California	94566	United States	7/16/13
Zach Gardner	Milton	Georgia	30004	United States	7/16/13
Ricky Melot	Fitchburg	Massachusetts	1420	United States	7/16/13
Iván Dávila	Cidra	Puerto Rico	739	United States	7/16/13
susan skibell	chicago	Illinois	60610	United States	7/16/13
Esther Garvett	Miami	Florida	33186	United States	7/16/13
Holly McDuffie	Los Angeles	California	91606	United States	7/16/13
Amy Fives	Huntington	New York	11743	United States	7/16/13
Vince Cerutti	Ann Arbor	Michigan	48104	United States	7/16/13
Martita Echevarria	Kissimmee	Florida	34758-4115	United States	7/16/13
Margarita Vockell	austin	Texas	78739	United States	7/16/13
Susan Carter	Houston	Texas	77079	United States	7/16/13

Ed FitzGerald	Natchitoches	Louisiana	71457	United States	7/16/13
Martha Williams	Burlington	North Carolina	27215	United States	7/16/13
Renee Locks	Mill Valley	California	94941-4051	United States	7/16/13
Lorena Balint	ORLANDO	Florida	32826-5341	United States	7/16/13
Jennifer Gallagher	Dunmore	Pennsylvania	18509	United States	7/16/13
Yvette Bovey	Cypress	Texas	77433	United States	7/16/13
Ginger Geronimo	Birmingham	Alabama	35215	United States	7/16/13
Faith Vakil	Rockville	Maryland	20851	United States	7/16/13
Orlando Olmo	Lake Placid	Florida	33852	United States	7/16/13
Christine Barnes	Maplewood	Minnesota	55109	United States	7/16/13
Mary Slipher	Shakopee	Minnesota	55379	United States	7/16/13
Rita Falsetto	Aguilar	Colorado	81020	United States	7/16/13
Amanda Fogelberg	Tucson	Arizona	85719	United States	7/16/13
Jon Krueger	Jackson	Michigan	49201	United States	7/16/13
Mark Poynter	Corsicana	Texas	75109	United States	7/16/13
Suzanne Valencia	West Melbourne	Florida	32904	United States	7/16/13
Greg Koshak	Larsen	Wisconsin	54947	United States	7/16/13
devonna mathews	hercules	California	94547	United States	7/16/13
adelaide smith	pittsburgh	Pennsylvania	15213	United States	7/16/13
Joe Carrera	Layton	Utah	84041	United States	7/16/13
leslie korshak	Highland park	Illinois	60035	United States	7/16/13
Kylie Tessa	Naperville	Illinois	60564	United States	7/16/13
Gregory Ross	Oklahoma City	Oklahoma	73127-5235	United States	7/16/13
TOMMY BENJAMIN	CRYSTAL LAKE	Illinois	60014	United States	7/16/13
Kenneth Quilty	Charlotte	North Carolina	28269	United States	7/16/13
Susan Biby	Omaha	Nebraska	68114	United States	7/16/13
Alex Mazza	Grayslake	Illinois	60030	United States	7/16/13
Karen Raccio	Maple Grove	Minnesota	55311	United States	7/16/13
John Mahoney	Mechanicsburg	Pennsylvania	17050	United States	7/16/13
Billiejean Betzold	Winterset	Iowa	50273-1442	United States	7/16/13
Ben Thomas	Greensboro	North Carolina	27407	United States	7/16/13
Jason Resendes	raynham	Massachusetts	2767	United States	7/16/13
Sally Oesterling	Silver Spring	Maryland	20903	United States	7/16/13
Joe powell	Larchmont	New York	10538	United States	7/16/13
maria melo	lisbon	Federated States of Micronesia	1700	United States	7/16/13
john satterfield	centereach	New York	11720	United States	7/16/13

M Randolph	Los Angeles	California	90049	United States	7/16/13
Nicolette Pawlowski	Pittsburgh	Pennsylvania	15201	United States	7/16/13
Jenna Campana	West Hartford	Connecticut	6119	United States	7/16/13
David Vargas	Fort Wayne	Indiana	46805	United States	7/16/13
Xioramys Reyes	Coral Gables	Florida	33134	United States	7/16/13
reva james-frye	san francisco	California	94115	United States	7/16/13
Mike Long	Minneapolis	Minnesota	55417	United States	7/16/13
brian haden	little rock	Arkansas	72207	United States	7/16/13
Karen Wood	St. Paul	Minnesota	55102	United States	7/16/13
David Holoboff	Calgary		T2J 3T8	Canada	7/16/13
Amanda Woods	San Diego	California	92092	United States	7/16/13
Laurie Buckley	N. Hollywood	California	91602	United States	7/16/13
Katherine Gorell	Miami	Florida	33132	United States	7/16/13
Sheryl Peterson	Katy	Texas	77494	United States	7/16/13
William Weston	Chicago	Illinois	60641	United States	7/16/13
Meghan Olafson	Lochbuie	Colorado	80603	United States	7/16/13
Edward Cobo	Portland	Oregon	97205	United States	7/16/13
Kieran Ronayne	Chicago	Illinois	60640-3120	United States	7/16/13
Robert Castillo	Placentia	California	92870	United States	7/16/13
Ruth Weedman	Longview	Washington	98632	United States	7/16/13
Ricki Jones	Simi Valley	California	93063	United States	7/16/13
Charlene Berry	Clarksville	Tennessee	37040	United States	7/16/13
Andrew Bell	Minneapolis	Minnesota	55408-4151	United States	7/16/13
Tymoteusz Osiecki	Staten Island	New York	10314	United States	7/16/13
Evelyn Jordan	Panama City	Florida	32404	United States	7/16/13
Matt Haines	DRAPER	Utah	84020	United States	7/16/13
Jessica Booker	Garner	North Carolina	27529	United States	7/16/13
Pete Bennett	Three Rivers	Michigan	49093	United States	7/16/13
Jose Martin Giron Moreno	Brookfield	Connecticut	6804	United States	7/16/13
Nancy Weekley	Katy	Texas	77450	United States	7/16/13
gary lee	stockton	California	95206	United States	7/16/13
Christopher Kornmann	Bronx	New York	10469	United States	7/16/13
LaDawn Schneider	Fort Wayne	Indiana	46815	United States	7/16/13
Will Wheeler	Fallston	Maryland	21047	United States	7/16/13
Sharma Gaponoff	Grass Valley	California	95949	United States	7/16/13
Janet Liss	Long Beach	California	90808	United States	7/16/13
Michelle Martello	Baton Rouge	Louisiana	70816	United States	7/16/13

Robert Orr	Reston	Virginia	20190	United States	7/16/13
Kim Alarie	Rapid City	South Dakota	57701	United States	7/16/13
Rebecca Burmester	Raleigh	North Carolina	27615	United States	7/16/13
Lindsey Elton	Chicago	Illinois	60625	United States	7/16/13
Ginger Echols	Austin	Texas	78759	United States	7/16/13
Jennifer Johansen	Tacoma	Washington	98408	United States	7/16/13
Deborah Winsberg	Chandler	Arizona	85248	United States	7/16/13
Frank Heller	Duluth	Minnesota	55805	United States	7/16/13
Carla Gregg	Hueytown	Alabama	35023	United States	7/16/13
osvaldo franco	new york	New York	10025	United States	7/16/13
Barbara Bondurant	LaVerne	California	91750-3567	United States	7/16/13
Michael Bornfriend	Naperville	Illinois	60565	United States	7/16/13
Chuck Aragon	Livermore	California	94550	United States	7/16/13
Mark Goldfield	Brooklyn	New York	11238	United States	7/16/13
Mary Jacoby	Gilbert	Arizona	85233	United States	7/16/13
Sophia Romagnano	Mission Viejo	California	92691	United States	7/16/13
Natalie Jaime	Westminster	Colorado	80021	United States	7/16/13
Catherine Smith	Fredericksburg	Virginia	22407	United States	7/16/13
Barbara Kilikevich	Murrieta	California	92563	United States	7/16/13
L White	Neenah	Wisconsin	54956	United States	7/16/13
Alessandra Rafferty	Jersey City	New Jersey	7307	United States	7/16/13
Harut Minasian	West Nyack	New York	10994-1720	United States	7/16/13
Susan LaForsch	Hernando	Florida	34442	United States	7/16/13
gordon miller	waterbury	Vermont	5676	United States	7/16/13
Brenda Dickson	Florissant	Colorado	80816	United States	7/16/13
Laura P	Sonoma	California	95476	United States	7/16/13
Moor Lutz	Woodinville	Washington	98072	United States	7/16/13
Diane Argenzio	Carbondale	Colorado	81623	United States	7/16/13
Anne Wilhelms	Your Town	Wisconsin	Your ZIP Code	United States	7/16/13
Valerie Coleman	Germantown	Maryland	20876	United States	7/16/13
Darold Smith	Greenville	Texas	75402	United States	7/16/13
Sheila Hutchinson	Williamsburg	Virginia	23188	United States	7/16/13
Sharon Fortunak	Cottage Grove	Minnesota	55016	United States	7/16/13
Jaime Alvarez	Sacramento	California	95838	United States	7/16/13
Debra Myers	Wayland	New York	14572	United States	7/16/13
Barbara D'Emilio	Washington	District Of Columbia	20011	United States	7/16/13
Kathryn Grace	Ithaca	New York	14850	United States	7/16/13

Angie Guevara	Framingham	Massachusetts	1702	United States	7/16/13
Helen Joe	Ossining	New York	10562-2615	United States	7/16/13
Susan Pelakh	Cocoa Beach	Florida	32931	United States	7/16/13
tanya bailey	santa ana	California	92704	United States	7/16/13
Douglas McNeill	Greenbelt	Maryland	20770-0718	United States	7/16/13
Martin Bring	Bellingham	Washington	98225	United States	7/16/13
Hung NGUYEN	IRVINE	California	92604	United States	7/16/13
Jinny Pagle	Richmond	California	94805	United States	7/16/13
Luisa Patroni	Miami Beach	Florida	33141	United States	7/16/13
Steve Johnston	DeKalb	Illinois	60115	United States	7/16/13
Drea Noll	Halifax	Pennsylvania	17032	United States	7/16/13
denise szymanski	Cary	North Carolina	27518	United States	7/16/13
Don Brake	Holland	Michigan	49424	United States	7/16/13
sonja moskalik	Madison	Wisconsin	53703	United States	7/16/13
Joni Woods	Philadelphia	Pennsylvania	19147	United States	7/16/13
Penny Waterstone	Tucson	Arizona	85719	United States	7/16/13
Tim Toman	Westmont	Illinois	60559	United States	7/16/13
Jolie Misek	Wonder Lake	Illinois	60097	United States	7/16/13
Myra Scroggs	Springfield	Missouri	65807	United States	7/16/13
Yvonne Fisher Neal	Playa del Rey	California	90293	United States	7/16/13
Joan Stiehl	Portland	Oregon	97202	United States	7/16/13
Tamara Adams	Bothell	Washington	98011	United States	7/16/13
Kahla Fischer	Bothell	Washington	98011	United States	7/16/13
Kathleen O'Connor	Allentown	Pennsylvania	18104	United States	7/16/13
chris Lehman	Austin	Texas	78704-5936	United States	7/16/13
So Allen	Charlestown	Massachusetts	2129	United States	7/16/13
Judith Obermayer	Newton	Massachusetts	2465	United States	7/16/13
Lisa Montanus	Woodstock	New York	12498	United States	7/16/13
debra woods	manteca	California	95337	United States	7/16/13
Sandra Franz	Chicago	Illinois	60657	United States	7/16/13
Buffy Schwieger	Holladay	Utah	84117	United States	7/16/13
Christelle Raphael	glendale	California	92620	United States	7/16/13
william fiebel	succasunna	New Jersey	7876	United States	7/16/13
Marguerite Winkel	Spokane	Washington	99201	United States	7/16/13
Mike Harrington	Maplewood	Minnesota	55119	United States	7/16/13
Miguel Ruan	Long Beach	California	90815	United States	7/16/13
Laura Frame	Huntington	New York	11743	United States	7/16/13
tim nowlan	lakeside	California	92040	United States	7/16/13
David A. White	Bar Harbor	Maine	4609	United States	7/16/13

Teri Stewart	Pflugerville	Texas	78660	United States	7/16/13
Erick Adelmann	Portland	Oregon	97210	United States	7/16/13
Lawrence Germann	Longmont	Colorado	80503-8704	United States	7/16/13
Ed Sahagian-Allsopp	Milwaukee	Wisconsin	53208	United States	7/16/13
Dan Brook	San Jose	California	95192	United States	7/16/13
Carol Pawlak	Naperville	Illinois	60565	United States	7/16/13
Erika Carlo	Latham	New York	12110	United States	7/16/13
Claudine Beck	Siloam	North Carolina	27047	United States	7/16/13
virginia dionne	cranston	Rhode Island	2920	United States	7/16/13
Andi Van Gogh	Colorado Springs	Colorado	80915-5312	United States	7/16/13
Eileen Yellin	Phoenix	Arizona	85042	United States	7/16/13
Jesus Hernandez	St Helena	California	94574-1506	United States	7/16/13
Jenny Durand	Hermosa Beach	California	90254	United States	7/16/13
scott samuels	albany	California	94707	United States	7/16/13
Melissa Baldwin	Raleigh	North Carolina	27603	United States	7/16/13
Tina Egloff	Woods Hole	Massachusetts	2543	United States	7/16/13
Keith Koelling	Melbourne	Florida	32935	United States	7/16/13
Danielle Kolp	Beaverton	Oregon	97008	United States	7/16/13
Ingrid Femenias	Erie	Colorado	80516	United States	7/16/13
jonathan daley	Valley Village	California	91607	United States	7/16/13
Hunter Crawford	Vancouver	Washington	98685	United States	7/16/13
Justin Gall	San Diego	California	92102	United States	7/16/13
Sharon Landau	Indianapolis	Indiana	46234	United States	7/16/13
Raymond Desrochers	Fall River	Massachusetts	2721	United States	7/16/13
ignacio munoz	San Juan, Puerto Rico				7/16/13
SUSAN GRIBBON	Kailua	Hawaii	96734	United States	7/16/13
Gail McMullen	Los Angeles	California	90027-3722	United States	7/16/13
David Robson	Pawleys Island	South Carolina	29585	United States	7/16/13
John Hunter	Laguna Niguel	California	92677	United States	7/16/13
Katherine Doberne	Winnetka	California	91306	United States	7/16/13
Simon Levy	Los Angeles	California	90029	United States	7/16/13
jennifer eiffert	beaverton	Oregon	97005	United States	7/16/13
Keven Kaddi	Chicago	Illinois	60605	United States	7/16/13
Becky Coombs	Salt Lake City	Utah	83117	United States	7/16/13
Sonia Ness	Elk Grove Village	Illinois	60007-3418	United States	7/16/13

Jacob Clark	Grapevine	Texas	76051	United States	7/16/13
Patricia Chesnut	Fruita	Colorado	81521	United States	7/16/13
John Wadsworth	Portland	Oregon	97219-4811	United States	7/16/13
Jeffrey Leach	Flint	Michigan	48507	United States	7/16/13
Steven Benjamin	Rochester	New York	14607	United States	7/16/13
Robert Neda	St. Clair Shores	Michigan	48082	United States	7/16/13
Lili Byce	Atlanta	Georgia	31119	United States	7/16/13
Harriet Cavalli	Ocean Park	Washington	98640	United States	7/16/13
Donald Sirois	Fall River	Massachusetts	2723	United States	7/16/13
Maureen Parker	West Chester	Pennsylvania	19382	United States	7/16/13
Bill Hsu	San Francisco	California	94114	United States	7/16/13
Sharon Root	Marshall	Minnesota	56258	United States	7/16/13
Mariela Napolitano	East Norwich	New York	11732	United States	7/16/13
Janie Medrano	Harlingen	Texas	78550	United States	7/16/13
Iain Mackenzie	Washington	District Of Columbia	20001	United States	7/16/13
Dillon Lopatic	Middletown	Pennsylvania	17057	United States	7/16/13
erica regelin	knoxville	Tennessee	37921	United States	7/16/13
Virginia Téllez Rico			29160	Spain	7/16/13
SHIRLIE PERRY	jackson	New Hampshire	3846	United States	7/16/13
Anjelica Collins	San Antonio	Texas	78245	United States	7/16/13
ed sancious	Lihue	Hawaii	96766	United States	7/16/13
saizaun condon	costa mesa	California	92626	United States	7/16/13
John Fiebel	Hackettstown	New Jersey	7840	United States	7/16/13
Glen Anderson	Lacey	Washington	98503	United States	7/16/13
Kristyn MacPhail	Littleton	Colorado	80123	United States	7/16/13
Jean Williams	NORWOOD	Massachusetts	2062	United States	7/16/13
Grace Oh	Los Angeles	California	90026	United States	7/16/13
Jane Derbenwick	Bethlehem	Pennsylvania	18017	United States	7/16/13
tensy ciftdogan	arlington	Texas	76002	United States	7/16/13
heather sullivan	Spokane	Washington	99217	United States	7/16/13
Judith Gibson	Waynesville	North Carolina	28786	United States	7/16/13
Sandie Minasian	Porter Ranch	California	91326	United States	7/16/13
Jeanne Parzygnot	San Jose	California	95125	United States	7/16/13
Rukaiyah Abdullah	Torrance	California	90501	United States	7/16/13
Jane Ibur	St Louis	Missouri	63104	United States	7/16/13
Sandy Sibert	Winchester	Virginia	22603	United States	7/16/13
Chris Gatlin	Tulsa	Oklahoma	74136	United States	7/16/13
Sandra Manlove	Kent	Washington	98030	United States	7/16/13

Mindy Bloom	Columbia	Missouri	65202	United States	7/16/13
Jo Boies	Austin	Texas	78746	United States	7/16/13
Lesley Blocker	Nebraska City	Nebraska	68410	United States	7/16/13
Ellen Gold	Palo Alto	California	94306	United States	7/16/13
Christopher Wells	Bellingham	Washington	98225	United States	7/16/13
jeff zander	holiday	Florida	34691	United States	7/16/13
Dwight Allbee	Waverly	Iowa	50677	United States	7/16/13
Noel Moritz	San Leandro	California	94577	United States	7/16/13
Camillle Gilbert	Santa Barbara	California	93101	United States	7/16/13
Daniel Alexanyan	San Francisco	California	94117	United States	7/16/13
Scott Howe	Austin	Texas	78745	United States	7/16/13
Viki Andrews	Sammamish	Washington	98074	United States	7/16/13
Herbert C. Ziegler	Yucaipa	California	92399-4612	United States	7/16/13
Clay Adams	Batavia	New York	14020	United States	7/16/13
alison Harvey	old bridge	New Jersey	8857	United States	7/16/13
Bjarne Hill	Nashville	Tennessee	37209	United States	7/16/13
kathleen Malley-Morrison	Westwood	Massachusetts	2090	United States	7/16/13
Linda Leeser	Louisville	Kentucky	40204	United States	7/16/13
Annette Bau	Tempe	Arizona	85284	United States	7/16/13
Samantha Paull	Jacksonville	Florida	32207	United States	7/16/13
Terrance Shoemaker	Parker	Colorado	80134	United States	7/16/13
Michele Reynolds	Oak Park	Michigan	48237	United States	7/16/13
Brandon Musselman	West Hollywood	California	90069	United States	7/16/13
Warren R Keller	Clearwater	Florida	33756	United States	7/16/13
Heather Kaspar	Mountain Home	Arkansas	72653	United States	7/16/13
Kayleigh H.	Middleburg	Florida	32068	United States	7/16/13
Victoria Fedalizo	Chula Vista	California	91915	United States	7/16/13
Kelsea Snell	Kernersville	North Carolina	27284-9562	United States	7/16/13
Anne Salzer	Greenland	New Hampshire	3840	United States	7/16/13
Andre Gregoire	Vernon	Connecticut	6066	United States	7/16/13
K Davis	Altoona	Wisconsin	54720	United States	7/16/13
Edie Feiste	Covington	Indiana	47932	United States	7/16/13
Marian Krewson	Bellevue	Washington	98008	United States	7/16/13
Mona Motwani	San Francisco	California	94107	United States	7/16/13
tom boyle	round lake	Illinois	60073	United States	7/16/13
kristy turnage	wittmann	Arizona	85361	United States	7/16/13

Rachel Duda	Evanston	Illinois	60202	United States	7/16/13
David Hermanns	Staten Island	New York	10301	United States	7/16/13
Susan Brown	Lexington	Kentucky	40503	United States	7/16/13
Mary Ann Sowards	San Diego	California	92129-3023	United States	7/16/13
A M Frank	Snohomish	Washington	98296-6904	United States	7/16/13
Melinda Stone	Oakland	California	94611	United States	7/16/13
Rachael Oehler	Corvallis	Oregon	97333	United States	7/16/13
Martha Spencer	Brevard	North Carolina	28712	United States	7/16/13
Celso Rossy	San Juan	Puerto Rico	901	United States	7/16/13
christopher vichiola	torrington	Connecticut	6790	United States	7/16/13
Chelsea Kinsman		New York	10463	United States	7/16/13
George Matkovits	Eden Prairie	Minnesota	55347	United States	7/16/13
Alicia Jackson	Vallejo	California	94591	United States	7/16/13
Joan Nuno	South Gate	California	90280	United States	7/16/13
Nicholas Williams	Naples	Florida	34103	United States	7/16/13
Barbara Brisson	Ogdensburg	New York	13669	United States	7/16/13
ashley scott	durham	North Carolina	27702	United States	7/16/13
anna rita barron	central lake	Michigan	49622	United States	7/16/13
Franklin Wallace	Philadelphia	Pennsylvania	19146	United States	7/16/13
Kathleen Liermann	Portland	Oregon	97211	United States	7/16/13
Anna Lin-Campbell	San Francisco	California	94109	United States	7/16/13
Maddie Geller	ghf	Delaware	77643	United States	7/16/13
Dana Monroe	San Diego	California	92104	United States	7/16/13
eric weston	fort myers	Florida	33912	United States	7/16/13
Marjorie Boggs	Berryvile	Arkansas	72616	United States	7/16/13
Corinne Di Stephan	Jamaica	New York	11432	United States	7/16/13
Barbara Mauk	Hyampom	California	96046	United States	7/16/13
Barbara Abramowitz	Brooklyn	New York	11229	United States	7/16/13
Jared Polens	North Adams	Massachusetts	1247	United States	7/16/13
cherry Schilling	Hobe Sound	Florida	33455	United States	7/16/13
Jay Hall	West Hollywood	California	90046	United States	7/16/13
gwenn meltzer	ridley park	Pennsylvania	19094	United States	7/16/13
Loan Nguyen	Kentwood	Michigan	49508	United States	7/16/13
Barbara Diederichs	Poway	California	92064	United States	7/16/13
Meryl Friedman	Brooklyn	New York	11222	United States	7/16/13
Helen Rolfe	Norfolk	Virginia	23517	United States	7/16/13
Kerry V	San Francisco	California	94114	United States	7/16/13
James Fiebel	Succasunna	New Jersey	7876	United States	7/16/13
Jefff Guay	Chewelah	Washington	99109-	United States	7/16/13

			1281		
Catherine Loudis	San Anselmo	California	94960	United States	7/16/13
Mallory Evans	salem	Missouri	65560	United States	7/16/13
Cora Whitmore	Bangor	Maine	4401	United States	7/16/13
Andy Lynn	Douglasville	Georgia	30135-1108	United States	7/16/13
Kevin Curtin	Cedaredge	Colorado	81413	United States	7/16/13
Ruth Brighton	Bretnwood	New York	3833	United States	7/16/13
Irene Pérez Llorente			28043	Spain	7/16/13
TYRONE LEE	Ridgewood	New York	11385	United States	7/16/13
Whitney Tuthill-Preus	Minneapolis	Minnesota	55409	United States	7/16/13
Karen Hodges	Charlotte	North Carolina	28205	United States	7/16/13
Sandra Mcgettigan	Madison	Wisconsin	53704	United States	7/16/13
Howard Moore	San Diego	California	92115-3715	United States	7/16/13
Toni Ganshert	New Glarus	Wisconsin	53574	United States	7/16/13
Doug Fairbanks	Indianapolis	Indiana	46268	United States	7/16/13
mark potillo	granite city	Illinois	62040	United States	7/16/13
vannessa anderson	alexandria	Virginia	22309	United States	7/16/13
Vicki Beitseen			3053	United States	7/16/13
Will Bildsten	Minneapolis	Minnesota	55419	United States	7/16/13
L. A.	Medford	New York	11763	United States	7/16/13
Marla Espeseth	Chicago	Illinois	60618	United States	7/16/13
Melinda Burgess	Mission Hills	California	91345	United States	7/16/13
Edh Stanley	Sacramento	California	95823	United States	7/16/13
Troy Leutz	Jackson	Michigan	49202	United States	7/16/13
Jade Emerson	Rushville	Indiana	46173	United States	7/16/13
Marie Keung	Rockville	Maryland	20850	United States	7/16/13
Adriana Garcia	Pearland	Texas	77584	United States	7/16/13
Jannie Lauenroth	Pleasant Hill	California	94523	United States	7/16/13
Tim White	Effingboro	New Hampshire	3882	United States	7/16/13
Linda Behret	Viera	Florida	32955	United States	7/16/13
Ruth Thieme	Omaha	Nebraska	68134	United States	7/16/13
Karen Sadler	Freedom	Pennsylvania	15042	United States	7/16/13
Sarah Letnes	Chandler	Arizona	85286	United States	7/16/13
Christopher Obie	Orlando	Florida	32828	United States	7/16/13
Brandon Juhl	Lake Stevens	Washington	98258	United States	7/16/13
James Christian	Los Angeles	California	90025	United States	7/16/13
Richard Creswell	Lakewood	Colorado	80227-	United States	7/16/13

			3161		
Donna Bidgood	Park Hills	Missouri	63601-4277	United States	7/16/13
Earlon Sheaks	Scottsboro	Alabama	35768	United States	7/16/13
jennifer minish	tucson	Arizona	85710	United States	7/16/13
Elizabeth Ivy	Reston	Virginia	20191	United States	7/16/13
Julie Spickler	Menlo Park	California	9	United States	7/16/13
Debbie Proctor	Ojai	California	93023	United States	7/16/13
Ronald Womack	New Orleans	Louisiana	70115	United States	7/16/13
Greg Sells	Austin	Texas	78741-6942	United States	7/16/13
Rachel Wolf	Santa Cruz	California	95060	United States	7/16/13
Travis Edgar	WATERTOWN	South Dakota	57201	United States	7/16/13
daniella jackson	mount vernon	New York	10552	United States	7/17/13
Annette Ramos	Falls Church	Virginia	22042	United States	7/17/13
Deborah Spangler	Oakland	California	94619	United States	7/17/13
gwen buckingham	EVERETT	Washington	98203	United States	7/17/13
Phyllis Sladek	Santa Barbara	California	93107	United States	7/17/13
Sue Hildebrand	Terre Haute	Indiana	47803	United States	7/17/13
Helen Lovett	Orlando	Florida	32837	United States	7/17/13
Crystal Vance	knoxville	Tennessee	37920	United States	7/17/13
Candice Alexander	Memphis	Tennessee	38115-2723	United States	7/17/13
Ivan Fuentes	Orlando	Florida	32837	United States	7/17/13
Emily Sagovac	Wellington	Florida	33414	United States	7/17/13
Michele Taylor	Hoover	Alabama	35216	United States	7/17/13
Erik Schnabel	San Francisco	California	94103	United States	7/17/13
Julia Downer	Chambersburg	Pennsylvania	17202	United States	7/17/13
Marguerite Smith	Boston	Massachusetts	2148	United States	7/17/13
Rivka Dushoff	chesterfield	Missouri	63017	United States	7/17/13
Cathy Zimmerman	Hayward	Wisconsin	54843	United States	7/17/13
george walberg	fayetteville	West Virginia	25840	United States	7/17/13
Joan Budd	Pleasantville	New York	10570	United States	7/17/13
Patrick Dell'Italia	Selden	New York	11784	United States	7/17/13
Marc Laverdiere	Bellingham	Massachusetts	02019-1039	United States	7/17/13
Kari DeWitt	Rushville	Indiana	46173	United States	7/17/13
Douglas Monson	Medford	Oregon	97501	United States	7/17/13
les roberts	fresno	California	93704	United States	7/17/13
Janeth Mallory	Lewiston	Idaho	83501	United States	7/17/13
gloria czapnik	lakewood	Pennsylvania	18439	United States	7/17/13
D. Pologruto	Loxahatchee	Florida	33470-	United States	7/17/13

			4914		
CARLA DAVIS	CORTE MADERA	California	94925	United States	7/17/13
Andrew Johnson	Springfield	Missouri	65807	United States	7/17/13
Joy E Goldberg	Brooklyn	New York	11208	United States	7/17/13
Chad Kahl	Bloomington	Illinois	61701	United States	7/17/13
Ruth Bescript	Tucson	Arizona	85747	United States	7/17/13
Keisha Evans	East Palo Alto	California	94303	United States	7/17/13
NM Porter	Ypsilanti	Michigan	48197	United States	7/17/13
Bonnie Beavers	Chevy Chase	Maryland	20815	United States	7/17/13
Della Fernandez	Austin	Texas	78704	United States	7/17/13
peggy rodgers	haslett	Michigan	48840	United States	7/17/13
Gilda Fusilier	Sacramento	California	95831	United States	7/17/13
Bonita Hickman-Kamarad	Comstock	Nebraska	68828	United States	7/17/13
George S Cardillo	Washington	District Of Columbia	20011	United States	7/17/13
Mary Ann Ford	Oak Paark	Michigan	48237-3723	United States	7/17/13
Brandi Gray	Harves	Alabama	35749	United States	7/17/13
Steve Hibshman	Foster City	California	94404	United States	7/17/13
Deborah Stone	Austin	Texas	78766	United States	7/17/13
Katherine England	New York	New York	10023	United States	7/17/13
Michele Tanabe	Honolulu	Hawaii	96825	United States	7/17/13
Richard Brandes	Marina del Rey	California	90292	United States	7/17/13
Joyce Rollins	Bloomington	Minnesota	55431	United States	7/17/13
Marc Beschler	New York	New York	10022	United States	7/17/13
DeAnn Morris	Indianapolis	Indiana	46241	United States	7/17/13
Patricia Ramsey	Miami	Florida	33143	United States	7/17/13
Ronald Paige, MSG USA (Ret)	Lansing	Michigan	48911-1690	United States	7/17/13
Jae Liang	brooklyn	New York	11223	United States	7/17/13
Sosi Bocchieriyan	Centennial	Colorado	80015	United States	7/17/13
Donneen McKay	Burnsville	Minnesota	55337	United States	7/17/13
darrell rolstone	larkspur	California	94939	United States	7/17/13
marilyn denler	Hutchinson	Minnesota	55350	United States	7/17/13
Gladys Merced	Gurabo	Puerto Rico	778	United States	7/17/13
James W	janesville	Wisconsin	53548	United States	7/17/13
Andrea Ganz	Long Beach	California	90807	United States	7/17/13
Rachel D	Madison	Wisconsin	53703	United States	7/17/13
Jan Sanchez	Portage	Indiana	46368	United States	7/17/13
melinda mcafee	austin	Texas	78744	United States	7/17/13
Dona LaSchiava	Tucson	Arizona	85741	United States	7/17/13

August Scheer	Ardsley	New York	10S02	United States	7/17/13
James Bennett	Chandler	Arizona	8S226	United States	7/17/13
c dorg	St. Paul	Minnesota	55117	United States	7/17/13
Sundra Allen	Salt Lake City	Utah	84101-1822	United States	7/17/13
Jan Mosgofian	Sonoma	California	9S476	United States	7/17/13
Naomi Zarch	San Francisco	California	94117	United States	7/17/13
Stephanie Gomez	Penn Valley	California	95946	United States	7/17/13
Bruno Zacke			10249	Germany	7/17/13
Jessica Young	Rushville	Indiana	46173	United States	7/17/13
Sharon Sekura	Lackawanna	New York	14218	United States	7/17/13
Jill Petroski	Austin	Texas	78745	United States	7/17/13
Alexandre Kaluzhski	San Diego	California	92128	United States	7/17/13
Jerome Howard	Winfred	South Dakota	57076	United States	7/17/13
John Douglas	Santa Barbara	California	93118	United States	7/17/13
Natalie Hanson	Lansing	Michigan	48917	United States	7/17/13
Sam Hanson	Hudson	Wisconsin	54016	United States	7/17/13
Wayne Johnson	San Francisco	California	94114-2417	United States	7/17/13
Art Hanson	Lansing	Michigan	48917	United States	7/17/13
Clyde Holloway	Houston	Texas	77004-7202	United States	7/17/13
Isabella La Mar	San Jose	California	95132	United States	7/17/13
Rikje Maria Ruiter	Utrecht	California	A3515S	United States	7/17/13
Vivian Pons	Orem	Utah	84057	United States	7/17/13
Deserie del Valle-Medina	Aurora	Colorado	80013	United States	7/17/13
Chalene Mueller	HURRICANE	Utah	84737	United States	7/17/13
Linda Marcou	Amenia	New York	12501	United States	7/17/13
Denise Dardarian	L.A.	California	90046	United States	7/17/13
Catherine Horcasitas-Holcomb	The Colony	Texas	75056	United States	7/17/13
David Wiley	Minneapolis	Minnesota	55404	United States	7/17/13
Tony Menechella	Frankfort	Kentucky	40601	United States	7/17/13
TINA MINSTER	ROCHESTER	New York	14616	United States	7/17/13
Whitney Oliver	Morganton	North Carolina	28655	United States	7/17/13
Joan Cole	Staten Island	New York	10306	United States	7/17/13
Toby Lenihan	Stanfordville	New York	12581	United States	7/17/13
Mary Jo O'Connor	Coram	New York	``727	United States	7/17/13
Piper Honigmann	Chapel Hill	North Carolina	27517	United States	7/17/13

Debra Gakeler	Overland Park	Kansas	66210	United States	7/17/13
shirl bowman	Rulevo		81061	United States	7/17/13
Charisse Piros	Tulsa	Oklahoma	74136	United States	7/17/13
Mercedes Armillas	Brooklyn	New York	11215	United States	7/17/13
Reni Seidman	Ventura	California	93003	United States	7/17/13
Fay Bracken	Pisgah Forest	North Carolina	28768	United States	7/17/13
Christopher Rowley	Saint Louis	Missouri	63104	United States	7/17/13
Yanni Maniates	Morrisville	Pennsylvania	19067	United States	7/17/13
xdrop point	london				7/17/13
Joel Scott Strauss	Haverstraw	New York	10927	United States	7/17/13
James Brunton	Tampa	Florida	33612	United States	7/17/13
Ronald Garner	Bronx	New York	10468-4719	United States	7/17/13
caroline boston	bluffton	South Carolina	29910	United States	7/17/13
nancy peterson	tucson	Arizona	85735	United States	7/17/13
Chelsea Arne	Windham	Connecticut	6280	United States	7/17/13
Sarah Stewart	Trabuco Canyon	California	92679	United States	7/17/13
Urania Fuller Messing	Elmsford	New York	10523	United States	7/17/13
Renee Close	Cleveland	Ohio	44144	United States	7/17/13
Don Najita	Honolulu	Hawaii	96828	United States	7/17/13
Morgen LaCroix	Jericho	Vermont	5465	United States	7/17/13
Carmel Joseph-Burbano	Mount Holly	North Carolina	28120	United States	7/17/13
Karen Wright	Cedar	Texas	75104	United States	7/17/13
Michael Duffy	Staten Island	New York	10303	United States	7/17/13
Rahni Argo-Bryant	Helena	Alabama	35080	United States	7/17/13
mariela colon	Brooklyn	New York	11223	United States	7/17/13
Dawn Viazanko	MILFORD	Michigan	48381	United States	7/17/13
Jessie Casteel	Houston	Texas	77035	United States	7/17/13
Bridgett Hollowell	San Diego	California	91910	United States	7/17/13
lacey caraway	murphysboro	Illinois	62966	United States	7/17/13
Eileen Casey	Alsip	Illinois	60803	United States	7/17/13
Jessica George	college park	Maryland	20740	United States	7/17/13
Linda Parena	El Sobrante	California	94803	United States	7/17/13
Christopher Lish	Olema	California	94950	United States	7/17/13
Sheryl Warren	Williamsville	New York	14221	United States	7/17/13
Leon borsukiewicz	santa rosa	California	95401	United States	7/17/13
Celia Bolyard	Madison	Wisconsin	53705	United States	7/17/13
Nicole Gavrel Kotz	Chicago	Illinois	60660-3026	United States	7/17/13

Nicole Poore	San Antonio	Texas	78252	United States	7/17/13
Alisha Sauer	Omaha	Nebraska	68105	United States	7/17/13
Carolyn Phelps	Powell	Tennessee	37849	United States	7/17/13
Katherine Tarrant	Lake Stevens	Washington	98258	United States	7/17/13
JEFFREY ARTO	HOLLYWOOD	Florida	33020	United States	7/17/13
william dotson	anchorage	Alaska	99524	United States	7/17/13
Dianne Patrick	Marquette	Michigan	49855	United States	7/17/13
Roger Easson	St George	Utah	84770	United States	7/17/13
E D	Emerald Hills	California	94062-4053	United States	7/17/13
karen gordon	Rushville	Indiana	46173	United States	7/17/13
David Lewton	Phoenix	Arizona	85021	United States	7/17/13
john golding	oakland	California	94619	United States	7/17/13
Anne Marie Bonneau	Mountain View	California	94040	United States	7/18/13
Mary Stone	Oriental	North Carolina	28571	United States	7/18/13
John Michael Brennan	Dallas	Texas	75229	United States	7/18/13
Ann Horton	Farmington	Connecticut	6032	United States	7/18/13
Ann Sandritter	Old Bridge	New Jersey	8857	United States	7/18/13
Jason Fox	Camden	Tennessee	38320	United States	7/18/13
Mie Fukuda	San Francisco	California	94118	United States	7/18/13
Georgia Locker	Fort Collins	Colorado	80525	United States	7/18/13
Michelle Lai	Hacienda Heights	California	91745	United States	7/18/13
Marilyn Gunner	La Mesa	California	91944	United States	7/18/13
Carol Consolantis	Memphis	Tennessee	38104	United States	7/18/13
Wyatt Regan	Grand Forks	North Dakota	58201	United States	7/18/13
pauline fuit	Waikiki	Colorado	6169	United States	7/18/13
Elaine Fischer	Roanoke	Virginia	24018-2625	United States	7/18/13
Brooke Sparling	Ann Arbor	Michigan	48103-9770	United States	7/18/13
siria arteaga	modesto	California	95358	United States	7/18/13
Catherine Borsellino	San Clement	California	92672	United States	7/18/13
Sarah McKee	Amherst	Massachusetts	01002-2825	United States	7/18/13
anne roberts	melborne	Virgin Islands	3142	United States	7/18/13
Pete Hammill	Manitowoc	Wisconsin	54220	United States	7/18/13
Janelle Fox	Austin	Texas	78749	United States	7/18/13
Ron Sonesen Sonesen	Ocala	Florida	34481	United States	7/18/13

Diane Nino	Hollywood	Florida	33027	United States	7/18/13
Paul Gonzalez	Wilmington	California	90744	United States	7/18/13
Alex Dugan	Watertown	Massachusetts	2472	United States	7/18/13
Gary Overby	Madison	Wisconsin	53703-1530	United States	7/18/13
Layla Husain	Knoxville	Tennessee	37920	United States	7/18/13
Caitlyn Chrismore	Virginia Beach	Virginia	236464	United States	7/18/13
Mark Skaret	Riverton	Connecticut	6065	United States	7/18/13
Toni Tower	Fort Worth	Texas	76118	United States	7/18/13
Sylvia Latimer	Miami	Florida	33101	United States	7/18/13
Brian Henry	Fort Worth	Texas	76118	United States	7/18/13
Maureen Sheahan	Southfield	Michigan	48033-3520	United States	7/18/13
LaVerne Peterson	Boerne	Texas	78006	United States	7/18/13
KIMBERLY WALTON	SANTA ANA	California	92704	United States	7/18/13
Scott Burbridge	Takoma Park	Maryland	20912-4648	United States	7/18/13
Brian Harris	Wayne	Michigan	48184	United States	7/18/13
Mary Russell	Dover	Ohio	44622	United States	7/18/13
Robyne Hamme	Fresno	California	93726	United States	7/18/13
Emily Johnson	Omaha	Nebraska	68105	United States	7/18/13
sandra reeves	Houston	Texas	77006	United States	7/18/13
john toman	Bangor	Michigan	49013	United States	7/18/13
Carol Toman	Westmont	Illinois	60559	United States	7/18/13
jean buerckholtz	lemont	Illinois	60439	United States	7/18/13
Deborah Toman	Bangor	Michigan	49013	United States	7/18/13
philip lewis	LONDON		N80QD	United Kingdom	7/18/13
Terri Wood	St. Johnsville	New York	13452	United States	7/18/13
Steve Cook			4226	Australia	7/18/13
KATHIE DEFREHN	PHILADELPHIA	Pennsylvania	19132	United States	7/18/13
Tyler Hamway	Canoga Park	California	91303	United States	7/18/13
Lauren Samona	Orchard Lake Village	Michigan	48323	United States	7/18/13
JOANNA KELLEY	HAVERTOWN	Pennsylvania	19083	United States	7/18/13
Joanne DeFrehn	Philadelphia	Pennsylvania	19152	United States	7/18/13
Tee Guidotti	Washington	District Of Columbia	20009-1413	United States	7/18/13
Nadine Yousif	Orchard lake village	Michigan	48324	United States	7/18/13
Karen Hendershot	Columbus	Indiana	47203	United States	7/18/13
ellen Woodcock	Columbus	Indiana	47203	United States	7/18/13
Vanette Garmo	West Bloomfield	Michigan	48322	United States	7/19/13

	Township				
Kristin Woodcock	Columbus	Indiana	47203	United States	7/19/13
Lorraine fortino	Philadelphia	Pennsylvania	19147	United States	7/19/13
Richard Andrews	El Cajon	California	93019	United States Minor Outlying Islands	7/19/13
Jaime Simpson	Philadelphia	Pennsylvania	19114	United States	7/19/13
Gina Gantz	Philadelphia	Pennsylvania	19154	United States	7/19/13
Tonya Kiel	Columbus	Indiana	47203	United States	7/19/13
Carol Batch	Waterford	Connecticut	6385	United States	7/19/13
Elzabeth Devlin	Philadelphia	Pennsylvania	19154-2707	United States	7/19/13
Martha Schak	McHenry	Illinois	60050	United States	7/19/13
Michelle Bokaie	San Antonio	Texas	78250	United States	7/19/13
Alexandra Siegel	Ann Arbor	Michigan	48104	United States	7/19/13
Ashley Patros	Farmington Hills	Michigan	48331	United States	7/19/13
Paul Novak	Madison	Wisconsin	53711	United States	7/19/13
katie harding	longwood	Florida	32779	United States	7/19/13
Lisa Provencher	Lincoln	Rhode Island	2865	United States	7/19/13
Maria Dickmann	Davenport	Iowa	52806	United States	7/19/13
Kimberly Anne Halizak	Los Angeles	California	90068	United States	7/19/13
Arlene Komos	Woodstock	Illinois	60098	United States	7/19/13
Marilyn Brown	Matthews	North Carolina	28105	United States	7/19/13
charline ison	hope	Indiana	47246	United States	7/19/13
Adena Reeves	Columbus	Indiana	47201	United States	7/19/13
Debra Shamanow	Philadelphia	Pennsylvania	19154	United States	7/19/13
Grace Tedone	Bellerose	New York	11426	United States	7/19/13
Samantha Sullivan	olympia	Washington	98501	United States	7/19/13
mary bailey	Columbus	Indiana	47201	United States	7/19/13
melissa legere	Rushville	Indiana	46173	United States	7/19/13
Esther Rosenshein	Portland	Oregon	97220	United States	7/19/13
Komson Pirapatrungsuriya	Nonthaburi			Thailand	7/19/13
Linda Andersson	Medina	Washington	98039	United States	7/19/13
charin kajornchaikul	กรุงเทพมหานคร			Thailand	7/19/13
patti de leo	phila	Pennsylvania	19115	United States	7/19/13
john delicath	Washington	District Of Columbia	20017	United States	7/19/13
ryan mckenzie	apple valley	California	92307	United States	7/19/13

Kathleen Mullen	Toronto		M6P 3T5	Canada	7/19/13
Kathy Konik	Kimball	Michigan	48074	United States	7/19/13
Nessma Bashi	Ann Arbor	Michigan	48104	United States	7/19/13
Davina Yatoma	Farmington Hills	Michigan	48331	United States	7/19/13
Ellen Costa	San Diego	California	92131	United States	7/19/13
Diana Giacalone	St Peters	Missouri	63304	United States	7/19/13
Kara Remington	Knoxville	Tennessee	37920	United States	7/19/13
Emily Kinney	Portland	Oregon	97212	United States	7/19/13
Tobi Davis	Woodridge	Illinois	60517	United States	7/19/13
Carol Mitchell	Detroit Lakes	Minnesota	56501	United States	7/19/13
Sue Ballenger	Goldsboro	North Carolina	27530	United States	7/19/13
Luiz Eduardo Cheida	Londrina			Brazil	7/19/13
saraphine metis	grand marais	Minnesota	55604	United States	7/19/13
Tawnya Edwards	Deer Island	Oregon	97054	United States	7/19/13
Kim Hoover	Peru	Indiana	46970	United States	7/19/13
Dell Lutz	Clinton	Iowa	52732	United States	7/19/13
Mlke Large	Machester				7/19/13
RUTH ASHCRAFT	MENIFEE	California	92584	United States	7/19/13
Cindy Dumpprope	Monticello	Minnesota	55362	United States	7/19/13
susanne scheffler	Naples	Florida	34117	United States	7/19/13
JAMES LAUZON	PRAIRIE VIEW	Illinois	60069	United States	7/19/13
Joann Sunday	Peru	Indiana	46970	United States	7/19/13
Lechelle Cross	Bradford	Arkansas	72020	United States	7/19/13
Anna Ernst	Hyattsville	Maryland	20782	United States	7/19/13
Geoff Monse	Alvin	Texas	77511	United States	7/19/13
Christina Werner	edgewood	Maryland	21040	United States	7/19/13
Enrique Lopez	San juan	Puerto Rico	927	United States	7/19/13
megha arraj	leeds	Massachusetts	1053	United States	7/19/13
Anna M. Tippin	Philadelphia	Pennsylvania	19124	United States	7/19/13
Elizabeth Pavlick	Downingtown	Pennsylvania	19335	United States	7/19/13
martha eberle	dripping Springs	Texas	78620	United States	7/19/13
Jimmy Nguyen	Garden Grove	California	92840	United States	7/19/13
Julie Pursell	Springville	Indiana	47462	United States	7/19/13
Yvonne Davis	Keller	Texas	76248	United States	7/19/13
Irene Florian	Phila	Pennsylvania	19152	United States	7/19/13
Dameon Torrey	Atlanta	Georgia	30316	United States	7/19/13
Barry Stelling	sonoma	California	95476	United States	7/19/13
Paul Leisure	sun city	California	92586	United States	7/19/13
Michele Looby	Philadelphia	Pennsylvania	19135	United States	7/19/13
carol wood	newport beach	California	92663	United States	7/19/13

danielle mergen	Philadelphia	Pennsylvania	19116	United States	7/19/13
Dave Nash	Carlsbad	California	92011	United States	7/19/13
Alex Cole	Santa Barbara	California	93101	United States	7/19/13
John Sanders	San Francisco	California	94114	United States	7/19/13
Kari Rise	Carlsbad	California	92011	United States	7/19/13
Deana Snyder	North Lauderdale	Florida	3306	United States	7/19/13
Annette Marinkovic	Ypsilanti	Michigan	48197	United States	7/20/13
Angela Brust-Balogun	Troy	New York	12183	United States	7/20/13
PATRICIA TAYLOR	Philadelphia	Pennsylvania	19130	United States	7/20/13
christine coyle	philadelphia	Pennsylvania	19124	United States	7/20/13
karen figueira	makawao	Hawaii	96768	United States	7/20/13
jon gordon	n.y.	New York	11209	United States	7/20/13
caron kirschenbaum	palm city	Florida	34990	United States	7/20/13
JERRY WHEELER	BURIEN	Washington	98148	United States	7/20/13
Tonya Jackson	Columbus	Indiana	47201	United States	7/20/13
Al Prezkuta	Poughkeepsie	New York	12603	United States	7/20/13
Troy Schreiber	Millersburg	Pennsylvania	17061	United States	7/20/13
Dorothy Anderson	No Weymouth	Massachusetts	2191	United States	7/20/13
Susi Matthews	KANSAS CITY	Missouri	64134	United States	7/20/13
Wendy Dou	Abingdon	Virginia	24210	United States	7/20/13
Janet Nash	Lake Havasu	Arizona	86406	United States	7/20/13
Robert Carr	Leicester	North Carolina	28748	United States	7/20/13
SERVANDO PÉREZ-DOMÍNGUEZ			15782	Spain	7/20/13
sandra ferguson	carlsbad	California	92011	United States	7/20/13
Thomas Kruggel	Kissimmee	Florida	34759-3101	United States	7/20/13
Laura Miller	Beaver Falls	Pennsylvania	15010	United States	7/20/13
Ronni Taylor	Tiffin	Ohio	44883	United States	7/20/13
Evan O	St. Louis	Missouri	63116	United States	7/20/13
Maria Elena Hernandez	Los Angeles	California	90048	United States	7/20/13
Glenda Justice	Plantation	Florida	33317	United States	7/20/13
Dorr Bugbee	Battle Creek	Michigan	49017	United States	7/21/13
Margie Lachman	Beaverton	Oregon	97006	United States	7/21/13
Marc Jason Masicat	Baldwin Park	California	91706	United States	7/21/13
Scoot Snapper	Lakeport	California	95453	United States	7/21/13
CHRISTINE HARTSOCK	HOPE MILLS	North Carolina	28348	United States	7/21/13
Robert Lockhorn	Vancouver	Washington	98683	United States	7/21/13

Damon Laaker	Omaha	Nebraska	68105	United States	7/21/13
William Doty	Mount Zion	Illinois	62549	United States	7/21/13
Claudia Grasso	Lincoln	Massachusetts	1773	United States	7/21/13
Diana Bruso	West Springfield	Massachusetts	1089	United States	7/21/13
Chalanya Charoenthanyawari	Thailand				7/21/13
Frances Hoffman	Sparta	Missouri	65753	United States	7/21/13
Brittany Justice	Peru	Indiana	46970	United States	7/21/13
Lynn Oaks	Peru	Indiana	46970	United States	7/21/13
Geraldine Todd			RH11 0LZ	United Kingdom	7/21/13
suzanne marlborough	clevedon		BS21 6JY	United Kingdom	7/21/13
sandra neuenschwander	Tunnel Hill	Georgia	30755	United States	7/21/13
Pamela Mitchell	Dalton	Georgia	30721	United States	7/21/13
Frank Cavaluzzi	Lords Valley	Pennsylvania	18428	United States	7/21/13
Carla Bryant	Nashville	Tennessee	37218	United States	7/21/13
Lisa Minns	Peru	Indiana	46970	United States	7/21/13
Terri McKinlery	Peru	Indiana	46970	United States	7/21/13
bill siler	logansport	Indiana	46947	United States	7/21/13
Diana Pesicka	Colorado Springs	Colorado	80906	United States	7/21/13
Sherry McKnight	Pocahontas	Illinois	62275	United States	7/21/13
Karen Huber	Colleyville	Texas	76034	United States	7/21/13
Tracy Murphy	Burleson	Texas	76028	United States	7/21/13
Eleni Hagen	Brighton	Massachusetts	2135	United States	7/21/13
Charles Levenstein	Brookline	Massachusetts	2445	United States	7/21/13
Mark Fenech	Maple Grove	Minnesota	55369	United States	7/21/13
Olga Kalashnik	Bethesda	Maryland	20814	United States	7/21/13
Melissa Haynes	Goose Creek	South Carolina	29445	United States	7/21/13
Luis Haro-García			2800	Mexico	7/21/13
Marco Santaniello	Caracas			Venezuela, Bolivarian Republic of	7/21/13
Patricia Krings	Omaha	Nebraska	68137	United States	7/21/13
Max Glassburn	Peru	Indiana	46970	United States	7/21/13
Dena Dorsey-Brown	Logan	Ohio	43138	United States	7/21/13
tami justice	Peru	Indiana	46970	United States	7/21/13
Heather Jones	Mechanicsville	Virginia	23111	United States	7/21/13
Geraldine Orta			6760	Mexico	7/21/13
Linda Wride	Oxford				7/21/13

kate schmitz	ellensburg	Washington	98926	United States	7/21/13
Cathleen Dahlstrsnd	Mansfield	Ohio	44904	United States	7/21/13
Dave Councilman	St Louis Park	Minnesota	55426	United States	7/21/13
Twik Simms	Anaheim	California	92801-1904	United States	7/21/13
mary flanders	Lafayette	Colorado	80026	United States	7/21/13
Mary Aloyse Firestone	Bedford	Massachusetts	1730	United States	7/21/13
Stephen Martin	Rushville	Indiana	46173	United States	7/21/13
Judy Having	Bessemer	Alabama	35022	United States	7/21/13
Donna Bunten	Ouray	Colorado	81427	United States	7/21/13
Lisa Zito	Sanger	California	93657	United States	7/21/13
Vince Haughney	Philadelphia	Pennsylvania	19134	United States	7/21/13
Sonia Koltiska	Gillette	Wyoming	82718	United States	7/21/13
Justin Bragg	amarillo	Texas	79121	United States	7/21/13
Doreen Fiebel	Succasunna	New Jersey	7876	United States	7/21/13
Michelle Henry	Tucson	Arizona	85748	United States	7/22/13
Diane Kent	PHOENIX	Arizona	85032	United States	7/22/13
Angelo Garcia, III	Huntington	New York	11743	United States	7/22/13
Sara Cox	Rushville	Indiana	46173	United States	7/22/13
Laura Punnett	Medford	Massachusetts	215S	United States	7/22/13
Michelle Broyles	Volente	Texas	78641	United States	7/22/13
Tammy Little	Ashville	New York	14710	United States	7/22/13
Lee Lavigne	Seattle	Washington	98144	United States	7/22/13
R Haller	Sandy Springs	Georgia	30350	United States	7/22/13
liesel serbst	towanda	Illinois	61776	United States	7/22/13
John Luna	Hurst	Texas	76054	United States	7/22/13
Lance Huber	Colleyville	Texas	76034	United States	7/22/13
John Delicath	Washington	District Of Columbia	20017	United States	7/22/13
Paula McDougle	Indianapolis	Indiana	46221	United States	7/22/13
shawn thompson	Santa Monica	California	90405	United States	7/22/13
Anila Bello	Boston	Massachusetts	2128	United States	7/22/13
Mike Hokey	Indianapolis	Indiana	46229	United States	7/22/13
Robert Hokey	Indianapolis	Indiana	46229	United States	7/22/13
Deborah Young	Elkview	West Virginia	25071	United States	7/22/13
Teresa Robison	Peru	Indiana	46970	United States	7/22/13
Angela Brooks	Lynn	Indiana	473S5	United States	7/22/13
John Steele	Dromana		Street	Australia	7/22/13
Stephanie Beaumont	Redditch			United Kingdom	7/22/13

Paul Beaumont	Redditch				7/22/13
Aleesha Beaumont	Redditch			United Kingdom	7/22/13
Nancy Luna	Hurst	Texas	760S4	United States	7/22/13
Lisa Geoppo	Los Angeles	California	90027	United States	7/22/13
Elaine Cash	Chesnee	South Carolina	29323	United States	7/22/13
Nikki Holbert	Winfield	West Virginia	25213	United States	7/22/13
Lin Kaatz Chary	Gary	Indiana	46403	United States	7/22/13
Jane Gray	Peru	Indiana	46970-1546	United States	7/22/13
Carol Duerden	Bradford		BD2 4RS	United Kingdom	7/22/13
Danielle Wolf	Alexandria	Virginia	22304	United States	7/22/13
Cindy Hilbinger	Greensboro	North Carolina	27410	United States	7/22/13
Rod Nash	Carlsbad	California	92011	United States	7/22/13
Sharon Ona	Camarillo	California	93012-4334	United States	7/23/13
Shirley Vitela	Some Town	Colorado	80920	United States	7/23/13
T G	San Francisco	California	94109-5858	United States	7/23/13
Ryan Hendershot	Grand Junction	Colorado	81504	United States	7/23/13
Karen McCoy	Riverside	California	92508	United States	7/23/13
Denise Thompson-Slaughter	Rochester	New York	14618-1221	United States	7/23/13
วิทยา กุลสมบูรณ์ กุลสมบูรณ์	Bangkok, Thailand			Thailand	7/23/13
Mary Ellen Strote	Calabasas	California	91302	United States	7/23/13
Dimu Pratama			40254	Indonesia	7/23/13
Andrew Morgan	London			United Kingdom	7/23/13
Derrick Fernie	Vancouver BC		V5N 1X7	Canada	7/23/13
Dorothy Doran	Waltham	Massachusetts	2254	United States	7/23/13
Jennifer Finn	Euless	Texas	76040	United States	7/23/13
Yvonne Waterman	Wouwse Plantage			Netherlands	7/23/13
MARK WINTER	Darlington			United Kingdom	7/23/13
Deana Montgomery	Hot Springs	Arkansas	71913	United States	7/23/13
Stephanie Tyrrell	St. Martinville	Louisiana	70582	United States	7/23/13
stephen Blake	huntington beach	California	92646	United States	7/23/13
mike crill	rimrock	Arizona	86335	United States	7/23/13
Sean Marshall			2130	Australia	7/23/13
Nancy Griesemer	Bellefonte	Pennsylvania	16823	United States	7/24/13

kristen hodge	South Hampton	New Hampshire	3827	United States	7/24/13
Mary Hale	Plainfield	Illinois	60544	United States	7/24/13
Geraldine Elsbree	surprise	New York	12176	United States	7/24/13
Amy Westman	BELLINGHAM	Washington	98226	United States	7/24/13
Alexandra Coppa	Cranston	Rhode Island	2921	United States	7/24/13
Rafael Gardiner	Cranston	Rhode Island	2921	United States	7/24/13
Teresa Coppa	Cranston	Rhode Island	2921	United States	7/24/13
Toni Matthews	Springfield	Oregon	97478	United States	7/24/13
Nick Sarazen	North Kingstown	Rhode Island	2874	United States	7/24/13
Loriann Connelly	Staten Island	New York	10314	United States	7/24/13
Molly Sandstrom	Lindstrom	Minnesota	55045	United States	7/24/13
Michelle MacWilliams	Gloucester Township	New Jersey	8012	United States	7/24/13
PATRICIA MATTISON	philadelphia	Pennsylvania	19149	United States	7/24/13
david j. lafond	Holyoke	Massachusetts	01040-3502	United States	7/24/13
Julia Gordon	Live Oak	California	95953	United States	7/25/13
robin ratcliff	sonora	California	95370	United States	7/25/13
Lisa Engels	Temecula	California	92592	United States	7/25/13
Stephen Matrese	Carlisle	Pennsylvania	17013	United States	7/25/13
Stephen Matrese	Carlisle	Pennsylvania	17015	United States	7/25/13
David Pansegrouw	Washington	District Of Columbia	20009	United States	7/25/13
Diane DeMarco	Staten Island	New York	10314	United States	7/25/13
Becky Bell-Greenstreet	Coquille	Oregon	97423	United States	7/25/13
Sunsik Kim			558-8585	Japan	7/26/13
Amber Childers	Bunker Hill	Indiana	46914	United States	7/26/13
Scott Chapin	Trafford	Alabama	35172	United States	7/26/13
Jennifer Gray	Glasgow		G13 1JG	United Kingdom	7/26/13
Francine Kendrick	Littleton	North Carolina	27850	United States	7/26/13
Jan Pelfrey	Dallas	Georgia	30132	United States	7/26/13
Tanya Gamez	Fresno	California	93727	United States	7/26/13
Tank Hale	Plano	Texas	75024	United States	7/26/13
Martha MacMillan	Sebastopol	California	95472	United States	7/26/13
THOMAS WEICHERS	GRANTS PASS	Oregon	97526	United States	7/26/13
marilyn karwowski	Fairfax	Virginia	22033	United States	7/26/13

Sharon Volz	cooksville	Illinois	61730	United States	7/26/13
Susan DeJoseph	Douglassville	Pennsylvania	19518	United States	7/26/13
Sarah Midkiff	St. Louis	Missouri	63136	United States	7/26/13
Brandee Rutkowski	Bloomington	Illinois	61701	United States	7/26/13
Carla Moliterno	Schwenksville	Pennsylvania	19473	United States	7/26/13
anthony manera	Upper Chichester	Pennsylvania	19061	United States	7/26/13
Marilyn Marsaglia	Springfield	Illinois	62711	United States	7/27/13
Chester E Mack Jr	East Norriton	Pennsylvania	19403	United States	7/27/13
Donna Mack	East Norriton	Pennsylvania	19403-4104	United States	7/27/13
Jesse Gamez	Fresno	California	93727	United States	7/27/13
Kristen Angel	Honolulu	Hawaii	96818	United States	7/27/13
Susan Hoeing	Rushville	Indiana	46173	United States	7/27/13
Adam Kaminski	Kuala Lumpur		56100	Malaysia	7/27/13
amanda bell	Grand Rapids	Michigan	49546	United States	7/27/13
Kathy Ridge	Albany	Kentucky	42602	United States	7/27/13
Michael Le	Denver	Colorado	80209	United States	7/27/13
Susan Knape	Dallas	Texas	75209	United States	7/27/13
jackie coupland	north vancouver		v7g2p6	Canada	7/27/13
Chad Kinney	Papillion	Nebraska	68046	United States	7/27/13
jonathan holzingwr	Lafayette	Indiana	47909	United States	7/27/13
Lynda Ozan	Edmond	Oklahoma	73034	United States	7/27/13
Christine Dwyer	Medford	New Jersey	8055	United States	7/27/13
Cindy Pappas	Medford	Oregon	97504	United States	7/27/13
c clark	Chicago	Illinois	60642	United States	7/27/13
KIRK BANDEKO	NORMAL	Illinois	61761	United States	7/27/13
Debra Frederiksen	Buffalo	New York	14216	United States	7/27/13
Lila Ellison	Lemmon	South Dakota	57638	United States	7/27/13
Julie Cramer	Rushville	Indiana	46173	United States	7/27/13
Jennifer Shackford	Berlin	Connecticut	6037	United States	7/27/13
Kimberly Benane	New Hartford	Connecticut	6057	United States	7/27/13
Marlene Demma	Rocky Hill	Connecticut	6067	United States	7/27/13
Marilyn Richter	Berlin	Connecticut	6037	United States	7/27/13
karen macy	rushville	Indiana	46173	United States	7/27/13
Kathleen Kourie	Garrison	New York	10524	United States	7/27/13
Melissa Gionfriddo	Northford	Connecticut	6472	United States	7/27/13
Anne-Marie Boulet			42000	France	7/27/13
Andrea Lamb	Scugog		L9L	Canada	7/27/13
Jan Garrison	Rushville	Indiana	46173	United States	7/27/13
linda fuchs	Warminster	Pennsylvania	18974	United States	7/27/13
Neil Panetta	Cromwell	Connecticut	6416	United States	7/27/13
Jodi Clavette	Southington	Connecticut	6479	United States	7/27/13

Annie Thebaud-Mony			94120	France	7/27/13
Judy Eckstein	Batesville	Indiana	47006	United States	7/27/13
Marian Peters	Berlin	Connecticut	6037	United States	7/27/13
Michael Kain	Okemos	Michigan	48864	United States	7/27/13
Juliet Carnell	Annapolis	Maryland	21403	United States	7/27/13
Christine Jasonis	Berlin	Connecticut	6037	United States	7/27/13
Tammy wills	Buffalo	West Virginia	25033	United States	7/27/13
Christina Gosser	Rushville	Indiana	46173	United States	7/27/13
Heather Clark	Rushville	Indiana	46173	United States	7/27/13
Kim Sebesta	Minneapolis	Minnesota	S5421	United States	7/27/13
sandra griffen	Swainsboro	Georgia	30401	United States	7/27/13
charles j dreher jr	louisville	Ohio	44641	United States	7/27/13
Tina Barten	Ankeny	Iowa	50021	United States	7/27/13
Donna Carruthers	Camano Island	Washington	98282	United States	7/27/13
Alli Minarik	Winnipeg		R3M 0A7	Canada	7/27/13
Lynn Friedman	Longmeadow	Massachusetts	1106	United States	7/27/13
Emily Gabbert	East Liverpool	Ohio	43920	United States	7/27/13
Martha Crumpton	Goodrich	Texas	77335	United States	7/27/13
Barbara Massimino	Hollywood	Florida	33020	United States	7/27/13
Michele Mikulic	Casa Grande	Arizona	85122	United States	7/27/13
John Mikulic	Casa Grade	Arizona	85122	United States	7/27/13
Dianne Geissinger	Hudson	Florida	34667	United States	7/27/13
Shawna Smith	san antonio	Texas	78209	United States	7/27/13
Shelly Miller	Boulder	Colorado	80304	United States	7/27/13
Vicki Bucher	Maumee	Ohio	43537	United States	7/27/13
junedale keala	H.O.V.E.	Hawaii	96737	United States	7/27/13
Teresa Brown	Cortland	New York	13045	United States	7/27/13
Sherri Wicker	Shelbyville	Indiana	46176	United States	7/27/13
Marilyn Favali	Narragansett	Rhode Island	2882	United States	7/27/13
Marlyn Landin	Pasadena	Maryland	21122	United States	7/27/13
Lois Corcoran	Steward	Illinois	60553	United States	7/27/13
Maggie Hayes	Prestonsburg	Kentucky	41653	United States	7/27/13
Theresa Sweigart	Meriden	Kansas	66512	United States	7/27/13
Joanna Geisler	Newington	Connecticut	6111	United States	7/27/13
Kim Joslyn	Berlin	Connecticut	6037	United States	7/27/13
roxanna bostick	Auburn	Washington	98001	United States	7/27/13
Judy Guinosso	Souderton	Pennsylvania	18964	United States	7/27/13
Debbie Woods	Watervliet	New York	12189	United States	7/27/13
Siri Coupland	North Vancouver		V7G 2P5	Canada	7/27/13
laura swain	kensington	Connecticut	6037	United States	7/27/13
Lee Roy Henslee	Decatur	Michigan	49045	United States	7/27/13

Mynyon Patrick	Atlanta	Georgia	30310	United States	7/27/13
radyne coursey	tucson	Arizona	85719	United States	7/27/13
scott davis	san diego	Alabama	92116	United States	7/27/13
Jordan Knape	Brooklyn	New York	11238	United States	7/27/13
mary rickaway	Port Lavaca	Texas	77979	United States	7/27/13
Raymond Crawford	Dallas	Texas	75233	United States	7/27/13
Marilynn Murray	Rockwall	Texas	75032	United States	7/27/13
john kirk	Bemidji	Minnesota	56601	United States	7/27/13
Rose & John Martin	Hazel Crest	Illinois	60429-1309	United States	7/27/13
L Lechner	Shoreline	Washington	98155	United States	7/27/13
Scott Anderson	Lawrence	Kansas	66044	United States	7/27/13
Wendy Stout	Dunedin	Florida	34698	United States	7/28/13
Rodger Hoene	Spencer	Indiana	47460	United States	7/28/13
Tracy Feger	Bloomington	Illinois	61701	United States	7/28/13
Kelly Rawls	Lexington	North Carolina	27292	United States	7/28/13
Lori Koehler-brown	Normal	Illinois	61761	United States	7/28/13
Sara H Kent	Pottstown	Pennsylvania	19465	United States	7/28/13
Karen Murphy	Rocky Hill	Connecticut	6067	United States	7/28/13
Debra Cluley	Grand Blanc	Michigan	48439	United States	7/28/13
James Richardson	Aurora	Colorado	80011	United States	7/28/13
Jodie Rogers	Rushville	Indiana	46173	United States	7/28/13
Ellen Gentile	Berlin	Connecticut	6037	United States	7/28/13
Erica Rouse	Rushville	Indiana	46173	United States	7/28/13
Paul W. Ayers	Chelan	Washington	98816	United States	7/28/13
Teresa Aquino	Howell	New Jersey	7731	United States	7/28/13
julie gundlach	Saint Louis	Missouri	63110-1602	United States	7/28/13
Trevor Hofer	Noblesville	Indiana	46060	United States	7/28/13
Charlotte VanGenechten	Millbrook		L0A1G0	Canada	7/28/13
Cheryl Walker	Logansport	Indiana	46947	United States	7/28/13
Tina Willard	Alliance	Ohio	44601	United States	7/28/13
Dean Woodhouse	Denver	Indiana	46926	United States	7/28/13
renie frisbymccallum	troy mills	Iowa	52344	United States	7/28/13
Sandra Balthazar	Fairhaven	Massachusetts	2719	United States	7/28/13
Kathy Tiberio	Havertown	Pennsylvania	19083	United States	7/28/13
Isabel Neal	Manhattan Beach	California	90266	United States	7/28/13
Maureen Tavaglione	3801 Sunward Drive	Florida	32953	United States	7/28/13
danielle shafer	warsaw	Missouri	65355	United States	7/28/13

Melissa Saberhagen	Channahon	Illinois	60410	United States	7/28/13
Tracy Vollrath	groton	Connecticut	6340	United States	7/28/13
Debra Morgan	port angeles	Washington	98362	United States	7/28/13
Francisco Pedra	Rio de Janeiro		20031-170	Brazil	7/28/13
Laura Fineman	El Segundo	California	90245	United States	7/28/13
Jamie Weaver	Pocahontas	Tennessee	38061	United States	7/28/13
Mary Starnes	Lancaster	South Carolina	29720	United States	7/28/13
mary parker	Lancaster	South Carolina	29720	United States	7/28/13
Amber Muirhead	Brandon	Mississippi	39042	United States	7/28/13
Amanda Tompkins	Liverpool	New York	13090	United States	7/28/13
Virginia House	Huntingdon	Tennessee	38344	United States	7/28/13
Leo Smith	Ashland	Oregon	97520	United States	7/28/13
emily bleyl	salt lake city	Utah	84108	United States	7/28/13
Amanda Hubbard	Jacksonville	Florida	32211	United States	7/28/13
Lisa Crandall	Tampa	Florida	33618	United States	7/28/13
barbara mccann	burton	Michigan	48509	United States	7/28/13
Laura Guill -	Sarnia		N7S 4B3	Canada	7/28/13
DEBORA Barnes	Rushville	Indiana	46173	United States	7/28/13
Steven Vesco	Enfield	Connecticut	6082	United States	7/28/13
Michele Mann	Connelly Springs	North Carolina	28612	United States	7/28/13
Deborah McBride	Cocoa	Florida	32922	United States	7/28/13
Mary Gonzalez	league city	Texas	77573	United States	7/28/13
sherissa gates warren	atlanta	Georgia	30342	United States	7/28/13
John Douard	Montclair	New Jersey	7042	United States	7/28/13
Linda Amabile	statham	Georgia	30666	United States	7/28/13
Laura Evens	Newhall	California	91321	United States	7/28/13
Janet Goss	Port Washington	Wisconsin	53074	United States	7/28/13
Beth Clifton	Prescott	Arizona	86305	United States	7/28/13
Corene Messer	Manchester	Iowa	52057	United States	7/28/13
rita tuttle	Greenwood	Indiana	46142	United States	7/28/13
Crystal Woods	Rushville	Indiana	46173	United States	7/28/13
Madi Campbell	Rushville	Indiana	46173	United States	7/28/13
Amy Pennington	Rushville	Indiana	46173	United States	7/28/13
Teresa smith	Rushville	Indiana	46173	United States	7/28/13
Tracy Ford	New Westminster		V3M 2X2	Canada	7/28/13
Michael Orrfelt	Glencoe	California	95232	United States	7/28/13
kathleen matson	manchester	Connecticut	6042	United States	7/28/13
Graham Sherlock-	Solihull, UK				7/28/13

Brown					
Brad Comer	Manchester	Iowa	52057	United States	7/28/13
Kristen Foster	Havelock	North Carolina	28532	United States	7/28/13
Holly Southerland	Sonora	California	95370-7404	United States	7/28/13
Elaine Edgarton	fulton	New York	13069	United States	7/28/13
Tammy Miser	Lexington	Kentucky	40517	United States	7/28/13
Richard Evens	Las Vegas	Nevada	89169	United States	7/28/13
Luci Enza	palm springs	California	92260	United States	7/28/13
Julia Chrstensen	BOISE	Idaho	83709	United States	7/28/13
Carmen Gibson	Peru	Indiana	46970	United States	7/28/13
Dawn Smith	Peru	Indiana	46970	United States	7/28/13
Paul Samuelson	Delhi	Iowa	52223	United States	7/29/13
michelle myers	Port Angeles	Washington	98362	United States	7/29/13
Susan Davis	North Dartmouth	Massachusetts	2747	United States	7/29/13
diane closser	peru	Indiana	46970	United States	7/29/13
Adam Hilt	Rushville	Indiana	46173	United States	7/29/13
Luke Thomsen	Manchester	Iowa	52057	United States	7/29/13
Clayton Miller	Dyersville	Iowa	52040	United States	7/29/13
Jill Rahe	Earlville	Iowa	52041	United States	7/29/13
Elisa Cohen	SILVER SPRING	Maryland	20901	United States	7/29/13
Briana Rumple	Pekin	Illinois	61554	United States	7/29/13
charles williams	walford	Iowa	52351	United States	7/29/13
Billy Hector	spring lake hts	New Jersey	7762	United States	7/29/13
Erica Dimuzio	Toms River	New Jersey	8753	United States	7/29/13
Prudie Donner	s lake tahoe	California	96150	United States	7/29/13
Lisa Hall	howell	New Jersey	7731	United States	7/29/13
Andrea Marano	Brick	New Jersey	8723	United States	7/29/13
randy litz	pekin	Illinois	61554	United States	7/29/13
David Craig	Pekin	Illinois	61555	United States	7/29/13
Tara Wilmot	Pekin	Illinois	61554	United States	7/29/13
MICHELLE TESTA	OVIEDO	Florida	32765	United States	7/29/13
Lori Darling	Creve Couer	Illinois	61610	United States	7/29/13
Peggy Lands	Eatontown	New Jersey	7724	United States	7/29/13
Johanna Kuhlman	Dyersville	Iowa	52040	United States	7/29/13
Barbara Heiser	Howell	New Jersey	7731	United States	7/29/13
Shawn Muth	Pekin	Illinois	61554	United States	7/29/13
JANET MCKINLEY	Pekin	Illinois	61554	United States	7/29/13
Laura Wenger	central city	Iowa	52214	United States	7/29/13
Angi Vance	Pekin	Illinois	61554	United States	7/29/13
penny jo major	pekin	Illinois	61554	United States	7/29/13
BRIAN BEVILL	MAPLETON	Illinois	61547	United States	7/29/13

Mindy Hauser	Manchester	Iowa	52057	United States	7/29/13
Erica Gusk	howell	New Jersey	7731	United States	7/29/13
Donna Marano	Brick	New Jersey	8724	United States	7/29/13
Todd Dourneen	Pekin	Illinois	61554	United States	7/29/13
Lindsay Boldt	Parlin	New Jersey	8859	United States	7/29/13
Spenser Vande Voorde	Delhi	Iowa	52223	United States	7/29/13
Lorraine Gaffney	Ryan	Iowa	52330	United States	7/29/13
jim ellis	dallas	Texas	75209	United States	7/29/13
Cathy Lloyd	Redford	Michigan	48240	United States	7/29/13
Cat Cambra	Peoria	Illinois	61615	United States	7/29/13
Martha Collins	Frostproof	Florida	33843	United States	7/29/13
Darlene Blackwell	Pekin	Illinois	61554	United States	7/29/13
Joelle Cook	Seattle	Washington	98115	United States	7/29/13
Kristy Nelms	Pekin	Illinois	61S54	United States	7/29/13
Maureen Breyer	Manchester	Iowa	52057	United States	7/29/13
Josh Swink	Longmont	Colorado	80501	United States	7/29/13
Spencer Archer	Sacramento	California	95827	United States	7/29/13
Robin Kehrli	Ryan	Iowa	52330	United States	7/29/13
Lynn Gabriel	Mesa	Arizona	85209	United States	7/29/13
Cynthia Mefford	Alburnett	Iowa	52202	United States	7/29/13
joan langlois	howell	New Jersey	7731	United States	7/29/13
James Jordan	Champlin	Minnesota	55316	United States	7/29/13
Christine Graef	Mesa	Arizona	85209	United States	7/29/13
Judith Aquino-Cilento	Bridgewater	New Jersey	8807	United States	7/29/13
Rosemary Howley	Oakland	California	94618	United States	7/29/13
Marie Gilkey	Rich Hill	Missouri	64779	United States	7/29/13
Elba Crump	Jackson	New Jersey	8527	United States	7/29/13
Jan Egerton	United Kingdom				7/29/13
Charolette Price-Jensen	West Jordan	Utah	84081	United States	7/29/13
Barbara Voetsch	Middletown Township	New Jersey	7738	United States	7/29/13
Jawad Qasrawi	Sheffield		S8 9RL	United Kingdom	7/29/13
Randy Bradley	Lexington	South Carolina	29073	United States	7/29/13
sarah menne	brick	New Jersey	8723	United States	7/29/13
Rose Aquino	Livingston	New Jersey	7039	United States	7/29/13
Judith Gawlik	Elyria	Ohio	44035	United States	7/29/13
shawn mattison	phila	Pennsylvania	19149	United States	7/29/13
David Loughlin	Myrtle Beach	South Carolina	29577	United States	7/29/13
George Henderson	Pekin	Illinois	61554	United States	7/29/13

vinnie dietrick	west orange	New Jersey	7052	United States	7/29/13
DAN URICOLI	MARGATE	Florida	33063	United States	7/29/13
wendy updegraf	Toms River	New Jersey	8753	United States	7/29/13
Dan Young	St. Louis	Missouri	63110	United States	7/29/13
Lesa Cala	Beachwood	New Jersey	8722	United States	7/29/13
Thomas Shaffer	Summerton	South Carolina	29148	United States	7/29/13
Joshua Wheeler	Brick	New Jersey	8724	United States	7/29/13
maria tarullo	Howell	New Jersey	7731	United States	7/29/13
Shannon Foiles	Bartonville	Illinois	61607	United States	7/29/13
Rene Wohleb	Blum	Texas	76627	United States	7/29/13
Catie Leach	Livermore	California	94550	United States	7/29/13
John Woodward	Wolverhampton			United Kingdom	7/29/13
Kathleen Black	Alexandria	Virginia	22308	United States	7/29/13
Trisha Saal	South Pekin	Illinois	61564	United States	7/29/13
Susan Giacchi	South River	New Jersey	8882	United States	7/29/13
chad mcnamara	Cedar Rapids	Iowa	52402	United States	7/29/13
Melo Pisha	Cypress	Texas	77429	United States	7/29/13
Lisa Equils	Howell	New Jersey	7731	United States	7/29/13
rebecca thum	bartonville	Illinois	61607	United States	7/29/13
Kyla Lux	Ryan	Iowa	52330	United States	7/29/13
Dustin Lux	Ryan	Iowa	52330	United States	7/29/13
aimee phillips	pekin	Illinois	61554	United States	7/29/13
Janine Di Muzio	Toms River	New Jersey	8753	United States	7/29/13
Diana Ryan	San Tan Valley	Arizona	85140	United States	7/29/13
Laura Archer	Reno	Nevada	89503	United States	7/29/13
Lorna Johns	Fishguard			United Kingdom	7/29/13
GUY DEVINCENTIS	MORRISTOWN	New Jersey	7960	United States	7/29/13
Courtney Turnis	Corning	Iowa	50841	United States	7/29/13
Debra Castellucci	Brampton		L6Z 4E4	Canada	7/29/13
Angiw Corcoran	Ryan	Iowa	52330	United States	7/29/13
Wendy Knelsen	St Thomas		N5p 4p2	Canada	7/29/13
Michelle Pulkrab	Lakewood	Colorado	80232	United States	7/29/13
Brooke Salin	Toms River	New Jersey	8753	United States	7/29/13
Vicki Staebell	Jesup	Iowa	50648	United States	7/29/13
Patty Gonzales	Fernley	Nevada	89408	United States	7/29/13
Sarah Wheelan	Callander		P0H 1H0	Canada	7/29/13
Alyssa Silver	Sioux City	Iowa	51108	United States	7/29/13
Heather Dudgeon	Rushville	Indiana	46173	United States	7/29/13
Jon Gelman	Wayne	New Jersey	07470-2805	United States	7/29/13

Marli Beer	Cobourg		K9A 1Z9	Canada	7/29/13
zachary klein	boston	Massachusetts	2130	United States	7/29/13
Lauren Benning	Waterford	Michigan	48327	United States	7/29/13
Carolyn Whittaker	Rushville	Indiana	46173	United States	7/29/13
Stacia Koontz	Manchester	Iowa	52057	United States	7/29/13

September 2, 2013

UNITED STATES SENATE ENVIRONMENT AND PUBLIC WORKS HEARING

"Strengthening Public Health Protections by Addressing Toxic Chemical Threats"

Senator Barbara Boxer: Do you agree that any TSCA reform legislation must contain provisions requiring prompt EPA action to ban asbestos in the United States?

On behalf of the Asbestos Disease Awareness Organization (ADAO), we strongly recommend that it is not only necessary, but also imperative that any TSCA reform legislation must contain provisions that require prompt EPA action to ban asbestos in the United States. Americans need and deserve legislation to:

1. Expedite action to prohibit asbestos imports.
2. Ban the manufacture, sale, and export of asbestos-containing products.
3. Protect each state's ability to maintain or pass stronger laws to regulate chemicals.

Most Americans trust that their air, soil, and water are safe from toxic contaminants; however, the Toxic Substances Control Act (TSCA) has failed to protect public health and our environment. In 1989, the EPA issued a final rule under Section 6 of TSCA, banning most asbestos-containing products. In 1991, however, this rule was vacated and remanded by the Fifth Circuit Court of Appeals. As a result, most of the original ban on the manufacture, importation, processing, or distribution in commerce of asbestos-containing products was overturned.

There were only five asbestos-containing products banned by TSCA in 1976:

1. Corrugated paper
2. Rollboard
3. Commercial paper
4. Specialty paper
5. Flooring felt

The World Health Organization[1], International Labor Organization[2], U.S. Environmental Protection Agency[3] and Surgeon General[4] all agree that there is no safe level of exposure to asbestos. Asbestos-related diseases are often misdiagnosed and under-reported. Exacerbated by a latency period of 10–50 years, late stage

[1] http://www.who.int/occupational_health/publications/asbestosrelateddiseases.pdf
[2] http://www.ilo.org/safework/WCMS_144446/lang--en/index.htm
[3] http://www2.epa.gov/asbestos/learn-about-asbestos#effects
[4] http://www.surgeongeneral.gov/news/2013/04/pr20130401.html

diagnosis often limits patients' treatment options. Most patients die within 6–12 months after diagnosis. Each death is preventable.

The facts are clear: the tons of asbestos that have been mined in and imported to the U.S. have created a public health crisis. Asbestos remains in our homes, schools, buildings, and even on consumer shelves. Workers and consumers cannot adequately identify the toxic fibers nor manage the risks of consumer, environmental, and occupational asbestos exposure in products or places.

- In 2007, ADAO identified 5 consumer products, including a child's toy, that were contaminated with asbestos.
- In 2012, ADAO was sent a mitt that was made of 97% chrysotile asbestos.
- It was reported that 2,600 tons of asbestos was collected after the Joplin, Missouri tornado and tons of toxic debris littered the coastline after Hurricane Sandy.
- W.R. Grace Vermiculite Mine, a man-made disaster in Libby, MT, has been costly in dollars and lives. The federal government has spent more than $450 million to remediate the toxic areas in Libby, MT and treat the residents.

Although we have laws and regulations, workers are still being exposed on the job and take-home exposure threatens their families with deadly hugs and chores. Occupational exposures can occur during maintenance, construction, abatement, and hazardous debris removal.

In April 2013, ADAO applauded congressional efforts on the "Safe Chemicals Act of 2013" (S. 696)[5], which would adequately protect American families from toxic exposures. However, since then, CSIA, the Chemical Safety Improvement Act of 2013 (S. 1009)[6], was introduced in May. While the chemical industry is pleased with this new bill, ADAO and the majority of other environmental and public health organizations do not support the current language.

Americans have lost confidence in the chemical industries' ability to protect us from toxins. Congress should draft and pass meaningful TSCA reform legislation that truly strengthens protections for our families and environment and expedites action to ban asbestos.

THE FIVE IRREFUTABLE ASBESTOS FACTS ARE:

1. Asbestos is a known human carcinogen and there is no safe level of exposure.
2. 54 countries have banned asbestos, but the United States has not.
3. Asbestos imports and exposure continue. In 2012, the United States imported over 1,060 tons of asbestos.
4. An estimated 10,000 Americans die each year from preventable asbestos-caused diseases.
5. Americans cannot determine or manage consumer, environmental, and occupational asbestos risk.

In summation, Americans need and deserve TSCA reform legislation to: expedite action to prohibit asbestos imports, ban the manufacture, sale, and export of asbestos-containing products, and protect each state's ability to maintain or pass stronger laws to regulate chemicals.

[5] http://www.govtrack.us/congress/bills/113/s696
[6] http://www.govtrack.us/congress/bills/113/s1009

September 2, 2013

UNITED STATES SENATE ENVIRONMENT AND PUBLIC WORKS HEARING

"Strengthening Public Health Protections by Addressing Toxic Chemical Threats"

Senator David Vitter: In your testimony you stated "there is no safe level of exposure to asbestos." Because asbestos is a naturally occurring substance, there is potential difficulty in setting a no exposure limit. Is it possible that there is no known safe level of exposure to asbestos? In other words, there may be a safe level but it is difficult to quantify?"

It is indeed true that asbestos is a naturally occurring mineral, but there is no "difficulty in setting a no exposure limit." The World Health Organization[1], International Labor Organization[2], U.S. Environmental Protection Agency[3] and Surgeon General[4] all agree that there is no safe level of exposure to asbestos. Science and policy recommendations are clear – to protect public health, Americans must not be exposed to asbestos to eliminate disease.

The World Health Organization urges that since there is no evidence for a threshold for the carcinogenic effect of asbestos[5] and that increased cancer risks have been observed in populations exposed to very low levels[5,6], the most efficient way to eliminate asbestos-related diseases is to stop using all types of asbestos.

The facts are clear: the tons of asbestos that have been mined in and imported to the U.S. have created a public health crisis. Asbestos fibers can be nearly 700 times smaller than a human hair and are odorless, tasteless, and indestructible. Americans cannot determine or manage consumer, environmental, and occupational asbestos risk on their own. Asbestos remains in our homes, schools, buildings, and even on consumer shelves.

To reduce the number of lives lost from asbestos-related disease, we must prohibit asbestos imports and identify existing asbestos in commerce, in the workplace, and buildings. Workers and consumers cannot adequately identify the toxic fibers nor manage the risks of consumer, environmental, and occupational asbestos exposure in products or places. It is not only important, but also essential to establish federal policy to prevent toxic chemical exposures by prohibiting the use of asbestos to ultimately protect the health of all Americans.

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[1] http://www.who.int/occupational_health/publications/asbestosrelateddiseases.pdf
[2] http://www.ilo.org/safework/WCMS_144446/lang--en/index.htm
[3] http://www2.epa.gov/asbestos/learn-about-asbestos#effects
[4] http://www.surgeongeneral.gov/news/2013/04/pr20130401.html
[5] WHO. *Environmental Health Criteria 203: Chrysotile Asbestos.* Geneva, World Health Organization; 1998.
[6] IARC. *IARC Monographs, Supplement 7: Asbestos.* Lyon, International Agency for research on Cancer, 1987.

Senator BOXER. Thank you. Our vote started at 10:15. We are going to move forward with this panel. Ms. Robin Greenwald, Of Counsel, Weitz & Luxenberg.

STATEMENT OF ROBIN L. GREENWALD, OF COUNSEL, WEITZ & LUXENBERG

Ms. GREENWALD. Thank you, Madam Chairman, Ranking Member Vitter and members of the Committee, for the opportunity to testify today.

I have practiced in the field of environmental law for almost 30 years of my legal career, and I am also a mother. Much of my work has been driven by the belief that we all have an obligation to protect public health for all segments of our population.

I wholeheartedly support efforts to reform the Toxic Substances Control Act. While my support for TSCA reform is unwavering, my view is that the recently proposed bill, S. 1009, as it is currently written, takes chemical safety reform several steps backward. While CSIA as currently drafted has numerous flaws, I am going to focus my comments on a few of the infirmities.

No. 1, the bill attempts to have EPA solely occupy the field of toxic substance regulation, but provides no assurances that there will be any better protection for the public health after enactment than before. Number two, the bill precludes people from bringing actions against chemical manufacturers for injuries, wiping out State statutory and common law, and by making EPA safety determinations dispositive of the chemical safety.

No. 3, the bill takes the unprecedented step of preempting States from enforcing existing laws and/or promulgating new laws designed to supplement Federal laws regulating toxic chemicals. And No. 4, the bill effectively blocks any other entity from evaluating any chemical deemed by the EPA as a low priority substance, even after other health evidence comes to light.

To summarize, the bill essentially banks on the assumption that chemical manufacturers will always act in the interest of public safety by being candid and forthright and disclosing all information they have amassed about their chemicals and their potential danger for use. History teaches all of us that industry cannot necessarily be trusted to place public health above their bottom line. For example, chemical manufacturers engaged in a widespread cover-up of the evidence they had of vinyl chloride's health risk. When people increasingly became sick from exposure to vinyl chloride in the workplace, lawsuits were filed that uncovered decades of deceit by the chemical industry about the dangers of vinyl chloride.

Industry leaders knew and failed to disclose as early as the 1950s, when a Dow Chemical toxicologist admitted privately to his counterpart at B.F Goodrich, "We feel quite confident that 500 parts per million is going to produce rather appreciable injury when inhaled 7 hours a day, 5 days a week for an extended period. As you can appreciate, this opinion is not ready for dissemination yet, and I would appreciate it if you would hold it in confidence, but use it as you see fit in your own operations."

We now know the evidence to support the finding that vinyl chloride causes cancer of the lungs, liver and brain had existed decades

earlier, but had been intentionally suppressed by the very industry that this bill would shield from liability.

Neither OSHA nor EPA can bring this type of information to light. They don't have the funds or the authority to dig into the closets of large corporations to find suppressed health studies. However it is largely disclosed through litigation, the judicial process upon which all citizens rely and what allows victims of wrongdoings to unveil information that would otherwise never been seen. How else would this evidence ever be uncovered?

The multilayered preemption language woven throughout this bill does not simply prevent State agencies from duplicating the work of the EPA, it would rather eviscerate State laws, including the ability of citizens to bring a lawsuit against a chemical company under his or her State. Under this section, if the EPA takes any action on a chemical, State laws and State tort liability would be wiped out and Americans would have no remedy if they are harmed or killed by a toxic chemical.

Further, Section 15 of the bill effectively bars individuals from bringing suits for injuries caused by exposure to approved chemicals by providing an EPA safety determination for a high priority substance shall not only be per se admissible in any State or Federal court, but also determinative of whether the substance meets the safety standard. By dictating the admissibility and weight that the EPA safety determination must be given, must be given in a judicial proceeding, the proposed bill effectively shields the chemical industry from lawsuits for injuries caused by their products.

Such preemptive treatment in the environmental law arena is unprecedented, as there is good reason why such sweeping preemption language exists nowhere else. Federal statutes quite properly set the floor for regulatory compliance. They should not impose a ceiling, as such would strip the States of their police power to protect their citizenry. The bill in several ways steps back in time to an era where industry safety claims about their products went unchallenged. The public health and welfare should not be entrusted to chemical manufacturers regulated by a Federal agency with limited powers and resources.

Thank you.

[The prepared statement of Ms. Greenwald follows:]

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U.S. Senate Committee on Environment and Public Works
Hearing:
"Strengthening Public Health Protections by Addressing Toxic Chemical Threats."
Wednesday, July 31, 2013

I would like to thank the Committee for the opportunity to testify on S. 1009, the "Chemical Safety Improvement Act." My name is Robin Greenwald. I have practiced in the field of environmental law most of my 30-year legal career. I spent nearly 20 years working for the federal government, as an Assistant United States Attorney in the Eastern District of New York, as an Assistant Chief in the Environmental Crimes Section of the U.S. Department of Justice and as General Counsel for the Department of the Interior, Office of Inspector General. In all of these positions I had the opportunity to work with scientists and attorneys at the Environmental Protection Agency. I also was the Executive Director of the Waterkeeper Alliance, an international organization dedicated to the protection of water bodies worldwide, and I was a Clinical Professor of Law at Rutgers College of Law, Newark. I am currently Of Counsel at the New York law firm Weitz and Luxenberg, where I head the Environmental and Toxic Tort Unit. In my various positions, I have worked with nearly every federal environmental statute and am familiar with principles of federal jurisprudence, including preemption, the Administrative Procedure Act and the Rules of Civil Procedure and Evidence. I am also a mother, and much of my work has been driven by the belief that we all have an obligation, regardless of our chosen profession, to protect public health for all segments of the population, to preserve our natural resources and to guarantee that future generations maintain their rights to challenge wrongdoing, both publicly and in the courts, and to be protected from industry irresponsibility that effects and compromises their health and life choices.

I wholeheartedly support efforts to reform the Toxic Substances Control Act and I thank this committee for taking steps towards this goal. I am also encouraged by the willingness to reopen the discussion on this issue as I believe Congress has a responsibility to take chemical safety reform seriously. I have witnessed first-hand how this country's failure to effectively regulate toxic chemicals has negatively impacted the health and safety of American families.

While my support for TSCA reform is unwavering, my view is that S. 1009, the "Chemical Safety Improvement Act," as it is currently written, contains critical and fundamental flaws which will take chemical safety reform in the U.S. a step backwards rather than a step forward. Theoretically designed "to improve the safety of consumers in the United States [and] ensure that risks from chemical substances are adequately understood and managed by modernizing Title I of the Toxic Substances and Control Act . . .," [1] current provisions in the bill unfortunately render it neither protective of public health and welfare nor an improvement over

[1] S. 1009, 113th Cong. § 2(a)(2).

the Toxic Substances Control Act ("TSCA"). While the bill as currently drafted has numerous flaws, I intend to focus my testimony on the following infirmities:

- S. 1009 effectively precludes private parties from bringing actions against chemical manufacturers for injuries caused by their chemicals. It does so by wiping out state statutory and common law, and by declaring the EPA's safety determination *per se* admissible in court and dispositive of the issue of the chemical's safety, even when there is newly acquired safety information generated after EPA's safety determination.
- S. 1009 takes the unprecedented step of preempting states from enforcing existing laws and/or promulgating new laws designed to supplement federal law regulating toxic chemicals. In most federal environmental statutes, the federal standard sets a floor rather than a ceiling; this bill is unprecedented in the environmental statutory world by setting a ceiling;
- S. 1009 does not improve on TSCA's cost-benefit safety standard. To ban or limit a chemical's use, EPA still has the heavy burden of performing a complex and difficult balancing of costs and benefits rather than using a health-based standard, which would be more appropriate when regulating toxic substances. This cost-benefit type standard has rendered EPA nearly powerless to ban toxic chemicals pursuant to TSCA; and
- S. 1009 effectively blocks a state from evaluating any chemical deemed by the EPA as a "Low-Priority Substance".

I. History proves that S. 1009 removes critically important and necessary checks and balances on the chemical industry.

S. 1009 empowers the chemical manufacturers industry while compromising states' and citizens' power to protect themselves. The bill, like the Toxic Substances Control Act (TSCA), establishes a system for approving chemicals either already in the marketplace or in the development stage. First, it places trust in the chemical industry to submit complete and truthful information to the EPA in support of its application to market its chemicals. Based on that information, the EPA either approves or disapproves the chemical. A determination of approval by the EPA is *per se* dispositive of a chemical's safety in a judicial proceeding. In legislating that standard, S. 1009 negates the check and balance that comes with states' or citizens' suits that challenge a chemical's safety. Moreover, the proposed bill deprives states of their fundamental police power to promulgate more stringent testing before a chemical can be used and exposes a state's own citizens. In doing so, the bill strips the country of yet another important check on dangerous decision-making.

The bill banks on the assumption that chemical manufacturers will always act in the interest of public safety, rather than in the name of profits, by being candid and forthright in disclosing ALL of the information they have amassed about their chemicals and the potential dangers of their use, especially if that disclosure risks their approval. History tells us that the industry cannot always be trusted to place public safety above their bottom line; and when the industry fails to do so, it puts the health of millions of Americans at risk. Yet S. 1009 proposes to shield the industry more than ever before by removing the threat of litigation for injuries caused by chemicals and by stripping states of their right to impose more stringent health and safety standards. A review of some examples shows the importance of protecting citizens' and states' ability to bring suit. The below examples may never have been brought to light if S. 1009 were law.

1. Industry deceit about vinyl chloride.

Consider those companies that manufactured vinyl chloride, for example. Chemical manufacturers, supported by the Chemical Manufacturers Association, engaged in a widespread cover-up of the evidence they had of vinyl chloride's health risks. When people increasingly became sick from exposure to vinyl chloride in the workplace, lawsuits were brought against PP&G, Dow Chemical, Ethyl Corporation, B.F. Goodrich and others. As explained below, those lawsuits, as well as other events, uncovered decades of deceit by the chemical industry about the dangers of vinyl chloride.

A brief history is instructive.[2] The first experimental evidence of vinyl chloride carcinogenicity was reported in 1969.[3] Additional data were published in 1971,[4] followed in 1974–1975 by disclosure of rare liver cancers in workers exposed to vinyl chloride.[5] Upon release of these data, first disclosed through an anonymous source to the federal Occupational Safety and Health Association (OSHA), OSHA issued a notice effective April 1975 that vinyl chloride and polyvinyl chloride production plants must reduce Time-Weighted Average workplace exposure levels from 500 parts per million (ppm) to 1 ppm, to provide adequate

[2] A chilling, comprehensive rendition of the depth and breadth of the vinyl chloride cover up is produced by Chemical Industry Archives, a project of Environmental Working Group, together with links to the wealth of information withheld from the government and the public demonstrating the chemical industry's early knowledge of vinyl chloride's dangers, at http://www.chemicalindustryarchives.org/dirtysecrets/vinyl/1.asp. *See also* http://www.deceitanddenial.org/docs/timeline.pdf.

[3] Dr. P.L. Viola, Regimi Elana Institute for Cancer Research, Rome, Italy, unpublished data. See http://www.chemicalindustryarchives.org/dirtysecrets/vinyl/1.asp.

[4] Viola *et al.* 1971 at http://cancerres.aacrjournals.org/content/31/5/516.full.pdf.

[5] Creech and Johnson 1974; Creech and Makk 1975; Maltoni 1974, 1975; Maltoni et al. 1974. *See* http://www.medscape.com/viewarticle/508568_2.

worker protection. Litigation years later exposed the breadth of the industry's early knowledge about and its failure to disclose the dangers of vinyl chloride.[6]

When OSHA issued the new exposure limit of 1 ppm, industry spokespeople used the age-old intimidation tactic of predicting widespread job loss and plant closures. Fortunately, OSHA did not succumb to industry's veiled threat and, in less than two years following the regulations' effective date, virtually all chemical manufacturing plants in the United States had been able to meet the new standard while maintaining rapid growth of sales volume. All it took was a small expenditure of money – and I mean small – and these improved safety measures were easily accomplished.

Yet it is now well documented that industry leaders had learned and failed to disclose as early as the 1950s – long before the 1975 OSHA standard -- that the then-existing limit of 500 ppm was far beyond a level that assured worker safety and health. In 1959, for example, internal industry experiments revealed micropathology in rabbit livers after repeat exposures to 200 ppm vinyl chloride monomer,[7] causing Dow Chemical toxicologist Dr. Rowe to admit privately to his counterpart at B.F. Goodrich – "***We feel quite confident ... that 500 ppm is going to produce rather appreciable injury when inhaled 7 hours a day, five days a week, for an extended period. As you can appreciate, this opinion is not ready for dissemination yet and I would appreciate it if you would hold it in confidence but use it as you see fit in your own operations***."

Vinyl chloride and polyvinyl chloride manufacturers also delayed public release of findings of liver angiosarcoma in vinyl chloride-exposed rodents by Dr. Cesare Maltoni.[8] In 1972, the industry was briefed on Dr. Maltoni's report of primary cancers of both liver and kidneys at exposure levels as low as 250 ppm, **half** the then 500 ppm allowable exposure limit for workers. Nevertheless, in a meeting with government officials -- eight months after receiving this information -- industry representatives failed to disclose Dr. Maltoni's findings. The public began to learn of the hazards of vinyl chloride only in early 1974 through newspaper reports of the deaths of three workers in a B.F. Goodrich vinyl chloride plant in Louisville, Kentucky.[9] Consistent with Dr. Maltoni's studies, the workers suffered from liver angiosarcoma.

In addition to evidence of liver cancer, starting in the 1970s the industry's internal studies

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[6] *See* affidavit of Dr. Judith Schreiber, Senior Public Health Scientist, New York State Department of Law, in In The Matter of the Application of Resilient Floor Covering Institute v. New York State Department of Environmental Conservation, outlining early knowledge about vinyl chloride's harmful effects at http://www.healthybuilding.net/pvc/NYS_vinyl_affidavit_js.pdf.

[7] Markowitz and Rosner, *Corporate Responsibility for Toxins*, Annals of the American Academy of Political and Social Science, 584, November 2002.

[8] Markowitz and Tosner 2002.

[9] Creech and Johnson 1974.

revealed excess cancers in non-liver sites, including the respiratory system and the brain. Industry suppressed this information also. Indeed, the International Agency for Research on Cancer (IARC), unaware of the industry's internal studies, reported at the time that "***there is no evidence that there is an exposure level below which no increased risk of cancer would occur in humans.***" The truth was not discovered until the late 1970s, when IARC discovered the existence of international studies that disclosed that vinyl chloride is a human carcinogen with target organs including the liver, brain, lung and haemo-lymphopoietic system. We now know that the evidence to support this finding had existed decades earlier but had been intentionally suppressed by the very industry this bill would shield from liability for such deceit.

It is critically important for this Committee to understand how this type of information comes to light: it is not through intensive investigative research of either the OSHA or the EPA – they do not have the funds or the human resources to dig into the closets of large corporations to find the suppressed health studies. Rather, it is largely disclosed through judicial proceedings – the judicial process upon which all citizens rely and that time and again allows victims of wrongdoing to unveil information that would otherwise never be seen.

Here is another disturbing aspect of this saga. EPA had the information about vinyl chloride's dangers in the 1970s. Nonetheless, EPA waited until the year 2000 to finalize an update of vinyl chloride's toxicological information, over two decades after the federal government had proof of the carcinogenic effects of vinyl chloride. EPA explains this delay by claiming it could not establish a numerical estimate of vinyl chloride's potency and therefore could not decide whether to classify vinyl chloride as a carcinogen. Regardless of the legitimacy of that rationale, a two-decade process to determine a chemical's safety is inexcusable, as during those years workers continued to be exposed to harmful levels of the chemicals.

Of course, during those two decades the chemical industry had been provided with ongoing opportunities to weigh in on EPA's review of vinly chloride's toxicity. EPA's 2000 vinyl chloride assessment downplayed risks from all cancer sites other than the liver. Its assessment reduced the cancer risk 10-fold – a big industry victory as it reduced the extent and costs of pollution reduction and clean-up measures.

The vinyl chloride story is but one illustration of the chemical industry's deceit and how EPA all too often takes action that serves industry rather than the public. At least under the current legal regime, states are permitted to cure these deficiencies and protect their citizens. But if S. 1009 were passed in its current form, states would be left powerless to fill the gaps left by the federal government.

2. Industry deceit about asbestos.

The vinyl chloride story is not an outlier. Owens Corning, Johns Manville and other asbestos manufacturers had reliable, proven information from their own experts that asbestos was dangerous and could and would kill many of those exposed to it. But asbestos promised to earn chemical manufacturers billions in revenue. Disclosing internal information they had about the dangers of the chemical risked those billions of dollars; suppressing the evidence meant the product could enter the stream of commerce. So the chemical industry suppressed its knowledge of asbestos' toxicity, in utter disregard for the health and safety of its workforce and for human life generally. In the words of one of these manufacturers: ". . . if you have enjoyed a good life while working with asbestos products, why not die from it."[10] Need this Committee be reminded of the consequences of this depraved perspective: hundreds of thousands, if not millions of people to date have died or become seriously ill from asbestos-related diseases, including mesothelioma. Perhaps before taking any further action on this proposed bill the Committee would consider inviting the surviving spouses and children who watched their loved ones, with no hope of recovery, die an incredibly painful death from mesothelioma, to tell their stories. Asbestos is still legal in this country today and thousands more continue to die every year due to exposure to Asbestos-containing products.

3. Industry deceit about polychlorinated biphenyls (PCBs).

Monsanto Corporation, the principal manufacturer of PCBs in the United States, knew as early as the 1930s that PCBs caused serious health problems in workers. But as the case with vinyl chloride, asbestos and many other chemicals, it was keenly aware that public disclosure of this information would jeopardize the product's sales and years later would subject them to considerable liability for making people ill and degrading numerous communities around the country with PCB waste, such as Anniston, Alabama; Schenectady, New York; and Pittsfield, Massachusetts, to name a few. Moreover, faced with the choice between protecting public health and making money, these companies chose money. As a result, and similar to the stories above, Monsanto suppressed information it had about PCB's harmful effects.[11]

S. 1009, with its broad preemptive effect, would undoubtedly result in a replay of these and many other similar events. The story of the marketing, manufacture and use of just these three

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[10] 1966 Bendix Corporation Letter, www.ewg.org/research/asbestos-think-again/industry-hid-dangers.
[11] A summary of Monsanto's deceit about PCBs' dangers is at http://www.chemicalindustryarchives.org/dirtysecrets/annistonindepth/toxicity.asp.

chemicals illustrates why significant changes must be made to S. 1009 for the health and safety of the country. In its current form, S. 1009 renders citizens even more powerless to protect themselves in the face of this powerful chemical industry than during the decades of the vinyl chloride, asbestos and PCB cover-ups. No one questions that the current TSCA needs major modification, but S. 1009 in its current form is not the modification required for many reasons, and I address several of these below.

II. Overview of Toxic Substances Control Act: What it did and did not accomplish.

As a backdrop to a more detailed discussion of the proposed Chemical Safety Improvement Act, I provide a brief overview of what I believe TSCA accomplished and what it did not. I further outline several relevant TSCA provisions that illustrate why improvement is needed in specific areas that are mishandled or altogether ignored by the proposed bill. Finally, I address the manner in which the proposed bill increases the power of the chemical industry and relies upon the judgment and discretion of that industry to make decisions despite its history of abusing its responsibilities.

Congress passed TSCA to address, and theoretically to redress, the Executive Branch's lack of oversight of chemicals in commerce. Earlier clean water and clean air laws and regulations were focused primarily on the waste streams from manufacturing, not on the chemical themselves. These Acts generally relied on EPA to establish standards and demonstrate risks before taking enforcement actions. Through TSCA, the federal government was permitted exercise authority over production and use decisions, thereby regulating the type and nature of chemicals that could be manufactured and placing limitations on their use. TSCA permits the EPA to regulate toxic substances in several ways, from outright banning of chemical substances to testing and labeling requirements. These safeguards have had some important beneficial impacts for society (for example, the banning of PCBs), but these measures do not go far enough.

TSCA's provisions vary as applied to new versus existing chemicals. A "new chemical substance" is defined as "any chemical substance which is not included in the chemical substance list compiled and published under [TSCA] section 8(b)." This list, called the "TSCA Inventory," is a list of all chemical substances in commerce prior to December 1979. All chemicals on the market prior to this date are considered existing chemical substances. This list represents 99% by volume of chemicals on the market today. Under TSCA, these existing chemical substances are considered *per se* safe unless EPA can demonstrate that they present an unreasonable risk to human health or the environment. This method of identifying *per* se "safe" substances, needless to say, was the result of significant industry lobbying and involvement.

Certain sections of the bill are worth specific mention. Section 5 prohibits the manufacturing, processing or importing of a "new chemical substance" or "significant new use" of an existing substance unless a Pre-Manufacture Notification (PMN) is submitted to EPA at least 90 days before the commencement of the proposed activity. The PMN identifies the chemical, its physical characteristics, processing and use, and provides available toxicity data. During the 90-day review period, EPA reviews the chemical's human and environmental risks and exposures, examining the data submitted in addition to other information. EPA may request more data, prohibit or limit manufacture, or halt the review process. The pre-manufacture submission requirements only apply to chemicals and products of biotechnology for industrial use, while different laws apply to any chemical used as a drug, food additive or pesticide. In addition, certain types of chemicals and chemical uses are exempted from the review process, and EPA is authorized to make future exemptions.[12]

Section 6[13] authorizes EPA to issue regulations to address the risks of existing substances if "there is a reasonable basis to conclude that . . . a chemical substance or mixture . . . presents or will present an unreasonable risk of injury to health or the environment . . . using the least burdensome requirements" that are necessary to address that risk. Such regulations can be issued immediately when a threat of harm is imminent.

Section 4[14] compels the EPA Administrator to require the testing of chemical substances or mixtures, new or existing, if (1) there are insufficient data to make an unreasonable risk determination and testing is necessary; and (2) the chemical substance or mixture (a) may present an unreasonable risk or (b) the chemical will be produced in substantial quantities and either (i) may enter the environment in substantial quantities or (ii) lead to significant or substantial human exposure.

Section 8[15] authorizes EPA to promulgate rules that require chemical manufacturers, processors and distributors to maintain records and make reports on chemicals and mixtures. This includes requirements to submit health and safety studies, provide immediate notice of "substantial risks," and maintain records of adverse health effects for 30 years. This Section allows EPA to issue rules to collect production and use information as well as information on disposal and byproducts, and includes the Inventory Update Rule, which generates an inventory every four years of all of the non-polymeric chemicals produced or imported into the United

[12] Ashford, N and C. Caldart. 1997, Technology, Law and the Working Environment, Washington, DC, Island Press.
[13] TSCA, 15 U.S.C. § 2605.
[14] TSCA, 15 U.S.C. § 2603.
[15] TSCA, 15 U.S.C. § 2607.

States.

Section 9[16] requires the EPA formally to refer regulation of an unreasonable risk to other agencies if that risk "may be prevented or reduced to a sufficient extent under a federal law not administered by the Administrator." These "referral agencies" include OSHA and the Consumer Product Safety Commission.

I am informed by Dr. Nicholas Cheremisinoff, a renowned chemical engineer who has authored/co-authored more than 160 books on industry practices and worked extensively on developing environmental regulations in numerous countries under United States Agency for International Development funded programs, and with whom I recently consulted about TSCA and S. 1009, that despite the intent of these provisions to fill a substantial gap in the regulation of toxic substances, the implementation of TSCA has been largely unsuccessful, particularly for existing chemicals. In implementing restrictions on the manufacturing or use of toxic chemicals, the EPA has an extremely high burden before it can take action under TSCA. To restrict dangerous chemicals, EPA must prove that the chemical "will present an unreasonable risk," that it is choosing the least burdensome regulation to reduce risks to a reasonable level, and that the **benefits of regulation outweigh the costs to industry**. EPA must do this on a chemical-by-chemical basis. As a result of this heavy burden, EPA has placed few restrictions on chemicals over the years.

Asbestos is one important example of TCSA's shortcomings. EPA began regulating asbestos in the late 1980s. After ten years of research, public meetings and regulatory impact analyses, EPA issued a final rule under Section 6 of TSCA in 1989 to prohibit the future manufacture, importation, processing and distribution of asbestos in almost all products. The asbestos industry challenged EPA's ban. In a landmark case,[17] the court all but eliminated EPA's ability to use Section 6 of TSCA to restrict dangerous chemicals. The court held that EPA had presented insufficient evidence, including risk information, to justify its asbestos ban. Specifically, the court found that EPA: (1) had not used the least burdensome regulation to achieve its goal of minimizing risk, (2) had not demonstrated a reasonable basis for the regulatory action, and (3) had not adequately balanced the benefits of the restriction against the costs to industry. The court further held that "EPA's regulation cannot stand if there is any other regulation that would achieve an acceptable level of risk as mandated by TSCA" and that "EPA, in its zeal to ban any and all asbestos products, basically ignored the cost side of the TSCA

[16] TSCA, 15 U.S.C. § 2608.
[17] *Corrosion Proof Fittings v. EPA* , 947 F.2d 1201 (5th Cir. 1991).

equation."[18] While S. 1009 does not have TSCA's "least burdensome requirements" safety standard,[19] it retains TSCA's "unreasonable risk" language and is vulnerable to being interpreted as placing a similarly heavy burden on EPA to impose even the most modest restrictions on a chemical.

In sum, TSCA's shortcomings are perhaps best illustrated by the fact that EPA's success rate in restricting chemicals is poor. Since its passage in 1976, EPA has restricted only five chemicals -- PCBs, chlorofluorocarbons, dioxin, asbestos, and hexavalent chromium -- under TSCA. EPA has only referred risks to other agencies, as required under TSCA Section 9, on only four occasions in 37 years.[20]

To make matters worse, TSCA has even hindered EPA's ability to provide public information on chemical production and risk by creating broad confidential business information provisions. During TSCA's early history, industry had to substantiate confidentiality claims; claiming confidential business information now requires little more than a routine check-off procedure. A 1998 EPA analysis found that 65 percent of the information in industry filings with the Agency under TSCA was submitted as confidential.[21] About 40 percent of substantial risk notifications by industry claims confidentiality for the identification of the chemical, thus keeping from the public which chemicals are acknowledged to be dangerous to heath and safety.[22] S. 1009 permits the same *pro forma* claims of confidentiality.

III. S. 1009, rather than providing needed improvements to TSCA, presents new and greater risks to public health and safety.

1. Preemption and Effective Immunity for Private Actions.

Section 15 of the bill is broad in effect and raises serious concerns about its impact on state laws, including state common law. The section states that no state may create a new, or continue to enforce an existing restriction on the manufacture, processing, distribution, or use of a chemical after the EPA completes a safety determination for that chemical. Under this section, if the EPA takes *any* action on a chemical, state laws and state tort liability could be wiped out. This would have the effect of banning U.S. consumers from filing causes of action based on state tort law if they are harmed or killed by a toxic chemical. Further, states would be prohibited from

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[18] *Id.*
[19] TSCA § 6, 15 U.S.C. § 2605(a).
[20] *See* www.chemicalspolicy.org/downloads/Chemicals_Policy_TSCA.doc .
[21] *Id.*
[22] *Id.*

creating new restrictions on such chemicals' manufacture, processing, or distribution for chemicals the EPA classifies as high- or low-priorities.

Further, S. 1009's preemption provisions effectively bar individuals from bringing private suits for injuries caused by exposure to approved chemicals. The bill provides that EPA's safety determination for a high-priority substance "shall be admissible as evidence in any public or private action in any court of the United States or State court for recovery of damages or for equitable relief relating to injury to human health or the environment from exposure to a chemical substance."[23] The bill moreover declares that the "safety determination **shall be determinative** of whether the substance meets the safety standard under the conditions of use addressed in the safety determination."[24] By dictating the admissibility and weight that an EPA "safety" finding must be given in a judicial proceeding, the proposed bill puts a further nail in the coffin of private actions by effectively shielding the chemical industry from lawsuits for injuries caused by their products. An attorney simply could not defeat summary judgment, even if he or she has abundant evidence of a chemical's danger and even if that evidence post-dates EPA's finding, because the court would be **bound** to make a finding that the subject chemical is safe based on EPA's determination and regardless of the evidence. This absolute barrier would be present regardless of whether an injured person files suit in federal or state court.

Based on my understanding and knowledge of the federal environmental laws, there is no other environmental law that declares the federal standard the ceiling, or declares that that ceiling is *per se* admissible in court and determinative of the issue of safety. Such a result would be counterproductive and potentially tragic for the health and safety of the populace. After all, it is important for the Committee to recall that the limitations on the use and/or outright ban of vinly chloride, asbestos and PCBs, to name just a few, are largely the result of environmental groups and attorneys for private citizens who fought relentlessly to uncover the multiple layers of deceit perpetrated by the chemical industry.

2. Preemption of State Action.

Historically, TSCA's deficiencies have been addressed through individual state implementation programs. The proposed bill intends to preempt state regulations,[25] thereby potentially depriving the public of one of the most important – and perhaps the most efficient – safeguards in TSCA. Specifically, S. 1009 as currently drafted would preempt existing and

[23] S. 1009, 113th Cong. § 15(e)(1).
[24] S. 1009, 113th Cong. § 15(e)(2).
[25] S. 1009, 113th Cong. § 15.

future state regulations that, for example, require chemical companies to develop and provide test data and studies on chemicals.

The bill also would preclude states from imposing restrictions on the manufacturing, processing, distributing or use of a chemical that EPA has classified as a low-priority substance. This limitation on states' authority effectively means that no safety assessments will be performed on chemicals EPA declares to be low priority substances.[26] Furthermore, the bill would prohibit states from even challenging EPA's determination of whether a substance is high-priority or low-priority, because such a finding is not considered a 'final agency action' and thus is not subject to judicial review.[27] Finally, if the history of TSCA is a prologue for future EPA action, since the bill exempts low-priority substances from regulatory protections, and since EPA historically has classified the majority of chemicals as low-priority substances, states for the most part will be deprived of the ability to regulate the use of chemicals in their states and to require the manufacturer to provide information about a chemical's safety.[28]

Such preemptive treatment in the environmental law arena is unprecedented, and there is a good reason why such sweeping preemption exists nowhere else.[29] The Tenth Amendment to the Constitution preserves states' exercise of police powers to protect the health and safety of their citizens. Courts have consistently recognized health and safety regulations to be at the heart of those constitutional police powers.[30]

I am not aware of any other federal environmental law which blocks the states from regulating toxics more stringently than the federal government. Other than the proposed bill, federal environmental statutes quite properly set the floor for regulatory compliance.[31] Section 15 of S. 1009, to the contrary, entitled "Preemption," strips the states of their police power to protect their citizenry. This provision is not only bad policy but may well not pass constitutional muster.

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[26] This proposed bill would remove even those inherent police powers in instances in which the EPA has not yet undertaken regulation or will not be regulating a chemical substance (for example,. a chemical it declares a low-priority substance: "The Administrator shall not perform safety assessments on low-priority substances, unless a low priority substance is redesignated [a high-priority substance]. S. 1009, 113th Cong. § 4(e)(3)(H)(ii)).

[27] S. 1009, 113th Cong. § 4(e)(5).

[28] *See supra* at page 8.

[29] For examples of the negative consequences of the preemption provision of S. 1009, see the Center for Environmental Health website at http://www.ceh.org/making-news/press-releases/29-eliminating-toxics/656-center-for-environmental-health-opposes-the-chemical-safety-improvement-act-of-2013-lautenbergvitter-s1009-unless-substantial-changes-are-made-to-protect-the-health-of-american-families.

[30] *See* Letter from Attorney General for the State of California for a discussion of the dangers of the bill's preemption provisions at http://www.healthandenvironment.org/docs/CaliforniaAGMemoOnCSIAPreemption.pdf.

[31] *See, e.g.*, 33 U.S.C. § 2718.

3. The Safety Standard and EPA's Burden to Uphold Action.

The proposed bill retains TSCA's onerous safety standard, defining "safety" as the lack of "unreasonable risk of harm to human health or the environment … result[ing] from exposure to a chemical substance."[32] A safety determination under the proposed bill requires the Administrator to determine "whether a chemical substance meets the safety standard under the intended conditions of use."[33] If the goal of S.1009 is truly as declared – "to improve the safety to consumers in the United States" – and in keeping with the bill's findings that "chemicals should be safe for the intended use of the chemicals" and "the unmanaged risks of chemical substances may pose a danger to human health and the environment" -- then this bill should include a strictly health-based standard requiring evidence of a "reasonable certainty of no harm." As now drafted, the standard based upon "unreasonable risk" requires EPA to engage in a complex balancing of costs and benefits rather than mandating a standard that forces the chemical manufacturers to carry the burden of proving that a proposed product does not present a threat to the public. As explained above, this standard functionally is the equivalent of the TSCA Section 6 standard that has hamstrung the agency from banning or limiting the use of chemicals.[34]

Not only does EPA have a heavy burden before it can impose restrictions on a chemical, but those decisions are subject to a more onerous administrative standard than is generally required for the review of administrative actions. Under the Administrative Procedure Act, an agency's regulations will be upheld unless it is shown that the agency acted in an arbitrary or capricious manner.[35] The proposed bill abandons this well-established standard of agency action in place of a more onerous one that requires courts to set aside EPA rules requiring additional testing data, safety determinations and restrictions unless EPA can support its action with "substantial evidence." This standard functionally shifts the burden of proof to EPA to submit substantial evidence that a chemical is not safe for particular uses. EPA is not in the business of manufacturing chemicals and generally does not, and cannot financially afford to, commission studies about a chemical's safety or lack of safety. The contrast with the chemical industry's financial ability to present support for its product and attempt to carry a burden of proving a product's safety is stark.

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[32] S. 1009, 113th Cong. § 3 (16).
[33] S. 1009, 113th Cong. § 3 (15).
[34] *See* discussion *supra* at pages 10 and 11 and footnote 14.
[35] Administrative Procedure Act, 5 U.S.C. §706.

4. Low-Priority Substances Are Unchecked.

As explained above, judicial review of agency decisions made under this proposed bill is anemic. While the bill purports to permit judicial review of final agency action regarding approved uses for high-priority chemicals, [36] the bill precludes judicial review of agency of the threshold agency decision classifying a chemical as being a high-priority or low-priority substance.[37] The consequences of this are enormous because, once EPA decides that a chemical is a low-priority substance, ["t]he Administrator shall not perform safety assessments on [the chemical]."[38] That important determination, however, is based upon incomplete information. A low-priority substance identification is based on "available information" that the chemical "is likely to meet the safety standard under the intended conditions of use."[39] The "information" that forms EPA's low-priority finding is comprised of "information and data submitted to the Administrator by manufacturers and processors of the substance."[40]

The manufacturer and processor are allowed broad latitude to label the information presented to EPA as "confidential information," thereby blocking the information's availability from public review and comment. Further, the manufacturer and processor are not required to disclose to EPA the funding sources for the studies except to the "extent reasonably ascertainable."[41] Anyone who has made an effort to learn funding sources of industry-commissioned studies knows that industry sets up sufficient barriers between themselves and the institution performing the research to make it difficult at best to confirm the funding source. The "reasonably ascertainable" language allows industry to circumvent any requirement that it provide funding sources for the studies they submit.

One of the reasons the above provisions are so troublesome is that the structure of the bill favors a chemical being identified as a low-priority substance. In an instance, that chemical will be in the marketplace with no requirements and, indeed, no ability to provide additional or future assessment of the chemical's safety and with no judicial review of the decision that has resulted in insulating the product from further review. While the bill permits judicial review of agency decisions regarding high-priority substances, there is hardly even the pretense of seeking real or ongoing evaluation of low-priority substances. The consequences are great: not only can the decision not be challenged by anyone, including a state, but a state also cannot, as explained

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[36] S. 1009, 113th Cong. § (1).
[37] S. 1009, 113th Cong. § 4(e)(5).
[38] S. 1009, 113th Cong. § 4(e)(3)(H)(ii).
[39] S. 1009, 113th Cong. § 4(e)(3)(F).
[40] S. 1009, 113th Cong. § 4(c)(1)(A).
[41] S. 1009, 113th Cong. § 4(b)(2).

above, require additional assessments for any substance the EPA identifies as low-priority. A misguided EPA decision effectively leaves the entire country powerless to defend itself against the placement of a dangerous chemical in commerce.

IV. Conclusion.

Fundamentally, S. 1009 suffers from multiple flaws, almost unprecedented in the world of environmental regulation to date. Under the bill, organizations and individuals who have fought so hard over the years to uncover the truth about chemicals would be barred from any meaningful participation in the assessment and accountability processes. Those guardians of our health and safety also would be effectively barred from bringing suit in the courts to challenge and expose wrongdoing by the chemical industry. States would not be permitted to fill the gaps left by the federal government and might be prevented from enforcing their current laws on toxic substances. And as a practical matter all interested parties, including the EPA, would be prevented from gaining full access to relevant company information about the chemical product. The bill puts the chemical manufacturing industry in charge of the health and welfare of our citizens and our environment. History proves that to be an unwise decision.

Consider this scenario: Chemical Company A develops Chemical X and submits an application to EPA for permission to sell Chemical X for Y uses. Company A has been developing Chemical X for years and has commissioned and funded studies during that time to support the application. Company A has shielded disclosure of that funding by filtering the funding through other entities in such as way so as to avoid the "reasonably ascertainable" standard for disclosure. Neither the public nor EPA know pre-application that Chemical X is being developed or that Company A intends to seek approval to market Chemical X for Y uses in the United States. The application is submitted and the states and the public, while given an opportunity for comment, must amass information and fight the uphill battle of challenging industry-controlled (and most likely funded) studies during the public comment time frame. It is a battle that rarely, if ever, can be won.

Assume a slightly different scenario. Company A submits information to EPA that Chemical X should be indentified as a low-priority substance. The states and the public amass a body of peer-reviewed studies by top-notch scientists from around the world that show that Chemical X has the potential for high hazard and high exposure and, therefore, should be identified as a high-priority substance. Company A submits a fraction of the information submitted by the states and the public, and either does or does not disclose that it paid for each study it submitted in support of the low-priority substance determination.

Despite the fact that the evidence is overwhelming in favor of identifying the chemical as high-priority which, in turn, would trigger the assessment process established by the bill, EPA nevertheless issues a notice of its determination that Chemical X is a low-priority substance. That decision is not subject to judicial review. It is final. End of story. Company A is now permitted to market Chemical X for Y uses in the United States, without any further assessment, despite the overwhelming evidence that X is not safe. Citizens are not able to hold the manufacturers accountable in a court of law and states are left powerless to exercise their police power to impose additional assessments before the product is marketed to their citizens.

The bill in several ways steps back in time to an era where industry safety claims about their products went unchallenged. The public health and welfare should not only be entrusted to chemical manufacturers and a federal agency with limited powers and resources. Enforcement of state law, both by private citizen suits and state enforcement actions, are essential components to fully protecting human health and safety. This multi-layered approach to protecting public health has been in operation for decades, and while TSCA reform is sorely needed, such reform need not disrupt or eviscerate this comprehensive system of checks and balances.

I am honored by the opportunity to provide this commentary and I look forward to doing anything I can to aid this Committee in its efforts to achieve meaningful TSCA reform.

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September 4, 2013

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RE: S. 1009

Dear Senators Boxer and Vitter:

Thank you again for the privilege of appearing before your Committee on July 31, 2013, to provide testimony about the dangers of S.1009 in its current form. As I stated at the hearing and in my written testimony, I concur that amendment of the current TSCA is sorely needed; however, such amendment should focus on protecting the public from the dangers of toxic chemicals. An amended TSCA should, therefore, take us many steps forward rather than, as S.1009 does, several steps backwards.

Below are my responses to the questions which Senator Boxer posed to me in a letter dated August 20, 2013:

1. **Your testimony discusses several shocking examples of industry concealing evidence that their chemicals were harming people. Can you describe the importance that the civil justice system played in revealing this deception?**

a. What other public benefits come from maintaining a strong civil justice system, including in states without cutting-edge chemical regulation programs?

Answer:

The civil justice system is the only way through which information concealed by a company can be publicly revealed. The examples cited in my testimony are sadly a mere sampling of companies' deceit and deflection about the dangers of their activities. There are limited ways the public is able to learn about a chemical's danger. One way is through government regulation that requires a manufacturer to provide particular information about its product and limits, to the greatest extent possible, companies' ability to prevent disclosure by claiming a confidential business information' exception. When such properly drafted government regulations exist, the public is able to obtain the information about a chemical's dangers through the federal Freedom of Information Act ("FOIA") and states' equivalent public disclosure laws. Through the FOIA, of course, the public is only able to gain access to information which a manufacturer provides to the government. There is no mechanism, outside of the civil justice system, to obtain concealed information or information the government has not previously demanded.

When individuals harmed by chemical exposure file lawsuits, those people are entitled to take discovery of the defendant chemical manufacturer. That means that the plaintiffs are allowed to ask written questions about the company's past practices and its early knowledge about the risks of the company's activities. Furthermore, the plaintiffs are allowed to ask questions through depositions of company executives and employees with knowledge about the chemical's dangers. Those deposition witnesses are given an oath at the start of the deposition that they must tell the truth or face punishment under the law for failing to tell the truth. This process allows ample information to be revealed.

Vitally important, the plaintiffs also are entitled to demand documents in the defendant company's possession that relate to lawsuit chemical's known dangers. That means the plaintiffs can force a corporation to reveal all information the defendant has or can obtain that shows the company knew about the dangers of the chemicals it manufactured or manufactures. It is perhaps most often through disclosure of this historical information, and the testimony of certain executives about these documents, that the plaintiffs learn about the true dangers of the chemicals to which they were exposed and, sadly, all too often learn that the company knew about the dangers from the outset.

I have been asked (and have sometimes wondered myself) why companies produce documents that make the type of statements that are quoted in my testimony – documents that show a company's early knowledge about a chemical's dangers and its concealment of that information from the government and the public – when the company knows that such documents likely will result in the plaintiffs being able to establish the company's liability for

their injuries. I believe that while incriminating documents might be destroyed from time to time, many companies faced with the option of producing such incriminating document versus destroying the documents opt to produce them because the penalty for destroying documents requested in litigation is a prosecutable offense that could land the corporate managers who ordered or knew about the destruction in jail. Without the civil justice system, and the hammer of obstruction of justice prosecution for destroying evidence, much of the information that has been uncovered about many toxic chemicals would still be sequestered in archived storage of the chemical manufacturers. I know of no better or more effective avenue for obtaining such information.

The civil justice system offers benefits and protections too numerous to mention in total. Some of the most important benefits, however, are (1) the public gains knowledge about the dangers of certain chemicals without having to rely exclusively on government officials who are hamstrung by many issues, including, especially in the case of the EPA, a shrinking budget and limited powers and resources; (2) the civil justice system works in a way that avoids the political pressures faced by government regulators; and (3) the civil justice system provides important economic incentives for corporations to make safe products by allowing for a more expansive enforcement structure for harm caused by chemicals than the federal and state agencies are equipped to handle and/or authorized to undertake.

2. Under state statutory and common law, private parties injured by toxic chemicals can seek justice in court by filing claims against chemical companies.

a. Can EPA determinations on a chemical's health threats already be used in courts as evidence in these cases?
b. Can you explain how S.1009 would harm a victim's ability to seek justice in courts compared to current law and practice?

Answer:

EPA determinations about a chemical's health threats can currently be used in lawsuits as evidence by both the plaintiffs and the defendants. Any determinations by the EPA, or other regulatory bodies, can be used in any court if a judge or jury finds that information important to the issues in a case. This is current practice under both state and federal law.

There is one stark difference, however, between the current system and S. 1009. Currently, the court and the jury decide how to interpret each piece of evidence, as they see appropriate. Both plaintiffs and defendants are free to present such evidence and make any arguments dismissive or supportive of the evidence. For example, assume EPA determines that Chemical X is safe; subsequently evidence comes to light showing that Chemical X is actually

responsible for the deaths of many Americans. Assume also that the plaintiffs have considerable evidence from credible sources that the EPA determination was based on misleading information and therefore wrong, including evidence developed by credible medical experts whose sound methodology shows that the chemical in fact is not safe to humans. In the current system, the defendant would undoubtedly want to introduce the EPA determination evidence at trial, and courts would typically admit it. The plaintiffs, however, would also be permitted to introduce the evidence they have garnered showing that the chemical is not safe and cross-examine the defendant's witness about the soundness of the EPA's determination. This type of public discourse should be protected, especially when the issue at hand involves the toxicity of chemicals impacting human health and safety. Further, this is especially important when our scientific assessments of chemicals are ever-evolving as new information emerges.

S. 1009 changes the landscape entirely. Under S.1009, the EPA determination of a chemical's safety is *per se* admissible and determinative of the issue of a chemical's safety. The example given above would change as follows: plaintiffs would not have the right to cross-examine defendant's witness about the EPA determination. The issue of safety is deemed already to have been determined under S. 1009. Further, if plaintiffs were to have credible experts available to testify about reports critical of the EPA determination and that show the chemical's dangers, the defendants undoubtedly would make a motion to exclude those reports and those experts' testimony as irrelevant since S. 1009 deems the EPA determination to be dispositive on the issue of safety.

Perhaps most disturbing, it would be irrelevant that the plaintiffs' experts were relying on information that *post-dated* the EPA determination: S. 1009 strips the trial court of all discretion to allow the jury to evaluate whether the EPA determination is unreliable or outdated and decide whether the plaintiffs' evidence on the chemical's safety is persuasive. In short, since the pivotal issue in a lawsuit brought by a person who claims he or she has been harmed by a chemical is whether the chemical is safe, S. 1009 as a practical matter immunizes a company responsible for producing a dangerous chemical by depriving the plaintiff of the ability to prove that the chemical is not in fact safe.

I know of no other environmental statute that makes an EPA determination *per se* admissible and determinative of the issue in a lawsuit. It is antithetical to the civil justice system and it unrealistically assumes both that the EPA has all relevant information available when it makes safety determinations and that it never makes a mistake. It also mistakenly assumes that the industry will consistently be honest and forthright about all the information is has about its chemicals. History teaches us that neither is true.

3. Should TSCA's "substantial evidence" standard for judicial review be replaced with an "arbitrary and capricious" standard or some other standard of review?

Answer:

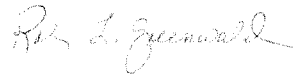
S.1009 fails to address one of the principle underpinnings of the current law's ineffectiveness: the "substantial evidence" standard of review. This standard of review has invited courts to review EPA regulatory rulemaking for dangerous chemical substances less deferentially than they otherwise would be required to under the "arbitrary and capricious" standard mandated by the Administrative Procedures Act (APA) and most other environmental statutes. Specifically, the Administrative Procedures Act requires that in order to set aside agency action the reviewing court must conclude that a regulation is "arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law."

Rather than adopt the APA standard, S.1009 would retain the existing Toxic Substances Control Act's ineffective standard of review and require the EPA to defend any rulemaking by a showing of "substantial evidence." This heightened standard allows courts and interested parties to draw out the review process by questioning the Administrator's actions after the court has reviewed the "whole record." This results in considerable delay of agency action and imposes a nearly impossible burden for any Administrator to meet in order to promulgate a rule banning or phasing out the use of a dangerous chemical substance. Most notably, this standard of review enabled the 5th Circuit Court of Appeals to overturn the EPA's ban of most uses of asbestos in *Corrosion Proof Fittings v. EPA*.

Amending S.1009 to provide for an "arbitrary and capricious" standard of judicial review would considerably strengthen the EPA Administrator's ability to promulgate rules for dangerous chemical substances and send a clear signal to the reviewing courts that significant deference should be afforded to EPA Administrator rulemaking.

I am honored to be a part of this process and hope that I have the opportunity to continue to work with the Environment and Public Works Committee to improve S. 1009 so that meaningful TSCA reform can finally be realized.

Respectfully submitted,



Robin L. Greenwald

Senator BOXER. OK, we are going to finish this panel and then we will ask you to take a lunch break and we will be back at 1 o'clock to start our questions.

Let's move to Mr. Mark Duvall, Principal, Beveridge & Diamond, P.C.

STATEMENT OF MARK N. DUVALL, PRINCIPAL, BEVERIDGE & DIAMOND, P.C.

Mr. DUVALL. Thank you, Madam Chairwoman and members of the Committee, for inviting me to provide testimony today.

Although I represent a variety of clients on TSCA issues, I am appearing here today solely in my personal capacity. The views I express today are my own. For clarity, in my appearance here today I am not representing my law firm or any client of my law firm.

I have worked with the Toxic Substances Control Act for 30 years. We have heard today a lot about the preemption provision of S. 1009. Let me add my perspective.

It is a strong preemption provision. That is appropriate for a statute such as TSCA, that is largely aimed at managing the risks of chemicals that may become components of products distributed across the Nation. State product restrictions effectively become national standards. Since manufacturers generally cannot vary the content of their products by State, it is better for EPA to set national standards.

The CSIA shifts the focus of regulation of chemicals in products from individual States to the national level. At the same time, it creates an important role for States in EPA's evaluation and regulation of chemicals. Under the bill, States have access to confidential business information, thus facilitating dialog with EPA.

A State many nominate a chemical about which it has concern for immediate prioritization. And it may provide critical data to inform EPA's decisionmaking process.

In evaluating CSIA's preemption provision, it is also important to recognize the limited scope of that provision. First and foremost, it does not preempt any State or local requirements that apply to multiple chemicals. Instead, at most, it preempts the application of those requirements to specific chemicals after EPA takes action on those chemicals.

Second, it does not apply to State or local requirements related to water quality, air quality or waste management. Thus, State environmental laws will generally remain unaffected. Third, it does not apply to State or local requirements related to the end of life of chemicals or products. Thus, recycling, product take-back and disposal restrictions will not be preempted.

Fourth, it does not preempt reporting requirements. This means that most State green chemistry laws will not be preempted. For example, under the proposed California Safer Consumer Products regulations, responsible entities must notify the Department of Toxic Substances Control if they sell a listed priority product containing a chemical of concern. That is a reporting requirement. So is the requirement that they prepare and submit an alternatives analysis.

Only a DTSC restriction on their use of a chemical in a priority product would be preempted by EPA action on that chemical. That restriction would come only after DTSC's evaluation of the alternatives analysis and might not come at all, since the notification and alternatives analysis requirements are intended to encourage responsible entities to redesign their priority products or to remove them from the market.

Fifth, the scope of a safety determination limits the scope of preemption. The safety determination addresses some uses but not others. State restrictions on the uses not addressed would not be preempted.

Sixth, the provision allows for waivers. If EPA agrees that certain criteria are met, it may waive preemption at a State's request. One criterion is that compelling State or local conditions justify that waiver. OSHA has determined under its preemption provision that the phrase "compelling local conditions" does not require uniquely localized risks. In its view, compelling local conditions are conditions which exist locally. EPA is likely to agree.

The preemption provision would also not have a significant impact on tort suits. It would not preempt them, nor would it determine their outcomes. It is clear that there is no intention to preempt tort suits, since the provision also relates to the use of safety determinations in tort suits. To clarify the intended scope, it may be appropriate to amend it to refer to State or local "statutes and administrative actions," rather than the broader term "restrictions."

The provision would make a safety determination determinative of whether the chemical meets the TSCA safety standard. That would not control the outcome of tort suits. There the question is usually whether the defendant violated a common law duty, not whether it met the safety standard under an amended TSCA.

In conclusion, the preemption provision of the Chemical Safety Improvement Act will help level the playing field for products sold throughout the Nation without crippling State green chemistry laws, or limiting tort suits. Thank you for considering this testimony, and I welcome your questions.

[The prepared statement of Mr. Duvall follows:]

Testimony of Mark N. Duvall

Before the Committee on Environment and Public Works

United States Senate

"Strengthening Public Health Protections by Addressing Toxic Chemical Threats"

July 31, 2013

Thank you for inviting me to testify at this hearing. My name is Mark N. Duvall. Although I represent a variety of clients on TSCA issues, I am appearing here today solely in my personal capacity, and the views I express today are my personal views. For clarity, in my appearance here today, I am not representing my law firm or any client of my law firm.

I have extensive experience with the Toxic Substances Control Act (TSCA). I have been advising clients on TSCA for nearly 30 years.

I have studied the TSCA legislation that has been introduced this year, both the Safe Chemicals Act of 2013 (SCA), S. 696, and the Chemical Safety Improvement Act (CSIA), S. 1009. My comments today focus on the issue of preemption.

1. Comparison of Preemption Provisions in TSCA, SCA, and CSIA

TSCA today has a fairly strong preemption provision. Actions by EPA under section 4, 5, or 6 with respect to a chemical will generally preempt State and local restrictions on that chemical that address the same risk. States may apply to EPA for a waiver of preemption. In practice, there has been little occasion for this preemption provision to come into play, and EPA has never been asked for a waiver.

EPA has adopted very few rules under section 6 other than those for PCBs, which have been held to preempt local restrictions on PCBs. If section 6 of TSCA worked better, EPA could be expected to adopt more rules on chemicals that preempt State and local restrictions on those chemicals.

Few if any States or localities have adopted testing requirements that could be preempted by EPA test rules under section 4.

EPA has adopted over 2,000 significant new use rules (SNURs). EPA has also issued many orders under section 5(e) for both PMN and SNUR chemicals. As rules or orders under section 5, they could preempt State or local restrictions on those chemicals. However, few States or localities have adopted restrictions for those chemicals.

The SCA takes a radically different approach to preemption from TSCA today. No State or local restriction on a chemical would be preempted unless compliance with both that restriction and EPA's restriction would be impossible, in which case the State or local restriction would be preempted. The SCA thus does nothing to bring regulation of chemicals in products sold nationally to the national level.

The CSIA's preemption provision is much closer to that of TSCA currently. As under TSCA today, actions by EPA under section 4, 5, or 6 with respect to a chemical will generally preempt State and local restrictions on that chemical. States may apply to EPA for a waiver of preemption. The CSIA introduces two new EPA actions under section 4 and 6, a prioritization decision and a safety determination. Either of those EPA actions for a chemical will preempt certain kinds of State or local restrictions for that chemical.

2. **A Strong Preemption Provision Is Appropriate**

The CSIA has a strong preemption provision. That is appropriate for a statute such as TSCA that is primarily aimed at managing the risks of chemicals that may become components of products that are distributed nationally or internationally. For the most part, products sold in any one state are also sold throughout the country. A State restriction on the chemicals in a product sold in that State effectively may become a national standard, since manufacturers generally cannot vary the content of their products by State. This means that manufacturers must monitor the laws of all States and tailor the content of their products to meet all applicable State requirements. Thus, State product content restrictions directly burden interstate commerce.

TSCA provides a federal response to the concerns underlying State product content restrictions. Until now, TSCA has limited EPA's ability to address those concerns. The CSIA will enable EPA to address those concerns faster and more comprehensively than has been possible under TSCA to date. Where EPA has addressed a chemical under TSCA, in many circumstances its actions should preempt State and local restrictions on the use of that chemical in products.

The CSIA significantly expands the role of States in EPA's decisionmaking under TSCA. Today, States have at most a peripheral role in EPA's implementation of TSCA. Their role would not be greater under the Safe Chemicals Act. In contrast, the CSIA makes States important contributors to EPA's implementation of TSCA. States can have access to confidential business information, under appropriate safeguards. The role of States begins with the prioritization process. If a State has concerns about a chemical (for example, because it has enacted a restriction on the use of that chemical in products sold in the State), the State may nominate it for immediate consideration in EPA's prioritization process. The State may bring important information to EPA's attention to help it prioritize the chemical appropriately. EPA must give quick consideration to the State's nomination of a chemical for prioritization, as the bill gives EPA only six months in which to designate a State-nominated chemical as either a high priority or a low priority for a safety assessment and safety determination. Where EPA has designated a chemical as a high priority, a State has the opportunity to provide additional information for EPA to evaluate in making its safety assessment and safety determination. Where EPA determines that a chemical does not meet the safety standard under the intended conditions of use, a State may provide comments to EPA on the risk management measures that EPA should adopt.

In short, the CSIA shifts the focus of regulation of chemicals in products sold in interstate commerce from individual States to the national level, while creating an important role for States in evaluating and regulating those chemicals at the national level.

3. **The CSIA Preemption Provision Has Important Limitations**

In evaluating the CSIA's preemption provision, it is important to recognize the limited scope of that provision.

First and foremost, it does not preempt any State or local requirements that apply to large numbers of chemicals. Instead, at most it preempts the application of those requirements to individual chemicals for which EPA has taken a preemptive action. EPA will need years to prioritize chemicals and to complete safety determinations. Until it does one or the other, there will be no preemption.

Second, the provision does not apply to State or local requirements related to water quality, air quality, or waste management. Thus, many state environmental laws will remain unaffected.

Third, the provision does not apply to State or local laws related to the end-of-life for chemicals or products. Recycling, product take-back, and disposal restrictions will not be preempted.

Fourth, the CSIA does not preempt any reporting requirements. As I will discuss, this means that most state green chemistry laws will not be affected. Nor does it preempt any State statutes based on federal law, such as the Clean Air Act.

Fifth, the scope of a safety determination limits the scope of preemption. If a safety determination addresses some uses of a chemical but not others, State or local restrictions on the uses not addressed in the safety determination would not be preempted.

Sixth, the provision has a waiver provision. A State or locality may apply to EPA for a waiver of preemption. If EPA agrees that certain criteria are met, it can waive preemption. One criterion is that the State or locality shows that compelling State or local conditions warrant granting the waiver. Several federal statutes require demonstration of "compelling local conditions" to justify State action in the face of federal action, including the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 346A and 360k, and the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. § 667.

Despite some criticisms of these criteria, they are not significant obstacles for States or localities. OSHA has determined that the phrase "compelling local conditions" in the OSH Act's preemption provision does not require uniquely localized risks. In its approval of California's plan to add Proposition 65 to its State plan, OSHA concluded, 62 Fed. Reg. 31159 (June 6, 1997):

> Conditions unique to a given State are a sufficient, but not a necessary, basis for a finding of compelling local conditions .... OSHA has never said that a State must establish that the conditions of concern to the State's lawmakers are not prevalent in any other State as well. Such an interpretation would be inconsistent with the plain meaning of "compelling"; more than one State may have a compelling interest in regulating particular safety issues. Simply put, "compelling local conditions" are compelling conditions which exist locally.

On judicial review, a court specifically found that "OSHA's construction of [the] 'compelling local conditions' requirement is permissible under the Court's deferential review." *Shell Oil Co. v. U.S. Department of Labor*, 106 F. Supp. 2d 15 (D.D.C. 2000). EPA is likely to follow OSHA's construction in considering a waiver request asserting "compelling State or local conditions." Thus, a State or locality would only have to establish that compelling conditions justifying a waiver exist within its borders, not that those conditions are unique to that jurisdiction.

Another criterion for a waiver is that compliance with the State or local restriction would not unduly burden interstate or foreign commerce. In the same proceeding, OSHA also found that adding Proposition 65 to the California State plan would not unduly burden commerce. The court upheld that finding as well. The "not unduly burden" criterion, which appears in numerous federal statutes, is unlikely to be a substantial hurdle for a waiver.

4. The CSIA Preemption Provision Will Have Little Impact on State Green Chemistry Laws

An important question is how the CSIA will impact state green chemistry laws, such as California's proposed Safer Consumer Products (SCP) regulations. The answer is that there will likely be little or no impact.

Upon passage of the CSIA, the SCP regulations will be unaffected, because EPA will not have taken any preemptive actions. Under the regulations as proposed, the Department of Toxic Substances Control (DTSC) must identify Priority Products containing Chemicals of Concern. At that point, a responsible entity who makes or sells a Priority Product containing a Chemical of Concern must notify DTSC. This is a reporting requirement, and as such will not be preempted by the CSIA. Next, the responsible entity must conduct and submit an Alternatives Analysis. This is also a reporting requirement, and so will not be preempted. DTSC must evaluate the Alternatives Assessment. After doing so, DTSC may choose to impose restrictions. Any restrictions related to end-of-life will not be preempted. The only kind of DTSC restriction that will be preempted is one that relates to the manufacture, processing, distribution, or use of a chemical for which EPA has taken a preemptive action. In practice, it is unlikely that many entities selling consumer products in California will go through the full process of notification, Alternatives Analysis, and restriction. Most will choose to reformulate or to remove the product from the California market. Thus, in the vast majority of cases, there is likely to be no preemption at all.

Similarly, under the green chemistry law in Washington, the Children's Safe Products Act, responsible entities must notify the Department of Ecology that they sell into the State a children's product containing a Chemical of High Concern to Children (CHCC) at or above the relevant threshold. This is a reporting requirement, and as such will not be preempted by the CSIA even after EPA takes action on a CHCC.

Maine's green chemistry law, Toxic Chemicals in Children's Products, also has a notification requirement. Like California's SCP regulations, it can require responsible entities to

conduct and submit alternatives assessments. As reporting requirements, these requirements will not be preempted by the CSIA. Only in limited cases can the Maine Department of Environmental Protection restrict chemicals in children's products. Those restrictions could potentially be preempted by EPA taking a preemptive action with respect to the chemicals involved.

3. The CSIA Preemption Provision Will Have Little Impact on Tort Suits

The CSIA will not have a significant impact on tort suits. It will not preempt them, nor will it determine their outcomes.

It is clear that the drafters did not intend for EPA action to preempt tort suits, as indicated by the provision that refers to the use of an EPA safety determination for a chemical in tort suits related to that chemical. To clarify the limited intent of the preemption provisions, it may be appropriate to amend the provision to refer to preemption of State or local statutes or administrative actions rather than the broader term "restrictions."

The CSIA preemption provision would deem an EPA safety determination to be admissible in court proceedings. This is not a significant limitation on tort cases. Courts already routinely take judicial notice of official federal actions. This requirement is simply an extension of current practice.

The CSIA preemption provision will make a safety determination for a chemical substance "determinative of whether the substance meets the safety standard under the conditions of use addressed in the safety determination." The question of whether a chemical substance meets the newly-created safety standard under the CSIA is not determinative of the outcome of tort suits. There the question is typically whether the defendant violated a common-law duty or an applicable legislative or regulatory obligation. The safety standard under the CSIA has no direct relationship to common-law duties or legislative or regulatory obligations other than those under TSCA.

* * * * *

In conclusion, the CSIA's preemption provision will help promote a level playing field for products sold throughout the nation, without crippling state green chemistry laws or limiting tort suits.

Thank you for considering this testimony.

September 4, 2013

Responses of Mark N. Duvall to Follow-Up Questions

On July 31, 2013, I testified at the Environment and Public Works Committee hearing "Strengthening Public Health Protections by Addressing Toxic Chemical Threats." My testimony focused on the preemption provision of the Chemical Safety Improvement Act (CSIA), S. 1009, and the limited scope of that provision. I subsequently received follow-up questions from Senators Boxer and Vitter. Their questions and my responses appear below. As with my testimony, these responses reflect my personal views. In providing these responses, I am not representing my law firm or any client of my law firm.

Question 1 from Senator Boxer

> In March 2011, you gave a presentation on TSCA Modernization at a conference put on by the Society of Chemical Manufacturers and Affiliates, which said: "A new safety standard is needed .... 'Unreasonable risk' standard is unworkable"; [TSCA reform legislation should] "Set realistic deadlines"; and "TSCA today has many procedural protections, resulting in long delays." Do you believe that legislation to reform TSCA should provide a new safety standard, set realistic deadlines, and reduce procedural hurdle to implementing protections for public health and the environment?

Response to Question 1 from Senator Boxer

TSCA was enacted over 35 years ago. At the time, it represented a significant and untested expansion of federal regulatory authority over chemicals. Congress was concerned that the substantial authority given to EPA under the new law – especially the authority to ban or severely restrict individual chemicals – be exercised in a manner that reflected an appropriate weighing of the risks and benefits of the chemicals directly affected and those that would replace them, as well as the economic and other effects of the regulatory measures undertaken.

Some of the provisions intended to accomplish this result have proven more difficult to implement than anticipated; EPA has not taken full advantage of the authorities it has under the statute; and public and industry expectations regarding chemical regulation have evolved with the greater knowledge and experience now available to us. Accordingly, changes such as those reflected in the CSIA now seem appropriate.

Any deadlines included in TSCA reform legislation should be reasonable, reflecting the ability of EPA to complete the activities to which the deadlines relate with the resources realistically likely to be available to it. Procedural hurdles in the current TSCA should be

reduced so long as EPA is required to make appropriate findings and adequate opportunity is provided to stakeholders to receive notice and have the opportunity to comment.

Question 1 from Senator Vitter

Mr. Duvall, you mentioned in your testimony that "the safety standard under the CSIA has no direct relationship to common-law duties or legislative or regulatory obligations other than those under TSCA." Could you elaborate on that thought and the idea that the CSIA somehow preempts tort actions?

Response to Question 1 from Senator Vitter

The CSIA would make EPA safety determinations admissible in tort suits and determinative of whether a chemical substance meets the TSCA safety standard (based on the concept of unreasonable risk) under the intended conditions of use. However, common-law duties that underlie products liability and negligence tort suits are developed by courts over time. I am unaware of any tort suit that has even referred to the safety standard under TSCA, much less been determined on the basis of that standard. That standard is not central to tort suits.

Moreover, it is clear that the CSIA does not intend to preempt tort suits; if it did, the provision about the admissibility of safety determinations in tort suits would be superfluous. Nevertheless, to resolve possible ambiguity, it may be appropriate to revise the preemption provision to clarify that state and local "statutes" and "administrative actions" may be preempted by EPA as provided in the CSIA, rather than using broader terms (e.g., "requirements," "prohibitions," and/or "restrictions"), which might be interpreted to encompass preemption of tort suits.

Questions 2, 4, and 5 from Senator Vitter

2. Mr. Duvall, in some of the testimony you heard in our first panel, concerns were raised that the preemption language in the Chemical Safety Improvement Act could preempt states' abilities to address VOC's and Ozone, to require information collection and reporting of ingredients, and state green chemistry programs. Do you agree that these state programs will be preempted by the CSIA?

4. In the letter that 9 State Attorneys General sent to Sen. Boxer and EPW Committee Majority members, there was an attachment that includes examples from the 9 States of some of their state regulations of chemical substances. The AGs' statement asserts that these State chemical management laws and programs would be preempted by the CSIA. Can you characterize the examples provided by the AGs in this letter?

5. Are these state restrictions outlined in the AGs' letter likely to be preempted by the CSIA or not? Under what conditions might they be preempted? In fact, haven't some states recognized that some of these examples are preempted by other federal laws already, and by statutes other than TSCA or the CSIA? For example, have any states recognized the preemptive effect of actions by the Consumer Product Safety Commission?

Response to Questions 2, 4, and 5 from Senator Vitter

The letter from the state Attorneys General has overstated the extent of potential preemption of their state statutes by the CSIA. While I have not studied each of the laws cited in Exhibit A to their letter in detail, the following is my initial judgment about the likelihood of preemption.

Some of the laws listed in Exhibit A concern products that are excluded from the scope of the term "chemical substance" as defined in section 3(2)(B) of TSCA. These include products regulated by the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (FFDCA), such as cosmetics and food packaging. Tobacco is also excluded. Accordingly, EPA would have no authority over these products. The laws listed in Exhibit A relating to products outside the scope of TSCA include the following:

- Cosmetics – California, Health and Safety Code § 111791 et seq. (the "California Safe Cosmetics Act of 2005")
- Bisphenol A used in food packaging:
  - Massachusetts, Mass. Ann. Laws ch. 94B (the "Hazardous Substances Act"), as implemented in 105 C.M.R. § 650.020
  - Washington, Wash. Rev. Code ch. 70.280 ("Bisphenol A – Restrictions on Sale")
- Tobacco – Massachusetts, Mass. Ann. Laws ch. 94B (the "Hazardous Substances Act"), as implemented in 105 C.M.R. § 650.105 ("Labeling of Tobacco Snuff")

Some of the laws listed in Exhibit A relate to products for which the Consumer Product Safety Commission (CPSC) has issued mandatory standards under the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), and thus may already be preempted by the CPSA regardless of the scope of any TSCA preemption provision. These include the following:

- Lead in children's products (CPSC standards under CPSIA § 101):
  - Maryland, Md. Code Ann., Environment § 6-1303 (part of Subtitle 13, "Lead-Containing Children's Products")
  - Vermont, Vt. Stat. Ann. tit. 9, § 2470e (part of Subchapter 1C, "Lead in Consumer Products")
- Phthalates in children's products (CPSC standards under CPSIA § 108):
  - Vermont, Vt. Stat. Ann. tit. 18, § 1511 ("Phthalates")

- Cadmium in children's toys (CPSC standards under CPSIA § 104[1]):
    - Maryland, Md. Code Ann., Environment § 6-1402 (part of Subtitle 14, "Cadmium in Children's Jewelry")

A Washington law addresses lead, phthalates, and cadmium: Wash. Rev. Code § 70.240.020, "Prohibition on the manufacturing and sale of children's products containing lead, cadmium, or phthalates." The Washington Department of Ecology has conceded that this provision was "substantially preempted" by the CPSIA, http://www.ecy.wa.gov/programs/swfa/cspa/.

Other laws relate to products regulated by CPSC under the CPSA or the Federal Hazardous Substances Act (FHSA), and thus may be preempted under those statutes, again without regard to any TSCA preemption provision. These include the following:

- Oregon, Or. Rev. Stat. §§ 453.205 to 453.275 ("Art and Craft Materials")[2]
- Oregon, Or. Rev. Stat. § 453.055 ("Hazardous, banned hazardous, misbranded hazardous substance; declaration; removal from commerce"), as implemented by Or. Admin. R. § 333-016-0075 ("Banned Hazardous Substances")
    - Bans extremely flammable water repellent treatments for interior masonry walls, floors, etc.; carbon tetrachloride and mixtures containing it; and liquid drain cleaners containing 10% or more sodium hydroxide or potassium hydroxide. CPSC regulations under the FHSA contain similar bans, 16 C.F.R. § 1500.17(a)(1), (2), and (4).
    - Bans full-size baby cribs not designed and constructed in accordance with prescribed requirements. CPSC regulates full-size cribs under the CPSA, 16 C.F.R. Part 1219, so this provision appears to be preempted by the CPSA.

Some of the laws listed in Exhibit A relate to reporting requirements, but the CSIA would not preempt state reporting requirements. These laws include the following:

- California, Health and Safety Code § 25252 et seq. (A.B. 1879, part of Article 14, "Green Chemistry"), as implemented by Cal. Code Regs. tit. 22, ch. 55 ("Safer Consumer Products"). A.B. 1879 directs the Department of Toxic Substances Control (DTSC) to

[1] Section 106 of the CPSIA adopted as a consumer product safety standard ASTM F963-07, and subsequently CPSC accepted ASTM F963-11 as a mandatory consumer product safety standard. Both versions restrict cadmium in children's toys, including children's jewelry. Section 106(h)(2) provides that the CPSA does not preempt state laws in effect prior to the effective date of the CPSIA if designed to address the same risk of injury as the CPSC standard (e.g., risks from cadmium exposure) and "if such State or political subdivision has filed such requirement with the Commission within 90 days after the date of enactment of this Act, in such form and manner as the Commission may require." I am unaware of any state filings under this provision.

[2] Or. Rev. Stat. § 453.235(5) provides that compliance with the labeling standards of ASTM D-4326 will constitute compliance. The requirements of ASTM D-4326 are a CPSC standard pursuant to the Labeling of Hazardous Art Materials Act, 15 U.S.C. § 1277, which amended the FHSA. CPSC has added those requirements to its regulations in 16 C.F.R. § 1500.14(b)(8). Thus, these provisions may be preempted by the FHSA.

adopt a regulation addressing safer consumer products. Under the new Safer Consumer Products rules, a responsible entity must notify DTSC that it sells or otherwise handles a listed priority product containing chemicals of concern and submit an alternatives analysis.

- Massachusetts, Mercury Management Act, aspects of Mass. Gen. Laws. ch. 21H ("Solid Waste Facilities"). Section 6B requires notification to a state agency before a mercury-added product is offered for sale, use, or distribution.
- Massachusetts, Mass. Gen. Laws ch. 21I (the "Massachusetts Toxics Use Reduction Act"). This law requires certain users of toxic chemicals to develop and submit plans for reduction in the use of toxic chemicals.

Some of the laws listed in Exhibit A relate to disposal requirements, but the CSIA would not preempt state disposal requirements. These laws include the following:

- Massachusetts, Mercury Management Act, aspects of Mass. Gen. Laws. ch. 21H ("Solid Waste Facilities"). Sections 6I and 6L relate to disposal of mercury-containing products.

Of the remaining laws listed in Exhibit A, few would be preempted in their entirety. In most cases, the only preemption would be of the application of a law to particular chemicals and then only if and when EPA takes preemptive actions under the CSIA. For example, under California's Health and Safety Code § 25252 et seq. (A.B. 1879, part of Article 14, "Green Chemistry"), as implemented by Cal. Code Regs. tit. 22, ch. 55 ("Safer Consumer Products"), if DTSC were to adopt a restriction for a priority product that related to the manufacture, processing, distribution in commerce, or use of the product, and if EPA were to take a preemptive action with respect to a chemical of concern in that product, the restriction would be preempted with respect to that chemical of concern.

For some laws listed in Exhibit A for which there could be preemption, EPA has already taken actions under current TSCA. For example, EPA has adopted a significant new use rule (SNUR) for certain flame retardants also regulated under state laws, 40 C.F.R. § 721.10000, and it has proposed to amend that SNUR in various ways, including by applying it to decaBDE and to articles containing pentaBDE, octaBDE, or decaBDE. EPA has also adopted a SNUR restricting mercury in certain products, 40 C.F.R. § 721.10068.

Question 3 from Senator Vitter

Please elaborate on the similarities between the preemption waiver provision in the Lautenberg-Vitter bill and the waiver provisions of other federal statutes and expand on why you think State waivers under the bill – if applied for – would be well received by EPA.

Response to Question 3 from Senator Vitter

Two aspects of the CSIA's waiver provision should be considered. One is the criterion that "compelling State or local conditions warrant granting the waiver to protect human health or the environment." The other is that compliance with the state or local requirement would not "unduly burden" interstate or foreign commerce. Based on experience under other statutes, neither criterion is likely to be a substantial obstacle to the granting of waivers.

Several federal statutes require demonstration of "compelling local conditions" to justify state action in the face of federal action.[3] Even more have provisions establishing the criterion that the state or local requirement not unduly burden interstate commerce.[4]

The Occupational Safety and Health Administration (OSHA) has determined that the phrase "compelling local conditions" in the preemption provision of its statute, the Occupational Safety and Health Act of 1970, does not require uniquely localized risks. In its approval of California's plan to add Proposition 65 to its State plan, OSHA concluded:

> Conditions unique to a given State are a sufficient, but not a necessary, basis for a finding of compelling local conditions .... OSHA has never said that a State must establish that the conditions of concern to the State's lawmakers are not prevalent in any other State as well. Such an interpretation would be inconsistent with the plain meaning of "compelling"; more than one State may have a compelling interest in regulating particular safety issues. Simply put, "compelling local conditions" are compelling conditions which exist locally.[5]

OSHA cited a case holding that "[p]ublic health and well-being have been recognized as compelling governmental interests in a variety of contexts."[6] On judicial review, a court specifically found that "OSHA's construction of [the] 'compelling local conditions' requirement is permissible under the Court's deferential review."[7] EPA is likely to follow OSHA's construction in considering a waiver request asserting "compelling State or local conditions" related to protection of health or the environment. Thus, a state or locality would only have to establish that compelling conditions relating to health or the environment justifying a waiver exist within its borders, not that those conditions are unique to that jurisdiction.

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[3] See, e.g., the FFDCA, 21 U.S.C. §§ 346A(h)(5)(C)(i) and 360k(b)(2)(A), and the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. § 667(c)(2).

[4] See, e.g., the Flammable Fabrics Act, 15 U.S.C. § 1203(c)(1)(B)(ii); the Poison Prevention Packaging Act of 1970, 15 U.S.C. § 1476(c)(1)(B); the CPSA, 15 U.S.C. §§ 2056b(h)(1)(B), 2075(c)(2); TSCA, 15 U.S.C. § 2617(b)(2); the FFDCA, 21 U.S.C. §§ 343-1(b)(2), 379r(b)(2), 379s(b)(3); and the Occupational Safety and Health Act of 1970, 29 U.S.C. § 667(c)(2).

[5] 62 Fed. Reg. 31159, 31164 (June 6, 1997).

[6] 62 Fed. Reg. at 31169, quoting *Goehring v. Brophy*, 94 F.3d 1294, 1300 (9th Cir. 1996).

[7] *Shell Oil Co. v. U.S. Department of Labor*, 106 F. Supp. 2d 15 (D.D.C. 2000).

In the same proceeding, OSHA concluded that "Proposition 65, therefore, does not ... result in an undue burden on commerce,"[8] despite the differences between Proposition 65 and the corresponding OSHA standard. This conclusion was also upheld on judicial review.[9]

In short, these criteria in the CSIA's waiver provision are well-established in other statutes related to protection of health and safety. In practice, they have not proven to be substantial obstacles to the granting of state waivers. There is no reason to believe that the CSIA would lead to a different result.

Question 6 from Senator Vitter

> At the hearing you also made reference to the idea that TSCA is not a traditional environmental statute like the Clean Air Act or Clean Water Act. Can you please elaborate on what you meant and how TSCA is distinguishable?

Response to Question 6 from Senator Vitter

My point was that media-specific environmental statutes address health or environmental risks that are often manifested locally. Accordingly, it is often appropriate for such federal environmental laws to allow states to administer those laws or to allow states to adopt their own laws addressing the same risk as that addressed by the federal law. In contrast, TSCA relates to chemical substances, often as they are used in products sold in interstate commerce. There is not the same local connection under TSCA as there may be with other environmental laws. Accordingly, it is appropriate under TSCA for states to work with EPA to develop appropriate national requirements. Where EPA has addressed a risk from a chemical substance, there is less justification for a state law to address the same risk, and thus preemption is particularly appropriate in that circumstance.

[8] 62 Fed. Reg. at 31172 (footnote omitted).
[9] *Shell Oil Co. v. U.S. Department of Labor*, 106 F. Supp. 2d 15 (D.D.C. 2000).

BEVERIDGE & DIAMOND PC

Related Practices

- FDA Practice
- Pesticides
- Toxic Substances/TSCA

Consumer Products Practice

Overview

Beveridge & Diamond, P.C. assists clients with regulatory requirements under a wide variety of statutes as they relate to consumer products.

Consumer Product Safety Improvement Act of 2008

With the passage of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), consumer product regulation is recognized as a critical factor for retailers, importers, consumer product manufacturers, and their upstream suppliers. Beveridge & Diamond counsels clients on these complex requirements, their implementation by the Consumer Product Safety Commission ("CPSC"), and Congressional consideration of CPSIA amendments.

Other Statutes Administered by the CPSC

Consumer product regulation was in place long before the CPSIA, and Beveridge & Diamond has represented clients on consumer product issues over the thirty-five years since the firm was founded. This experience includes work on the variety of consumer products regulated by the CPSC under the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act.

Packaging, Labeling, and Marketing Claims

In addition to CPSC work, we help clients

criminal and civil enforcement actions under the Lacey Act.

California Proposition 65

We have worked on Proposition 65 matters related to consumer products and other materials consistently since 1989. We regularly advise clients on Proposition 65 compliance questions. We have also litigated major Proposition 65 matters, including *People v. Superior Court (American Standard)* (1996) 14 Cal.4th 294, one of the few Proposition 65 cases to reach the California Supreme Court, and *Mangini v. J.G. Durand* (1994) 31 Cal.App.4th 214, a case which settled after a long trial and is still one of a handful of Proposition 65 cases to be tried.

EPA and State Encouragement of Green Chemistry

We counsel clients on green chemistry initiatives, including those under the federal Pollution Prevention Act and state laws. (Green chemistry in this context refers to the design of products that reduce or eliminate the use and generation of hazardous substances.) We also inform and engage clients with regard to emerging state programs such as California's Green Chemistry Initiative, which has given California's Department of Toxic Substances Control a legislative mandate to develop regulations for identifying chemicals of concern in consumer products and regulating chemicals of concern in consumer products based on a multimedia lifecycle evaluation.

Non-Governmental Considerations

We counsel clients on product stewardship, voluntary codes related to consumer products, and retailer requirements and restrictions on product content and packaging.

Senator BOXER. Thanks. I wanted to clarify, so you are not representing your law firm?

Mr. DUVALL. I am not. I am appearing on my own behalf.

Senator BOXER. I appreciate it. But the fact that they sued to overturn Prop 65, you are not involved in that lawsuit? You weren't involved in that lawsuit that your firm was to overturn Prop 65?

Mr. DUVALL. I am not involved in any lawsuit individually.

Senator BOXER. Fine. Not individually, but the firm is, and we will put that in the record.

Mr. Ken Cook, you will be our final speaker, President and Co-Founder, Environmental Working Group.

STATEMENT OF KENNETH A. COOK, PRESIDENT, ENVIRONMENTAL WORKING GROUP

Mr. COOK. Chairman Boxer, distinguished members of the Committee, thank you for this opportunity to testify. I want to submit my prepared testimony for the record and summarize it very briefly and depart just a little bit from the comments to summarize some of what I have heard and suggest maybe a way forward here.

When Senator Lautenberg, and years ago, Senator Jeffords, I think that would be the absolute embodiment of bipartisanship, introduced what was the Kid Safe Chemicals Act, it was met, for the most part, with some polite and some not so polite criticism by industry. To me, the most important development with the development of S. 1009 is that we now have a much clearer idea of specifically what it is many in industry have been seeking beneath the principles that have been enunciated over the years.

And that is a very helpful development, because now we can look at all of the ideas that have been offered in these different categories: exposure, safety standard, preemption and so forth, and have a pretty good idea of what the range of views are and the range of opportunities.

My organization maintains the chemical industry archives, the records of industry's deliberations over the years, some of which were cited earlier today. My organization has also done the most extensive work on asbestos in terms of its public health impacts. And we have tested the umbilical cord blood of 20 babies, the first time anyone has done that, and we have found hundreds and hundreds of toxic chemicals.

So we have a broad interest and broad research experience in this. When we looked at S. 1009, of course, we saw one basic problem. We felt it was going to be tying the agency in knots still, in some different ways than it is tied in knots now, but still tied in knots against a much weaker safety standard than we think. We agree with Senator Cardin, we think it should be reasonable certainty of no harm, as previous versions of the bill provided.

And that combined with preemption really resulted in a situation where literally this reform bill, in our view and the view of many people, put us in worse shape than, unbelievably enough, TSCA, the worst environmental statute on the books.

Let me suggest some topics that we can move forward on and look at the best thinking and see where we can find common ground. I disagree with Mark on preemption but I think we have heard today in the hearing, there is tremendous interest in dealing

with this issue. Maybe it was unintended, what have you, and there may be other sections of the bill where there was some unintended framing that we can easily deal with.

We need to deal with asbestos, for goodness sake. We need to ban asbestos. Two, we need to understand more about chemical exposure. We may be trying to regulate a lot of chemicals that people aren't exposed to. Shouldn't we know that before we move ahead? Shouldn't we be much more intensive in our work trying to understand what is in people, what products these chemicals are used in?

I had the good fortune and the bad fortune to marry an environmentalist, Deb Callahan, who is used to scoring people in this body for their votes. And when I told her that the children's play tunnel that our little boy, who is now 5, and he doesn't smoke in there, but it has flame retardants in it, we don't allow him to smoke in there, I don't know where he smokes, but we don't allow him to smoke in the play tunnel. It has flame retardants in it.

And when I told her that, she has a way of looking at me as if it is my responsibility and I find a score card forming in her head about my performance on chemical reform, and it is not very good. We need to know what people are exposed to and we need to have a much better idea of what the intended use of these chemicals really is. And time after time, when EPA does try and take a step, they find that they can't figure out how exposures have happened, because they don't know how the chemicals are used.

Clearly, we need the kind of data call-in authority in TSCA that the agency has for pesticides, straightforward. That is really the least we can do. The public can't quite believe that the agency doesn't have the ability, the power now, to say to a company, by the way, that stuff that's in my child, in his umbilical cord blood, can you test to see if it is neurotoxic? And the agency says, well, sure. I have to publish a regulation. We will give a comment period before we can even ask for the study. So I am grateful that we have made some progress. We have all seen the need to do that.

And then finally, we do need some minimum data submitted for these chemicals. And we have a reasonable belief that there are many sources of that data.

[The prepared statement of Mr. Cook follows:]

Testimony of Kenneth A. Cook

President
Environmental Working Group

Before the

Committee on Environment and Public Works
United States Senate

On

Strengthening Public Health Protections by Addressing Toxic Chemical Threats

July 31, 2013

Chairman Boxer, Ranking Member Vitter and distinguished members of the committee: I'm Kenneth A. Cook, president of the Environmental Working Group, a nonprofit research and advocacy organization based in Washington, D.C., Iowa and California.

I want to thank you, Chairman Boxer, for your leadership in organizing these panels today to discuss comprehensive reform of the Toxic Substances Control Act and for the opportunity to testify. There is widespread agreement that TSCA is broken and must be overhauled to protect public health and the environment. Today's hearing is an important step toward developing landmark legislation that will finally ensure that the chemicals to which we are all exposed in our everyday lives are safe – especially for children, our most vulnerable population.

I also want to acknowledge the loss of Senator Frank Lautenberg, widely acknowledged as the father of TSCA reform. Senator Lautenberg was a champion of consumer protection throughout his illustrious career in the United States Senate and the reform of TSCA fit perfectly with this mission. Ever since Senator Lautenberg decided to tackle this challenge nearly a decade ago he was a tireless advocate for reform, and testifying before this committee on this important issue just doesn't feel the same without him here.

For two decades, EWG has conducted research on the impact of toxic chemicals on Americans' health. Many of these toxic chemical exposures come from ordinary consumer products we all use – such as flame retardant coatings on sofa upholstery, nursing pillows, car seats, children's tents and nap mats, chemical components of nonstick cookware and stain repellents and chemicals used to make clear plastic water bottles.[1] These toxic chemicals are polluting people's bodies – our blood, our fatty tissue and even breast milk.[2]

Even more startling is the reality that toxic industrial pollution begins in the womb. In 2004 and 2009, EWG's groundbreaking research identified nearly 300 industrial chemicals in the umbilical cord blood of 20 American newborns.[3] These tests detected mercury; common fire retardants like tetrabromobisphenol A, or TBBPA, found on car seats, playpens and baby swings;[4] bisphenol A, part of

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the epoxy coating inside food cans[5] and perchlorate, a rocket fuel component. We also found lead, polychlorinated biphenyls and pesticides the federal government banned more than 30 years ago – decades before these children were conceived.

Exposure to even miniscule amounts of toxic industrial chemicals matters. Studies have found that children exposed in the womb to some common pollutants display measureable learning, memory and behavior delays that persist through childhood.[6] We have seen disturbing health trends associated with toxic chemical exposures, including more birth defects in the reproductive organs of baby boys,[7] earlier puberty in girls,[8] skyrocketing rates of autism, now at 1 in 50 American children,[9] more attention deficit-hyperactivity disorder[10] and higher incidence of certain childhood cancers.[11] American pregnancies are at risk, with decreasing birth weights[12] and more newborns diagnosed with thyroid disease.[13] A growing body of scientific research has established that exposure to toxic chemicals during fetal development and childhood can permanently alter a person's health and development.[14,15]

These data, along with biomonitoring studies conducted by the federal Centers for Disease Control and Prevention,[16] raise serious concerns about the lasting effects of lifelong exposure to complex mixtures of toxic chemicals. The President's Cancer Panel declared in 2010 that the number of cancers caused by toxic chemicals is "grossly underestimated" and warned that Americans face "grievous harm" from chemicals that contaminate air, water and food.[17]

The Environmental Protection Agency has been given responsibility but little authority for enforcing the Toxic Substances Control Act. When this law was enacted in 1976, Congress grandfathered more than 60,000 chemicals already on the market. To date, the EPA has thoroughly assessed the safety of only a few hundred. By last year, the agency had targeted 83 of the grandfathered chemicals on grounds they pose high concern for human health and the environment.[18] Earlier this year, the U.S. Government Accountability Office determined that the EPA does not have enough toxicity and exposure data to assess properly 70 percent of those chemicals.[19] At its current pace, GAO said, the agency could take another decade to complete assessments of the 83 chemicals on the list.[20]

The consequences of inaction are serious. For instance, the ubiquitous fire retardant TBBPA has been on the market for more than 20 years. The U.S. chemical industry makes more than 100 million pounds of it yearly. Among its uses are consumer electronics and children's products like baby carriers, playpens, car seats and baby swings.[21] Yet this chemical was not tested for carcinogenicity until the federal government's National Toxicology Program initiated a study in 2007. The NTP's preliminary findings, made known last April, were chilling: TBBPA caused aggressive uterine cancer in female rats.[22]

The federal law's failures are not limited to existing chemicals. The EPA approves an average of 600 new chemicals per year, often without toxicity data. Thousands of chemicals in widespread use in our homes, schools and communities have not been thoroughly studied for their health implications.

The Chemical Safety Improvement Act is worse than current law

The Chemical Safety Improvement Act will not fix the problem. It would preserve some of the worst features of the Toxic Substances Control Act. And yet it would prevent states from enacting their own, more protective, regulations, and it would prevent individuals from seeking remedies through the legal system. Americans would wind up with less government vigilance over hazards posed by toxic chemicals.

Thirty-four law professors and legal experts have warned this committee that if the Chemical Safety Improvement Act becomes law, the EPA still might lack the power to ban dangerous substances like asbestos – a chemical that causes 10,000 deaths per year in this country.[23] (See Attachment A).

This proposal's safety standard is too weak. Current law and the Chemical Safety Improvement Act both require that the EPA consider the safety of a chemical against a standard of "unreasonable risk."[24] This standard assumes that the public must tolerate "reasonable" harm. The Chemical Safety Improvement Act would likely allow numerous chemicals that present some risk of harm to escape regulation. This is especially troubling given the impacts of toxic chemical pollution on vulnerable populations like pregnant women, children and workers.

Furthermore, safety assessments under this bill would be limited to "intended conditions of use."[25] The intended use and actual use of a chemical can vary widely over time.

Pesticide manufacturers have met a much higher standard set by the Food Quality Protection Act of 1996 – "reasonable certainty of no harm" – for nearly twenty years. Most Americans would agree that chemicals in consumer products should be as safe as pesticides.

The Chemical Safety Improvement Act, like current law, would require the EPA to conduct an onerous balancing of costs and benefits and analysis of alternatives before restricting the use or manufacture of a chemical. To ban or phase out a chemical, the EPA would first have to consider: the costs and benefits of the proposed regulatory action and of potential alternative actions, the costs and benefits of the chemical and alternatives to the chemical, the availability of feasible alternatives for the chemical and the risks posed by alternatives to the chemical.[26]

The Chemical Safety Improvement Act replicates numerous other deficiencies contained in current law. For example:

-- The EPA need not give special consideration to vulnerable populations such as children, workers, pregnant women and residents of so-called fenceline communities near heavy polluters. Ignoring young, weak or poor Americans and people already exposed to toxic pollution is a glaring omission.

-- Chemical companies would not be compelled to prove their chemicals are safe or even to submit a minimum amount of data to the EPA so it could assess them. The burden would fall on the EPA to show that these substances were potentially hazardous. Sometimes the agency would not have enough information to make sound decisions about chemicals.

-- The EPA could still let new chemicals on the market before determining that they were safe.

-- The EPA would not face hard deadlines to assess chemical safety.

-- Chemical companies would not have to pay reasonable fees to help defray the costs of the EPA's assessments. The taxpayers would underwrite most of the costs of chemical safety tests, and the companies would reap all the profits.

The bill's sweeping preemption provisions are deeply troubling. When the EPA cannot impose even modest restrictions on dangerous substances, others must step in. Nearly 20 states enacted chemical safety laws between 2003 and 2010, reforms supported by Democrats and Republicans alike.[27] The Chemical Safety Improvement Act would preempt existing and future state regulations.[28] Its provisions are unduly broad. In fact, the bill's preemption language is so problematic that three California state agencies have warned Congress that it could cripple state laws on everything from warning labels on consumer products to regulations that protect the public from toxic chemicals, ensure clean drinking water and curb ozone pollution.[29]

In a sweeping section entitled "Effect on Private Remedies," the bill would cast EPA safety determinations as the final word on a chemical's safety during legal proceedings.[30] By limiting the right of judges and juries to evaluate and weigh relevant evidence on the potential harm caused by toxic chemicals, the bill could significantly chill lawsuits brought by people injured by these substances. The bill's section on private remedies would grant chemical companies virtual immunity from legal actions. Once the EPA issued its determination, a judge or jury could no longer consider the issue of safety, even when subsequent evidence called into question the agency's reasoning. People who were injured would have no legal recourse. Chemical manufacturers would have few incentives to reformulate their products to make them safer.

The Chemical Safety Improvement Act is a step backward, not forward

The Chemical Safety Improvement Act lacks key reforms considered critical to improving federal toxics regulation and protecting people from dangerous industrial chemicals. We recognize that bipartisan support is essential to securing passage of a chemical safety reform bill, but meaningful bipartisan compromise on what would be the first major federal environmental law in 16 years cannot become a reality without the solid support of environmental and public health communities.

Real reform means:

A solid safety standard that protects children. Any chemical safety reform bill must give priority to the protection of children. That is why EWG advocates the "reasonable certainty of no harm" safety standard found in the Food Quality Protection Act of 1996. It would put health first, not corporate profits. A standard of "reasonable certainty of no harm" would require the EPA to consider aggregate exposure to toxic chemicals and the many routes through which people are exposed to them when determining whether a chemical is safe. The EPA would not need to base its decisions on an assessment of costs and benefits. It is this standard that enables the EPA to issue meaningful rules under the Food Quality Protection Act that truly protect children from pesticides. A reform bill's safety standard should be modeled after such a health-protective framework.

Required submission of specific chemical safety data and testing information to the EPA. Chemical companies must be required to develop and submit to the EPA enough information about existing and new chemicals to ensure a proper evaluation. A good model is Europe's REACH program. The acronym stands for Registration, Evaluation, Authorisation and Restrictions of Chemicals. The minimum data sets required of chemical manufacturers should include existing safety data, including data prepared for European, Canadian, and U.S. screening programs, and internal company evaluations. Data submitted to the EPA must be sufficiently robust to allow the agency to set priority for a chemical, decide whether the agency needs more information and make a science-based determination of its safety.

Protection of vulnerable populations. The EPA must have the authority to take quick action to regulate chemicals that are most harmful to people, particularly vulnerable populations such as children, pregnant women, elderly people, workers, communities disproportionately affected by industrial pollution and low-income communities and communities of color too often residing in highly polluted areas. Although detection of a chemical in blood or cord blood does not prove harm, the presence of industrial chemicals in the human body is evidence of health risks. Chemicals that are getting into people's bodies should be given priority for assessment and management. Previous chemical safety reform bills have given high priority for evaluation to chemicals known to be hazardous to human health, including chemicals that persist and accumulate in the human body. EWG strongly supports such measures. Chemical reform legislation must target "hot spots" of industrial pollution to ensure that the unique issues facing fenceline and other disproportionately impacted communities are fully addressed.

Safety review of new chemicals. Most Americans assume that a chemical can't be sold until proved safe. They are wrong. In fact, according to a 2010 report by the EPA Inspector General, 85 percent of the premanufacture notices chemical manufacturers had submitted to the EPA to that date did not contain any toxicity data.[31] Not all those chemicals were eventually offered for sale. Even so, it is troubling that chemical makers can sell new substances with so few hard facts about their safety.

The EPA is perennially trapped in a chemical Catch-22. It cannot demand more test data without hard evidence that a new chemical could be an unreasonable risk, and it cannot come up with such evidence without test data. This flawed process has exposed us and our children to toxic chemicals whose risks were unknown to the EPA and to the public until well after they entered the marketplace.

New chemicals must no longer be entitled to a presumption of innocence. The law should place the burden on chemical manufacturers to establish that a new chemical is safe by demanding that the EPA make an affirmative finding of safety before the substance is allowed on the market.

Preservation of states' rights to protect the public. Congress must not interfere with states' authority to fill voids left by federal law. States must have flexibility to respond to changing circumstances and the unique needs of their citizens. They must be able to tackle unforeseen chemical risks in coming years. For instance, the relatively new field of nanotechnology is producing materials that may pose risks unknown to the lawmakers who crafted the Toxics Substances Control Act during the Ford administration.[32]

Timely review and regulation of problematic chemicals. Congress must ensure that the EPA moves in a timely manner to set priorities and regulate chemicals that raise concerns for public health and the environment. The EPA must have and meet hard deadlines for progress at each step in the chemical review process. The chemical industry must pay its fair share of the costs of tests that can ensure that chemicals are safe. As with other environmental laws, courts should defer to the agency's expertise as long as it can reasonably back up its decisions.

Conclusion

We applaud the committee for its commitment to making chemical safety reform a reality. We cannot support the Chemical Safety Improvement Act in its current form, but we look forward to working with you to build broad and deep support for safe chemicals legislation that will truly protect our children's health. Thank you for the opportunity to testify. I welcome any questions you may have.

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[11] U.S. Envtl. Prot. Agency, America's Children and the Environment (3d ed. 2012), http://www.epa.gov/ace/.

[12] N. Morsaki et al., Declines in Birth Weight and Fetal Growth Independent of Gestational Length, 121 Obstetrics & Gynecology 51-58 (2013), http://www.ncbi.nlm.nih.gov/pubmed/23262927.

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ATTACHMENT A

June 12, 2013

The Honorable Barbara Boxer
Chairman
Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable David Vitter
Ranking Member
Committee on Environment & Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Boxer and Ranking Member Vitter:

The undersigned are thirty-four law professors, legal scholars, and public interest lawyers from across the country who have years of collective experience in the fields of administrative, public health, and environmental law, with a particular focus on state and federal toxics policy. We write to express serious reservations with the "Chemical Safety Improvement Act," which was introduced by Sen. David Vitter and the late Sen. Frank Lautenberg on May 22, 2013. Supporters have heralded the bill as a "historic step" toward reforming our broken framework for regulating chemicals on the market. However, for reasons explained herein, we cannot support the bill as written, which must be strengthened to fix current law and ensure that chemicals are safe for people, particularly vulnerable populations such as children.

In our expert opinion, the bill:

• Essentially preserves the same inadequate safety standard used in current law, which has been read by at least one court to require the U.S. Environmental Protection Agency (EPA) to engage in an onerous balancing of costs and benefits to justify restrictions on toxic chemicals;

• Retains the same obstructive standard of judicial review that appears in current law, which requires judges to demand substantial evidence from EPA to justify any safety determination or restriction of a chemical that poses risks to public health and the environment;

• Contains sweeping preemption language that would prevent states from enforcing existing, and adopting new, laws designed to supplement federal law in protecting people and the environment from exposures to harmful substances; and

• Takes the extraordinary step of making any safety determination by EPA dispositive on the question of whether a chemical is safe in federal and state courts. This would effectively bar judges and juries from taking into account other relevant evidence regarding the safety of a chemical, particularly new evidence developed after the determination is made.

Here are our four major concerns presented in detail:

Safety Standard. The bill defines "safety standard" as one that "ensures that no *unreasonable risk* of harm to human health or the environment will result from exposure to a chemical substance." Chemical Safety Improvement Act, S. 1009, 113th Cong. § 3(16) (emphasis added). This definition fundamentally reproduces the same safety standard found in current law.

*See*Toxic Substances Control Act § 6(a), 15 U.S.C. § 2605(a). Unlike strictly health-based standards (*e.g.*, "reasonable certainty of no harm"), laws that use "unreasonable risk" language have been interpreted to require EPA to complete a complex balancing of costs and benefits before the agency can impose a restriction on a chemical to address safety concerns. *E.g.*, John S. Applegate, *Synthesizing TSCA and REACH: Practical Principles for Chemical Regulation Reform*, 35 Ecology L.Q. 721 (2008); *see also* Noah M. Sachs, *Jumping the Pond: Transnational Law and the Future of Chemical Regulation*, 62 Vand. L. Rev. 1817 (2009). Therefore, even without language in the safety standard directing EPA to restrict a chemical using the "least burdensome requirements," Toxic Substances Control Act § 6(a), 15 U.S.C. § 2605(a), by retaining the "unreasonable risk" language, the Chemical Safety Improvement Act might be read to place a heavy burden on EPA to impose even modest restrictions on a chemical. As a result, we believe that the same outcome in *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991) (striking down EPA asbestos ban and phaseout rule) could be possible under the safety standard proposed in this bill, particularly with the heightened judicial review discussed in the next paragraph.

Judicial Review. Courts typically use a reasoned decisionmaking standard to review agency actions, meaning they will not strike down a regulation unless an agency has acted in an arbitrary or capricious manner. *E.g.*, *Allied Local & Regional Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 77 (D.C. Cir. 2000) (EPA consideration of factors listed in statute "adequate to constitute reasoned decisionmaking"); *see also* Administrative Procedure Act, 5 U.S.C. § 706. In contrast, the Chemical Safety Improvement Act, like the Toxic Substances Control Act, would require courts to apply a heightened standard of judicial review when evaluating rules made pursuant to the bill. Specifically, courts would have to set aside rules requiring the development of more test data, safety determinations, and restrictions on chemicals unlikely to meet the safety standard if, in their opinion, EPA has not supported them with "substantial evidence." Chemical Safety Improvement Act, S. 1009, 113th Cong. § 16(2). In practice, this standard can be read to "impose[ ] a considerable burden" on EPA to develop a record that can withstand a hard look from courts, particularly when all of the other procedural hurdles in the bill are factored in. *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, 1214 (5th Cir. 1991), quoting *Mobile Oil Co. v. Fed. Power Comm'n*, 483 F.2d 1238, 1258 (D.C. Cir. 1973).

Preemption. The Chemical Safety Improvement Act would appear to largely preempt state regulations designed to protect public health and the environment from exposure to harmful chemicals. It would preempt existing and future state regulations that: require the development of test data or information on chemicals for which companies have to submit similar information to EPA; restrict the manufacture, processing, distribution, or use of a chemical after EPA has issued a safety determination for that chemical; or require notification for the use of a chemical substance if EPA has determined that it is a significant new use that must be reported to the agency. Chemical Safety Improvement Act, S. 1009, 113th Cong. § 15(a). The bill also would prohibit states from creating new restrictions on the manufacture, processing, distribution, or use of a chemical that EPA has classified as high- or low-priority. *Id.* § 15(b). This preemption provision is sweeping in nature and raises serious questions as to whether states could even enact or continue to enforce laws that simply require companies to disclose information about chemicals to consumers or require that products carry warning labels. Numerous states have passed laws in recent years in the absence of federal regulatory action to protect the public from

toxic chemicals. *E.g.*, Safer Chemicals Healthy Families, *Healthy States: Protecting Families from Toxic Chemicals While Congress Lags Behind* (2010), http://www.saferstates.com/attachments/HealthyStates.pdf. If this bill were to become law, it would perpetuate many of the Toxic Substances Control Act's shortcomings while preventing states from protecting public health and the environment in the absence of a robust federal law — or in the case of a strong federal regulatory framework, from complementing EPA's efforts to achieve this important goal.

Private Remedies. The bill takes the extraordinary step of making a safety determination by EPA admissible in any federal or state court and dispositive as to whether a chemical substance is safe. Chemical Safety Improvement Act, S. 1009, 113th Cong. § 15(e). As a result, the bill's section on private remedies could significantly encroach on the right of judges and juries to evaluate and weigh relevant evidence regarding the potential injuries caused by toxic chemicals. In turn, this could have the effect of granting chemical companies immunity from legal actions by private parties once EPA has issued a positive safety standard determination, even when subsequent evidence calls into question the agency's reasoning.

In view of these issues, and others identified by public health and environmental groups, we believe the Chemical Safety Improvement Act preserves some of the most problematic features of the Toxic Substances Control Act, while making it harder for state and private actors to ensure the safety of chemicals in the absence of a strong federal backstop for regulating these substances. As a result, the bill, as currently drafted, takes a step backward in the protection of public health. We respectfully ask that the bill be made stronger to achieve meaningful reform of current toxics law and are available to provide substantive recommendations as needed.

Sincerely,

Note: Institutions listed for identification purposes only. The signators do not purport to represent the views of their institutions.

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Responses to Questions for the Record

Submitted By Kenneth A. Cook

President
Environmental Working Group

Before the

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

On

Strengthening Public Health Protections by Addressing Toxic Chemical Threats

Thursday, September 5, 2013

The Honorable Barbara Boxer

1. **Your testimony states that S. 1009 "replicates numerous deficiencies contained in current law." Can you describe some of the main problems with TSCA that S. 1009 fails to address, particularly any problems that could harm the health of pregnant women, infants and children?**

As I noted in my written and oral testimony, there are numerous deficiencies in S. 1009, the Chemical Safety Improvement Act (CSIA). In several cases, S. 1009 is actually weaker than current law, despite the consensus that TSCA is a failed statute.

The bill does not improve on TSCA's weak safety standard, which requires EPA to prove with "substantial evidence" that a chemical poses an "unreasonable risk" to human health or the environment. This is not a health-based standard like the "reasonable certainty of no harm" standard found in Senator Lautenberg's Safe Chemicals Act and the Food Quality Protection Act that regulates pesticides, which Congress passed in 1996.

Given how courts and OMB have interpreted "unreasonable risk" under current law and despite claims to the contrary, the CSIA safety standard still involves an analysis of costs and benefits. Currently TSCA requires EPA to take the "least burdensome" course of action in regulating a chemical. While CSIA would strike that language, it would be replaced with provisions that require a seemingly endless cost-benefit assessment of alternatives.

The bill would also not require EPA to specifically assess and protect vulnerable populations, including children and pregnant women who can have both greater exposures to toxic chemicals and be more vulnerable to harmful effects of that exposure. In addition to the very young and

very old, chemical exposures pose a particular concern to workers, people living adjacent to industrial sites and people with chronic diseases who are more affected by chemical toxicity.

Unfortunately, these are not the only glaring deficiencies in S. 1009. Professor Thomas McGarity mentioned in his testimony before the committee on July 31 that he has never seen a preemption provision as intrusive as the one in S. 1009. The preemption language in the legislation is actually two-fold. First, states are prohibited from taking further proactive action on a chemical once EPA has prioritized it for a safety determination. Then, once the agency makes a determination, states are prohibited from enforcing existing restrictions on that chemical even if the state's restrictions and determinations are in conflict with EPA's assessment.

We also have significant concerns about the judicial review provisions of CSIA. S. 1009 uses the same judicial standard of review that appears in current law, which allows courts to "hold as unlawful and set aside [a] rule if the court finds that the rule is not supported by substantial evidence." This standard of review is more rigorous than the standard used under other environmental laws, and considering the role it played in blocking the EPA from banning asbestos under TSCA, any reform measure must scrap the standard.

Another concern about the judicial review provisions revolves around safety determinations and other relevant evidence. Under S. 1009, if EPA finds that a chemical meets the safety standard, judges and juries would be prevented from assessing other relevant evidence, particularly new information developed after EPA made its determination. While the agency's determination must provide the initial basis for risk management, there will be developing science on chemicals after determinations are made. By limiting the evidence that that can be presented to judges and juries, S. 1009 locks in an EPA determination regardless of what may have changed scientifically since the determination was first made.

In addition, the information that companies can claim as confidential under S. 1009 is actually broader than under current law. Under S. 1009, manufacturers would have broad scope to claim a chemical's identity as confidential even when studies show that it may be unsafe. Current law prohibits confidentiality under such circumstances, and rightly so. If data reveals a negative health effect from a chemical, the usefulness of that data is severely compromised if academic and independent researchers don't have access to the chemical's identity or name. S. 1009 also grandfathers in confidentially claims recognized under current law, even though many experts acknowledge that many of those claims are egregious. The Government Accountability Office has testified that 95 percent of new chemical applications contain information that is claimed to be confidential – very often the chemical's identity. EWG detailed in a 2009 report that approximately two-thirds of the chemicals introduced to the market since 1976 had the chemical identity claimed as confidential. When TSCA was signed into law in 1976, 60,000 chemicals were grandfathered in with no safety review. A reformed TSCA shouldn't make the same mistake by grandfathering in egregious confidentially claims that harm public health.

Under a truly effective TSCA reform, EPA will have to significantly increase its capacity to assess, prioritize and determine the safety of chemicals. However, S. 1009 does not specifically deal with fees or cost sharing. In fact, the bill retains the current law's $2,500 limit on the

amount EPA can assess companies to help defray the costs of safety reviews and evaluations. Inflation has dramatically increased the costs of these operations in the nearly 40 years since TSCA passed, and today they cost far more than $2,500. With many in Congress seeking to cut EPA's budget as dramatically as possible, the lack of any provision for fees is another area where S. 1009 would handcuff the agency.

Much has changed in science since TSCA passed in 1976. One obvious example is the explosion in development and use of microscopically small nanomaterials, which can penetrate skin and other surfaces. Reducing the size and shape of ordinary materials to create nanomaterials can greatly alter their potential danger to health and the environment, but S. 1009 does nothing to address EPA's current lack of authority to differentiate between these novel particles and materials of ordinary size when making safety determinations.

Many others share EWG's concerns. Recall that in May 2013, more than 30 legal scholars and public interest attorneys wrote to this Committee to raise similar issues over the bill's sections on the safety standards, preemption and judicial review. (Attached as Exhibit A.)

In short, S. 1009 has numerous deficiencies. It is vital that a reformed TSCA does not replicate the mistakes made nearly four decades ago and does not set back consumer protection. A reformed TSCA must provide the EPA with the authority and resources necessary to protect public health and the environment. S. 1009 badly misses that mark.

2. Does S. 1009's safety standard protect pregnant women, infants, and children?

The CSIA retains the same safety standard as TSCA, that chemicals should not present an "unreasonable risk" of harm to human health or the environment. In the more than two decades since EPA was unable to ban asbestos, we've known that the burden of proof imposed by this safety standard is too high to be effective.

Unfortunately, the goal of protecting vulnerable populations, including children, infants and pregnant women, is entirely absent in the CSIA language, including its safety standard. But for two vague references to undefined "subpopulations" on pages 11 and 63 of the CSIA, there is no requirement that EPA take into account pregnant women, infants and children or other vulnerable populations when making a safety determination.

a. How difficult is it for TSCA reform legislation to clearly include these types of protections?

Every previous iteration of TSCA reform introduced by Senator Lautenberg included the "reasonable certainty of no harm to public health and the environment" as the safety standard. This standard offers much stronger protection for human health and is akin to the current standard for pesticide exposure and FDA's risk standard for food packaging. The Safe Chemicals Act that passed the Senate Environment and Public Works Committee in 2012 and was reintroduced by Senator Lautenberg this year also explicitly required EPA to take into account the health risks to vulnerable populations when assessing the safety of a chemical. In the Kid-

Safe Chemicals Act that Senator Lautenberg introduced in 2008, the safety standard was also "reasonable certainty of no harm" and took into account the impact on vulnerable populations including the fetus, infants, children, workers and members of other sensitive subgroups.

As these previous iterations of reform legislation demonstrate, it would *not* be difficult for TSCA reform legislation to explicitly protect pregnant women, infants and children as well as other vulnerable subpopulations.

Given that hundreds of industrial toxic chemicals are regularly detected in Americans' bodies and that many companies subject to regulation under TSCA also manufacture pesticides that must already comply with a "reasonable certainty of no harm" safety standard, this legal standard is clearly workable and warranted to protect Americans from unwanted and unhealthy chemical exposures. In our view, chemicals in consumer products, especially those in children's products, should be at least as safe as pesticides.

3. Deadlines help to ensure that Agencies implement the law by a date certain and hold Agencies accountable for following the direction provided by Congress.

a. Could you please describe how S. 1009 addresses the issue of "deadlines" for action to implement public health protections, and the potential impacts of the bill's approach?

S. 1009 does not provide clear deadlines for EPA to complete safety reviews, requiring only that the agency do so "as soon as possible." The legislation also only requires the agency to "make every effort to complete the prioritization of all active substances in a timely manner." This language creates significant opportunities for delays that leave the American public vulnerable to dangerous chemicals.

We've already seen the negative consequences of the lack of deadlines under TSCA. EPA's efforts to regulate toxic chemicals have been crippled by political interference and delay. EPA's IRIS program, which performs toxicological assessments of potentially dangerous chemicals, has been unable to complete many of its assessments of clearly harmful chemicals, including formaldehyde, dioxin and arsenic. The formaldehyde assessment has taken nearly two decades. EPA's attempt to screen chemicals for hormone-disrupting activity is entering its 17th year without having made a single determination.

Consider what could happen under an EPA Administrator who dedlined to recognize that certain industrial chemicals pose a risk. Without specific deadlines, that administrator could indefinitely delay safety determinations or even the prioritization of chemicals for safety determinations. This is a negative not only for consumers but for chemical manufacturers as well. Under a reformed TSCA, manufacturers would benefit from gaining a government seal of approval that a chemical is safe. Without specific, reasonable deadlines, consumers would find themselves in a situation similar to the current one in which safety determinations can take decades to complete.

b. What type of deadlines do you believe are important for ensuring that the public, including pregnant women, infants, children, and fence-line communities are protected from toxic chemicals?

Most importantly, a reformed TSCA must have reasonable deadlines for completing safety reviews and for prioritizing those reviews. Without deadlines in those two aspects of the law, consumers face a situation where few if any chemicals are prioritized for review and safety determinations are few and far between and can take years.

One of the S. 1009's few improvements to current law is that it gives EPA the authority to issue an order for additional test data from companies. However, there are no firm deadlines for how quickly manufacturers must provide the data. Instead, S. 1009 says EPA must "provide an opportunity for interested persons to submit the additional information." This lack of specificity provides ample opportunity for manufacturers to slow EPA's reviews simply by not promptly providing the requested data.

An effective TSCA reform would require EPA to significantly ramp up its work on toxic chemicals. Therefore it is vital that deadlines be part of a reformed TSCA, and it is equally important that the deadlines be reasonable, that they can be met by the agency and that there be sufficient resources to meet those deadlines.

The Honorable David Vitter

Senator Vitter, certainly it is within your rights and your power as a senator and member of the Environment and Public Works Committee to ask whatever questions you see fit to ask of witnesses before your committee. EWG, in turn, fully embraces our equal obligation: to respond to Congressional inquiries truthfully and in good faith. In my decades of providing invited testimony before Congress, however, I've never received follow-up questions from a member of the House or Senate that were framed, as yours are, as open insults to my organization, my colleagues and our work, or larded, contemptuously, with excursions into issues far beyond the subject of the hearing, my prepared and delivered testimony, and indeed the jurisdiction of the committee. We gather from a number of our fellow witnesses that you posed no such questions to them.

My EWG colleagues and I recognize that as the first and foremost critics of CSIA immediately upon its introduction, we significantly shaped the legislation's initial reception and the ensuing debate. More and more independent experts, academic researchers, legal authorities, government agencies and public interest groups have since come forward to express, if not expand upon, many of the same concerns we first raised about the legislation's potential adverse impacts on human health, the environment and the rule of law in environmental policy.

I do appreciate why you might want to change the subject. The Toxic Substances Control Act has been an unregulated playground for the chemical industry for almost 40 years. Your legislation, the Chemical Safety Improvement Act, would only make it worse. We have observed, and continue to observe, many instances in which chemical companies have acted in exemplary fashion when faced with concerns about the environment and public health. But every playground has its bullies. EWG has also witnessed and documented far too many circumstances in which chemical companies have lied, misled and otherwise betrayed the public trust, poisoning the communities in which they operate, injuring and shortening the lives of millions of innocent people and polluting the entire living world – forever. They have even managed to pollute the blood of babies still in their mothers' wombs with hundreds, if not thousands, of TSCA-regulated chemicals. This is an industry that has earned, not the public's trust, but a reputation that requires, at long last, nothing less than the firmest, strongest possible government regulation for the public's health and safety.

1. **Have you or your organization sent out any fundraising requests over the last year based on current TSCA and the existing system. In other words, has your organization ever requested financial support (through sending out emails, letters, personal calls from you, etc.) based on the current system and attacking the chemical industry?**

As a watchdog organization, EWG works to shed a bright light on the activities of the chemical industry. EWG has published online thousands of pages of internal chemical industry documents that detail industry conspiracies involving the health effects of vinyl chloride on workers in Lake Charles, La.; attacks on Rachel Carson; covering up the dangers of asbestos to workers; the failure to notify residents of Parkersburg, W. Va., of toxic water and air pollution from Teflon-

related chemicals; and Monsanto's decades of dumping of millions of pounds of PCBs into the waterways of Anniston, Ala.

Yes, we ask our supporters to help EWG continue to watchdog the chemical industry, which is responsible for polluting the air and water of hundreds of cities around the United States. In the case of some chemicals such as PCBs and perfluorinated compounds, the industry has polluted the entire planet. Toxic industrial chemicals used in everyday consumer products contaminate food, wildlife and the bodies of our children and grandchildren.

EWG's research and policy efforts center on chemical pollution in people. EWG has sought financial support for groundbreaking research on toxic chemicals in newborn babies, teenage girls, minority justice leaders and many other groups. EWG engages in online fundraising from its supporters, much like the online fundraising campaigns of elected officials and political candidates.

Our campaigns also cover a wide range of other topics, including reforming the nation's ethanol policy, ending direct payments in the farm bill as well as fixing the nation's broken toxics law in order to protect children's health. EWG's view is that the Chemical Safety Improvement Act falls short of protecting children on even the most basic levels. For example, the Safe Chemicals Act introduced in April 2013 mentioned the word "children" 15 times. The CSIA does not mention "children" even once. Our full analysis of the failures of the current proposal is available at http://www.ewg.org/key-issues/toxics/chemical-policy.

In addition to asking EWG supporters to help fund our research and advocacy work as a watchdog, we have also asked our supporters to thank the chemical industry when it does the right thing. Earlier this year, I met with executives of Johnson & Johnson and presented a petition signed by 30,000 EWG supporters to thank the company for taking formaldehyde releasers and many other toxic chemicals out of its baby products.

2. **Do you have an idea of how much money the Environmental Working Group (EWG) raised over the last 5 or 10 years through complaining about current TSCA and the chemical industry? Please provide a rough estimate or the exact amount if available. As well, what was EWG's annual operating budget in 2010, 2011, and 2012 and anticipated for 2013?**

There is so much to complain about with respect to both TSCA and chemical industry. The law is the worst and weakest environmental law on the books. And a great many companies in the chemical industry have flagrantly taken advantage of TSCA's feeble regulatory framework to wreak havoc on the environment, human health and communities nationwide – most notoriously, fair to say, communities in your home state, including those I've visited on several occasions in "cancer alley."

If EWG could successfully raise financial support simply by complaining about TSCA or the chemical industry, our work would be much easier. It turns out that the sources we solicit (see Question 1) – both individuals and philanthropies – have come to value and expect EWG's hard-

hitting toxics research, our exposes of chemical industry malfeasance and our unvarnished commitment to stand up against any industrial or political interest that compromises human health and safety.

We have more than "an idea" of how much we have spent (and raised): we have audited figures. As a preface to explaining them, I would state that we regret not having been able to raise and spend even more support to counter the hundreds of millions of dollars the chemical industry spends to fight against almost any reasonable environmental safeguards.

We have spent $12,743,529 over the last five years to support our original research and analysis on toxic chemical pollution and its impact on people and communities and to support our advocacy work on reforming TSCA to make it a law that first and foremost protects children's health. Our operating budgets for the years requested are:

2010 – $5.8 million
2011 – $6.4 million
2012 – $7.2 million
2013 – $7.5 million

3. Has your organization ever endorsed a bipartisan legislation at the federal level for comprehensive TSCA reform? If so, please cite the bill and the list of cosponsors?

EWG has not endorsed a federal bipartisan proposal for comprehensive TSCA reform because the only bipartisan proposal is the CSIA, which is an unacceptably weak response to the failures of current law. In 1996, however, EWG actively supported and helped create a groundswell of momentum for the bipartisan Food Quality Protection Act (FQPA). This landmark legislation was championed by Senators Lugar, Pryor, Kassebaum, Inouye, Cochran, Kerrey, Dole, Heflin, Gorton and Breaux. In the House of Representatives, Commerce Committee Chairman Thomas Bliley Jr. created a swell of bipartisan support for the FQPA, including then-Speaker of the House Newt Gingrich. We were pleased to work with the Republican-controlled House to create a powerful bipartisan law that many experts regard as one of the most protective federal environmental health statutes. The bill passed unanimously in both chambers of Congress and was signed into law by President Clinton in 1996.

As you may also know, EWG's scientific research, analysis and advocacy work in agriculture has resulted in many bipartisan proposals and solutions involving ethanol, farm policy and local food initiatives. I applaud Senator Vitter's efforts to limit the amount of corn ethanol that is blended into gasoline, to oppose funding for ethanol blender pumps, and to urge the Administration to use its waiver authority under the Renewable Fuel Standard. I am also pleased that Senator Vitter supported amendments that EWG strongly endorsed based on our scientific research and analysis – the Feinstein amendment to the Economic Revitalization Act of 2011 that repealed the Volumetric Ethanol Excise Tax Credit; and the Coburn amendment to the 2012 Agriculture Appropriations bill that subjected direct payments to a means test. In the House of Representatives, EWG has testified as majority witnesses for the 113th and 112th Congresses to

detail our scientific research regarding the impact of federal ethanol policy on air quality, land conversion and soil erosion.

4. Mr. Cook, your organization EWG has a reputation for pushing at best fringe, and what could more likely be described as junk science. In July 2010 you released a sunscreen guide arguing that retinyl palmitate causes cancer. What is retinyl better known as?

Retinyl palmitate is also known as Vitamin A palmitate. Retinyl palmitate is the term that appears on the labels of sunscreens and other cosmetic products. In our 2010 Sunscreen Guide, EWG highlighted findings from a study conducted by the National Toxicology Program (NTP) that indicated that retinyl palmitate had photo-carcinogenic effects in animal tests – i.e., the chemical accelerated the development of skin tumors and lesions on sun-exposed skin.

I disagree with your characterization of EWG's scientific analysis and research. I also realize, Senator Vitter, that EWG comes to matters of science from very different perspective than yours. For instance, we believe the evidence is clear that human activity is causing climate change. We find the case for regulating formaldehyde as a known human carcinogen to be clear and urgently compelling. We believe in the theory of evolution by natural selection.

EWG has earned a reputation for innovative, headline-making, data-driven investigations of environmental problems and polluters' anti-environmental lobbying. For the past 20 years, EWG's research and analysis have made it a major force in national policy debates over toxic chemicals, pesticides, air and water pollution and the ecological impact of modern agriculture. EWG's work on toxic chemical pollution has been widely cited, including by former EPA Administrator Lisa P. Jackson.

Over this time EWG has been the subject of numerous newspaper profiles, including in the The Atlanta Journal-Constitution, Chronicle of Philanthropy, Chicago Tribune and The Des Moines Register. At the onset of debate over the 1995 Farm Bill, a front-page story in The Des Moines Register called EWG one of the five most influential players in agricultural policy, alongside then-Senator Bob Dole; Leon Panetta (then the head of the Office of Management and Budget); then-USDA Secretary Mike Espy; and former Farm Bureau head Dean Kleckner. A front-page profile in The Omaha World Herald in 1996 said, "[Cook's] fingerprints can be found on nearly two decades of U.S. farm law." In 2000, Progressive Farmer named me as one of agriculture's most influential leaders of the 20th century, alongside iconic environmentalists such as Rachel Carson and Aldo Leopold.

In agriculture policy circles, EWG is perhaps best known for its Farm Subsidy Database, which lists all direct payment recipients and their share of the $165 billion that taxpayers have spent on this program since 1995. The New York Times (Feb. 24, 2002) credited EWG's web site with helping "transform the [2002] farm bill into a question about equity and whether the country's wealthiest farmers should be paid to grow commodity crops while many smaller family farms receive nothing and are going out of business." EWG's recent analysis of wetland and prairie

loss "underscores why Congress must get right its rewriting of the farm bill," according to the Dallas Morning News.

5. Isn't it widely known that in scientific literature that retinyl plays an important role in maintaining normal skin function?

Retinyl palmitate and other vitamin A derivatives do play a role in maintaining normal skin function and are widely used in cosmetics as anti-aging agents. However, it is widely known that products containing these ingredients can increase sensitivity and irritation in sun-exposed skin.[i,ii]

6. Is it accurate that the EWG based its report on laboratory experiments showing that mice exposed to ultraviolet light while having retinyl palmitate applied to their skin developed tumors more quickly than mice that didn't? Is it accurate that the study was not peer reviewed when EWG chose to cite it?

EWG based its report on the findings of a study conducted by the National Toxicology Program (NTP) – an interagency group housed at the National Institutes of Health (NIH) – at a federal research center co-hosted by the FDA and NTP. The study found that mice exposed to ultraviolet light developed tumors more quickly when retinyl palmitate was applied to their skin than when it was not. EWG cited this government-funded study early in the peer review process after having it analyzed by an independent toxicologist. On Jan. 26, 2011, the NTP Board of Scientific Counselors peer reviewed the draft report and upheld the Agency's findings. The ultimate conclusion was that both retinyl palmitate and retinoic acid accelerate the photo-carcinogenic effects in test animals. The final NTP report was issued in August 2012.[iii]

7. Is it accurate that no sunscreen lotions consists solely (or even primarily) of retinyl palmitate, and another study from 2009 on hamsters concluded the exact opposite of what your study showed?

It is accurate to say that no sunscreen lotion consists solely, or even primarily, of retinyl palmitate. While retinyl palmitate is commonly added to sunscreens, it does not block UV light and therefore is not an "active" ingredient. EWG's analysis of SPF-rated products sold the United States has found that more than 20 percent include retinyl palmitate.

A 2009 study performed by L'Oréal found that retinyl palmitate did not induce DNA damage in UV-exposed Chinese hamster ovary cells (Dufour 2009). However, this study's findings conflict with a similar study performed in 2005 by the federal National Center for Toxicological Research (NCTR), which found that retinyl palmitate induced UV-related DNA mutations in mouse lymphoma cells (Mei 2005). In either case, whole animal studies, such as the peer-reviewed NTP study on which EWG based its report, are a better indicator of real world skin cancer risks than either of these cell-based tests.

Note that the Canadian government recently proposed that sunscreens with more than 0.1-1 percent retinyl palmitate and other anti-aging chemicals bear this stark warning label:

> This product contains [retinyl palmitate] that may increase your skin's sensitivity to the sun and particularly the possibility of sunburn. Please limit sun exposure while using this product and for a week afterwards.[iv]

8. Is it accurate that the New York-based Skin Cancer Foundation disputed your report's findings and, according to the Palm Beach Post, worried that "consumers confused about the report might stop using sunscreens" and isn't this a legitimate concern, since over-exposure to sunlight is a well-known cause of skin cancer?

The Palm Beach Post did publish a story on the Skin Cancer Foundation's (SCF) response to EWG's sunscreen report. It is important to note that the Foundation relies on funding from many of the companies that make sunscreens. The contention that consumers will stop using sunscreens as a result of EWG's work is a common industry tactic that has historically been used by other industries. EWG included the Skin Cancer Foundation in its "Hall of Shame" in the 2011 Sunscreen Guide, which detailed the flaws of the Skin Cancer Foundation's so-called "certification system" as follows:

> The Skin Cancer Foundation lends its logo to hundreds of sun protection products. Traditionally SCF approval has been easy: just document that your product has an SPF of at least 15 and provide results of basic tests for SPF, skin reactions and water and sweat resistance, if such claims are made. The Skin Care Foundation requires that companies seeking product approval pay a $10,000 donation to join the Foundation's "Corporate Council."
>
> The Skin Care Foundation advertises that its certified products "meet the highest standards for safety and effectiveness." But until January 2011, foundation-approved products were not required to protect from UVA rays and as of May, fewer than 60 of more than 500 certified sunscreens and lotions had met the foundation's standard for UVA protection.
>
> The Skin Cancer Foundation should ask its certified companies to comply with FDA's 2007 draft regulations voluntarily but instead lends its seal to dozens of products that don't even meet its own standards.
>
> The Skin Care Foundation advises the public "in most cases, SPFs beyond 50 are unnecessary." Yet one in six products bearing the seal boasts an SPF higher than 50. The foundation advises consumers to protect their skin from UVA by using products with avobenzone, ecamsule, titanium dioxide and zinc oxide. Yet its seal has been granted to products that contain none of these chemicals.

Conventional agriculture and pesticide industry interests have made similar statements with respect to EWG's research on pesticide residues on fruits and vegetables, claiming that

Americans would be misled into thinking that conventionally grown produce is unhealthy and stop eating fruits and vegetables altogether. USDA data show this did not happen[v], and that Americans have been consuming roughly the same amount of fruits and vegetables for many years.

EWG's goal is to provide the public with all the information and research possible so consumers can make educated decisions about the products they buy. In accordance with CDC guidelines and recommendations, EWG believes that people should do more than apply sunscreen to protect themselves from over-exposure to the sun. The CDC skin cancer prevention webpage suggests seeking shade and wearing protective, loose-fitting clothing as well as sunglasses when in the sun.

9. **According to the Skin Cancer Foundation "There is no scientific evidence that retinyl palmitate causes cancer in humans. The research that generated the controversy is an unpublished 10-year-old study in mice, far from proof of anything in humans. In fact, retinoids (topical vitamin A products similar to retinyl palmitate) are commonly prescribed by dermatologists, and no published data suggests that topical retinoids increase skin cancer risk. Oral retinoids are often prescribed to help prevent skin cancers in people at high risk of the disease!"**

    a. **Please explain if the Skin Cancer Foundation was discussing the report EWG cited for making its claim? Please thoroughly explain why EWG is correct and the Skin Cancer Foundation is wrong. If EWG now agrees with the Skin Cancer Foundation has EWG publicly apologized for disseminating inaccurate information to the public?**

The Skin Cancer Foundation, which is largely funded by companies that profit from the sale of sunscreens, appears to be citing a peer-reviewed, government-funded study authored by the National Toxicology Program. EWG based its sunscreen advice on retinyl palmitate on this peer-reviewed study, which found a link between the use of topical creams containing this ingredient on sun-exposed skin and accelerated skin tumor growth.[vi] It has always been EWG's policy that consumers should have access to all information and research available when deciding what products to use on themselves and their families.

10. **EWG has for a number of years contributed to stoking fears that childhood vaccines like those for Measles, Mumps, and Rubella are responsible for increased incidences of autism.**

    a. **Does EWG's website continue to host articles alleging a link between vaccines and autism? Does EWG or do you personally continue to say publicly or in any other forum that there is a link between vaccines and autism?**

Neither EWG nor myself has published articles or asserted that there is a link between vaccines and autism. In a 2004 article titled Overloaded, which remains on our website[vii], EWG discussed the findings of Dr. Jill James, whose research highlighted a metabolic profile in children

diagnosed with autism that could cause increased vulnerability to environmental contaminants such as mercury. EWG discussed Dr. James' findings on a potential link between autism and mercury exposure, but we made no claims or associations between autism and vaccines, nor did we call for parents to avoid vaccinating their children. We also encourage our supporters to read a wide range of literature on a variety of environmental health topics.

Does EWG believe it has contributed to putting children at risk of devastating childhood illnesses by furthering the vaccine-autism claim? Does EWG believe it has contributed to a growing subculture in which vaccines are shunned by some parents?

EWG has never claimed that there is a link between vaccines and autism. As an organization, EWG takes great pride in accurately reporting scientific findings. We believe that parents are savvy and capable of making the best decisions, along with a physician, for their children. We strongly urge parents to consult with a trusted physician prior to the administration of a vaccine. The conclusion of our 2004 report stated:

> The Environmental Working Group strongly supports the standard battery of childhood immunizations recommended by the American Academy of Pediatrics and the CDC. Clearly, vaccinations have led to many major advances in public health. At the same time, EWG recommends the removal of thimerosal and all mercury-based preservatives from all vaccines in the United States, as is currently required by law in California and Iowa.
>
> As individual states and many industrialized countries have phased out or banned the use of the mercury-based preservative in vaccines, the use of immunizations preserved with thimerosal continues unabated in the developing world. Precisely because of the clear public health benefits of vaccinations, the limited access to refrigeration, and the need to deliver vaccines in multiple dose containers in these countries, we urge the World Health Organization and multinational drug companies to move quickly to develop and adopt an alternative, low cost, effective preservative that is safer than mercury-based thimerosal.

Let me share with you what the actual science says:

Am Fam Physician. 2002 Dec 1: Vaccine Adverse Events: Separating Myth from Reality
SANFORD R. KIMMEL, M.D., Medical College of Ohio, Toledo, Ohio

"Vaccination was one of the 20th century's most successful methods of disease prevention and eradication. Smallpox was eradicated worldwide, and the Americas were declared free of wild poliovirus in 1994. The reported incidence of measles in the United States declined to 100 cases per year in 1999; more than one half of these cases were due to the importation of measles from other countries. In 1999, an outbreak of rubella occurred in Nebraska among Hispanic meat-packers who had not received rubella vaccine in childhood. Because vaccine-preventable diseases continue to be

imported from other countries and are a threat to unimmunized persons in the United States, family physicians and other health care workers should continue to maintain high immunization rates in their patients."

b. Please explain why you disagree with these statements and if you/EWG continue to disagree with the recommendations for vaccination? Which vaccinations does EWG recommend to parents and view as safe.

Clearly, vaccinations have led to major advances in public health, and EWG strongly supports vaccination efforts. We do not disagree with the above statement. However, we do not make specific vaccine recommendations to parents. We urge parents to always consult with a trusted physician before the administration of a vaccine.

We also appreciate Sen. Vitter's regard for "actual science," which is why we hope that you will work with the Chair of the committee to support climate change legislation, acknowledge that evolution exists, and allow the government scientists to move forward with their decision to declare formaldehyde a "known" human carcinogen after 30 years of research and study.

Mental Retardation and Developmental Disabilities Research Reviews. Volume 8, Issue 3, pages 151-161, 2002: The epidemiology of autistic spectrum disorders: is the prevalence rising?

"For decades after Kanner's original paper on the subject was published in 1943, autism was generally considered to be a rare condition with a prevalence around 2-4 per 10,000 children. Then, studies carried out in the late 1990s and the present century reported annual rises in incidence of autism in pre-school children, based on age of diagnosis, and increases in the age-specific prevalence rates in children. Prevalence rates of up to 60 per 10,000 for autism and even more for the whole autistic spectrum were reported. Reasons for these increases are discussed. They include changes in diagnostic criteria, development of the concept of wide autistic spectrum, different methods used in studies, growing awareness and knowledge among parents and professional workers and the development of specialist services, as well as the possibility of a true increase in numbers. Various environmental causes for a genuine rise in incidence have been suggested, including the triple vaccine for measles, mumps and rubella (MMR). Not one of the possible environmental causes, including MMR, has been confirmed by independent scientific investigation; whereas there is strong evidence that complex genetic factors play a major role in etiology. The evidence suggests that the majority, if not all, of the reported rise in incidence and prevalence is due to changes in diagnostic criteria and increasing awareness and recognition of autistic spectrum disorders. Whether there is also a genuine rise in incidence remains an open question."

c. Please explain which of the above statements EWG disagrees with and why?

The increases we have seen in mental retardation and autism-spectrum diagnoses can undoubtedly be partially attributed to the broadening of diagnostic criteria and improved assessment. However, the Centers for Disease Control and Prevention has said that the increase in autism rates is likely due to both better diagnosis and an actual increase in prevalence of the disease.[viii]

In addition to genetic factors, there is considerable evidence supporting the role of environmental triggers for autism and other neurological disorders. Recent publications have linked these disorders to exposure to air pollution[ix], pesticides[x] and certain prescribed medications[xi], and there are credible theories that point to a combination of susceptible genes and environmental triggers.[xii]

> **Journal of Child and Adolescent Psychiatric Nursing Volume 22, Issue 1, pages 51-53, February 2009: The Rise in Autism and the Mercury Myth**
>
> **"The increase in prevalence of the PDDs has a threefold explanation. First, in 1994, with the release of the Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV), there was a broadening of the diagnostic criteria for autism. The DSM-IV also added criteria for Asperger's syndrome and clarified the criteria for PDD-NOS. Finally, better assessment methods have provided clarification across PDD diagnoses and improved the demarcation between PDD and non-PDD cases. Thus, more recent studies have overcome the systematic undercount of PDD cases in previous studies."**
>
> **d. Please explain which of the above statements EWG disagrees with and why the science underpinning this article is inaccurate?**

While we agree that broadened diagnostic criteria and improved assessment methods may account for an increase in cases, there is considerable science connecting autism to environmental factors that demands consideration. It is accepted that the increase in diagnoses are not due just to broadened criteria and assessment methods.

> **"Did the mercury in vaccines cause autism? Answer: No. The Institute of Medicine spent four years studying this issue. Their conclusion, issued in 2004: mercury preservatives in vaccines did NOT cause autism . . . and the Institute said it was time to move on to look at other possible causes Several other leading medical organizations (both nationally and internationally) agree with this conclusion. Mercury preservative (thimerosal) was removed from vaccines in the U.S. in 2001, but the rates of children being diagnosed with autism is still skyrocketing. A survey of autism rates in California in 2008 confirms that mercury is out and autism rates are still going up. If thimerosal was the cause of autism, and it was taken out seven years ago, autism rates should be going down by now. That's because autism spectrum disorders are usually diagnosed by three years of age. Mercury preservatives were removed from vaccines in Denmark in 1992. Canada and the European Union have followed suit. Their autism diagnosis rates are still going up, too. A study of 100,000 kids in England compared those**

receiving mercury-containing vaccines to those who did not. The ones who had mercury-free shots had HIGHER rates of autism. A study in 2007 showed that children between seven and ten years of age who got those mercury containing vaccines (before 2001) had no significant differences in tests of attention and processing information."

e. Please thoroughly explain everything that you/EWG view as inaccurate in the statements quoted above.

We agree with the statement above that the increase in autism in recent years cannot be attributed to better diagnosis alone. According to a study of California birth records conducted by University of California scientists and published in Epidemiology, "younger ages at diagnosis, differential migration, changes in diagnostic criteria, and inclusion of milder cases do not fully explain the observed increases [in cases].[xiii]

We also agree that the removal of mercury from most children's vaccines has not appeared to reduce the incidence of autism and other neurological disorders. We remained concerned that children with autism may have gene or metabolic profiles that make them more susceptible to environmental contaminants, as discussed more fully in answer 10 (h) below. We remain concerned about children's exposure to mercury generally, given its neurotoxic properties.

According to the College of Pharmacy, University of Illinois at Chicago:

"The evidence presented does not show a causal relationship between the MMR vaccine and autism. Myths presented to potentially support any relationship between the MMR vaccine and autism have not been proven. Expert testimony refuting initial scientific theories has led to Supreme Court decisions that do not support a link between the MMR vaccine and autism. Pharmacists and all health care providers are responsible for informing and educating parents and families regarding this information so that they can make informed decisions about immunizations."

f. Can you explain why you/EWG disagree with the College of Pharmacy statements? If you /EWG agree with these statements are you willing to publicly say as much, retract prior claims by your organization and provide such correction on EWG's website?

EWG has never made claims regarding a link between the MMR vaccine and autism, and we do not disagree with the College of Pharmacy's statements. We agree with the College of Pharmacy that "pharmacists and all health care providers are responsible for informing and educating parents and families regarding this information so that they can make informed decisions about immunizations."

And according to the American Academy of Pediatrics in their thorough review of the scientific literature: "These studies do not show any link between autism and MMR vaccine, thimerosal, multiple vaccines given at once, fevers or seizures."

g. Please explain why EWG believes the American Academy of Pediatrics is wrong?

EWG has made no claims regarding autism's link to MMR vaccine, multiple vaccines given at once, fevers or seizures.

In 2004 an EWG report raised concerns about the apparent metabolic differences in children with autism that could make them more vulnerable to environmental contaminants and mentioned thimerosal as one environmental exposure that might be more problematic for children with autism than for others[xiv]. However, subsequent studies have shown that the removal of thimerosal from childhood vaccines did little to alter autism diagnosis rates[xv] , suggesting that thimerosal itself was not a major cause of the rising incidence of autism.

The researcher whose work EWG profiled in 2004, Jill James of the University of Arkansas for Medical Sciences, has continued to publish studies investigating the unusual metabolic traits of children with autism. Her more recent publications continue to suggest that this group has abnormal glutathione metabolism and methylation capacity, which we believe could result in an increased sensitivity to environmental chemicals.[xvi,xvii] This remains an active area of research, but it not presently possible to translate these findings into clear strategies for disease prevention and treatment.

h. Treatment and care for children with autism is of critical importance, particularly for parents that struggle with the financial challenges of the additional cost of care. Do you believe it is in everyone's interest to better understand the causes of autism and treatment using the best available science? Is it fair for any parent trying to make the most appropriate decisions for their child, including decisions related to the prevention of debilitating diseases, to not be given the most accurate information related to the best available science?

EWG strongly believes in trying to better understand the causes of autism and treatment using the best available of science. EWG also believes in education and in improving public awareness of chemicals that may potentially affect an individual's health. Our policy as an organization is to assess and disseminate the best available science, andwe use the definition of best available science outlined by the National Academy of Sciences in the report entitled Science and Decisions.[xviii]

11. You testified that "Although detection of a chemical in blood or cord blood does not prove harm, the presence of industrial chemicals in the human body is evidence of health risks." Please explain this statement in light of the CDC's interpretation of the biomonitoring data in its National Exposure Reports: "Just because people have an environmental chemical in their blood or urine does not mean that the chemical causes disease. The toxicity of a chemical is related to its dose or concentration in addition to a person's individual susceptibility. Small amounts may be of no health consequence, whereas larger amounts may cause adverse health effects. Research studies, separate

from the Report, are required to determine which levels of a chemical may cause health effects and which levels are not a significant health concern."

In my testimony, I said that while the presence of a chemical in blood or cord blood does not prove harm, it is evidence of health risk. The risk of an adverse effect caused by a toxic chemical is a function of both individual exposure and the potency of the chemical. Detecting potentially harmful chemicals in umbilical cord blood is an indicator of fetal exposure during a critical period of vulnerability to toxic agents. As I mentioned in my testimony, EWG has detected hundreds of chemicals known to be toxic to human health in samples of umbilical cord blood from American children. Due to this inherent risk, it is imperative that we have information on the magnitude of Americans' exposures and the precise levels that are capable of causing harm. Lead and mercury are two examples of chemicals detected in EWG's umbilical cord blood tests that have been shown to permanently hinder children's brain development at very low doses. It is shocking to the general public that industry has not provided answers to these basic questions: What do these low doses mean over time? What do they do to the developing fetus in combination? What impact do they have on cancer and other health-related issues? The chemical industry should share with the American people everything it knows about chemical exposures from everyday consumer products and their potential impact on health.

12. **In your statement, you testified that "Chemicals that are getting into people's bodies should be given priority for assessment and management." Please discuss this statement in light of EPA's use of the CDC's National Report on Human Exposure to Environmental Chemicals to set priorities for Work Plan Chemicals for assessment and possible risk management under TSCA today. Please also discuss other factors that went into EPA's prioritization of Work Plan Chemicals in 2012 in light of your testimony. Also, please discuss the CSIA's requirement at Section 4(e)(2)(B) that EPA include an "initial list" of chemical substances that includes at a minimum, "those substances prioritized by the Administrator before the date of enactment of the Chemical Safety Improvement Act and for which assessments or safety determinations have not been completed, and proposed prioritization outcomes based on the proposed criteria."**

EPA's TSCA work plan identifies 83 chemicals of concern for priority risk assessments. These chemicals are identified based on their potential toxicological hazards, potential for widespread human exposure and their capacity to persist and bioaccumulate in the environment.[xix] EWG is pleased with the Environmental Protection Agency's (EPA) steps to take children's health and biomonitoring data into consideration when setting priorities for high-risk chemicals. EWG believes that public health agencies should expand biomonitoring efforts to detect the presence of chemicals in people. The information derived from an expanded biomonitoring program would produce a wealth of data that could be utilized to set smart, targeted prioritization standards.

13. **In your testimony, you criticize the fact that the Chemical Safety Improvement Act's (CSIA) safety assessments would be "limited to 'intended conditions of use'" and you**

contrast those to "actual use" of chemicals over time. Please explain your interpretation of the definition of "intended conditions of use" in Section 3 of the bill.

The CSIA defines "intended conditions of use" as the "circumstances under which a chemical substance is intended or reasonably anticipated to be manufactured, processed, distributed in commerce, used, and disposed of." This specific definition has been absent from previous proposed reforms of the Toxic Substances Control Act and might not be interpreted by the courts to require that EPA consider the safety of sub-populations with the greatest exposures to toxic chemicals. In order to ensure that the phrase "intended conditions of use" is not a mechanism for ignoring risks to vulnerable populations, we suggest that the definition be expanded to explicitly address highly exposed groups as follows:

> INTENDED CONDITIONS OF USE – The term 'intended conditions of use' means the circumstances under which a chemical substance is intended or reasonably anticipated to be manufactured, processed, distributed in commerce, used and disposed of. This term explicitly includes people with high-end exposures, including children, pregnant women, workers, people living near industrial sites and people with greater contact with the chemical in finished goods.

14. Also in your testimony, you assert that EPA need not give special consideration to vulnerable populations under the CSIA. Please explain the CSIA's reference to "subpopulations" in Sections 4 and 6.

The CSIA states that a safety assessment shall "take into consideration the vulnerability of exposed subpopulations." EWG believes this language is woefully insufficient. It should be strengthened for three reasons:

1. The CSIA fails to define subpopulations.
2. Under this bill a safety assessment must only "take into consideration" the vulnerability of a subpopulation, not mandate that such populations be protected from harm.
3. CSIA only requires that EPA consider the exposure of vulnerable populations to toxic chemicals, but this should be expanded to include subpopulations that are more vulnerable to the toxic effects of chemical exposure. These include children, pregnant women, the elderly and people with pre-existing diseases.

The CSIA does not adequately protect vulnerable populations. In a complete and unnecessary concession to the chemical industry, the words "children," "pregnant women" and "children's health" have been entirely stripped from the bill.

15. Were you disappointed when you discovered Democratic staff had circulated a document refuting many of your public claims regarding the CSIA? Have you reviewed that document and can you cite specifically why such a clear refutation was inaccurate?

We reviewed the document and we found multiple factual errors in the staff memo that was produced and circulated by a legislative assistant prior to my testimony, which EWG circulated the evening of the hearing. The full text of our memo is attached, but several examples follow:

1. The circulated memo claimed that CSIA improves on TSCA by redefining the safety standard based solely on risk to human health and the environment and by striking the "least burdensome" requirement. Although the CSIA states that EPA must evaluate whether a chemical meets the safety standard "based solely on considerations of risk to human health and environment"[xx], a safety assessment would still involve consideration of costs and benefits, given the way the "unreasonable risk" clause has been interpreted by the courts. If EPA wants to phase out or ban a chemical, the agency must present a careful cost-benefit analysis, including a discussion of technically and economically feasible alternatives, risks posed by each of those alternatives compared to the chemical under considered, and the economic and social costs and benefits of the proposed restriction compared to potential alternatives, among other things[xxi].

2. The circulated memo also claimed that new or existing state requirements that do not directly prohibit or restrict a chemical would never be preempted, including required reporting of a chemical's use or presence in products, warning labels such as those required by California's Proposition 65, limits on exposure levels or releases, monitoring, etc. However, the CSIA states clearly that once EPA has completed a safety determination for a chemical, no state may create new, or continue to enforce existing, restrictions on the manufacture, processing, distribution, or use of that chemical.[xxii] This language limits the ability of states to require companies to disclose to consumers information about chemicals and/or require that products carry warning labels, since companies will be likely to argue that "distribution" covers product packaging decisions.

3. Finally, the circulated memo claimed that CSIA makes it easier for medical personnel as well as health care professionals to obtain the identity of a secret chemical when treating a potentially exposed individual. However, CSIA actually narrows the definition to "health professional employed by a Federal or State agency or a treating physician or nurse" in a non-emergency situation, rather than using broad language such as "public health officials" or "medical personnel."[xxiii] The CSIA also requires EPA to follow more detailed procedures before providing the confidential information to these parties.[xxiv]

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[ii] Anon (2013) Tretinoin topical disease interactions. Available: http://www.drugs.com/disease-interactions/tretinoin-topical.html#Sunburn

[iii] National Toxicology Program (2012) NTP Technical Report on the Photocarcinogenesis Study of Retinoic Acid and Retinyl Palmitate. Available: http://ntp.niehs.nih.gov/ntp/htdocs/LT_rpts/TR568_508.pdf
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Senator BOXER. Thank you all. You have been incredibly important to this hearing. I ask unanimous consent to put in the record a letter from Trevor Schaefer on the importance of addressing disease clusters as we move forward.

[The referenced information follows:]

TREVOR'S TREK FOUNDATION

July 31, 2013

Senator Barbara Boxer
112 Hart Senate Office Building
Washington, D.C. 20510

Senator Mike Crapo
239 Dirksen Senate Building
Washington, D.C. 20510

RE: Importance of Addressing Disease Clusters and TSCA Reform Efforts

Dear Chair Boxer and Senator Crapo,

I am writing to you about the importance of addressing disease clusters in efforts to reform the Toxic Substances Control Act. My name is Trevor Schaefer. Ten years ago I was attacked where I lived in a town in northern Idaho. Toxins in my environment gave me brain cancer at the age of 13. Four other brain cancers were diagnosed that same year. I went into battle against this bully without any armor or knowledge about what I was up against. The day I got my diagnosis, more than two classrooms-full of children in this country heard the same thing. While this November will mark my 10-year anniversary of being cancer-free, many of those other kids didn't make it through the war. Although I am alive and considered cured, I will forever endure debilitating residual effects resulting from my brain tumor, radiation and chemotherapy treatments.

Before cancer I was a straight-A student, an athletic participant in several sports and with a positive outlook on life. As a result of my diagnosis and treatments, I struggle with my memory and endure bouts of depression. I have had two eye surgeries, my athletic ability is limited, and I may never be able to have children of my own. Senators, believe it or not, I am considered one of the lucky ones. Coping with a life-threatening disease like cancer is a frightening and unpredictable process. Children who have battled cancer feel a range of emotions that include fear, depression, and anxiety-- all symptoms similar to Post-traumatic Stress-disorder.

I would also like to impress upon you the fact that childhood cancer doesn't only attack the victim. It greatly impacts every member of the family. Siblings often experience concern, fear, jealousy, guilt, resentment and feelings of abandonment.. The financial burden of cancer can be extremely stressful on a marriage, and frequently a family breaks up.

Although there has been a significant increase in the cure rate of childhood cancer, there is mounting evidence that toxic pollutants play a pivotal role in childhood cancer, like they did in mine. Only 4% of all childhood cancer is genetic. Children

should not have to suffer from preventable diseases that are related to the air they breathe, the food they eat, the water they drink and the fields in which they play.

I strongly urge that any congressional action to reform our nation's toxic chemical regulation laws include: **S.50**, (**The Strengthening Protections for Children and Communities from Disease Clusters Act**.). **S.50** provides essential protection to children and communities affected by disease clusters through creating important tools that families, communities and agencies can use to help develop a comprehensive solution to address this very serious national problem.

Parents are trying to get authorities to investigate these clusters and to discern what caused the disease patterns. Scientists and health activists say the government's current response to disease clusters ranges from piecemeal to non-existent. **S.50** allows people in small communities to have their voices heard and their concerns validated about the environmental impact of toxins on their children's health.

Like our brave military heroes that fight to protect our country, children with cancer are brave warriors, too, although their battlefields are the neighborhoods where they live. Their enemy: preventable cancer. Do you want their sad legacy of pain and suffering to go unaddressed when the solution is right there in the language and purpose of **S.50**? The time to act is now. I can't imagine a world without children, can you?

Very Truly Yours,

Trevor Schaefer

CC: Senator David Vitter
516 Hart Senate Office Building
Washington, D.C. 20510

Senator BOXER. So we will see you at 1 o'clock and we will all have questions for you. Thank you. We stand adjourned until 1.

[Recess.]

Senator BOXER. The hearing will resume.

Senator Manchin, you are recognized for 5 minutes. Thank you for being here.

OPENING STATEMENT OF HON. JOE MANCHIN, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator MANCHIN. Thank you so much, Senator, and thank you, Chairman Boxer and Ranking Member Vitter, for holding the hearing today and allowing me to speak about an incredibly important piece of legislation, the Chemical Safety Improvement Act.

I also want to thank Mike Dorsey from West Virginia, who I understand was here earlier, from the Department of Environmental Protection, and testified about support for the CSIA earlier today. We all agree that the Toxic Substance Control Act, TSCA, is inadequate, and it is long past due to reform this law. Senator Lautenberg had worked for many years to do just that. I don't think anyone here today can question his dedication to protecting the health and safety of Americans.

That is why I was disheartened when I read news reports that said members questioned Senator Lautenberg's faculties during the CSIA negotiations. He entered into these negotiations with all his years of experience, skills and wisdom, because he knew that it was time to craft a bipartisan TSCA reform bill. To suggest otherwise and to attack the integrity of such a strong defender of public health is something that should offend all Americans.

Let me be clear: Frank Lautenberg, a champion of public health, safety and the environment, aligned with the Senate, negotiated the agreement before you because he knew it was time to fix this broken system in a way that could pass Congress and make Americans safer. To say anything else is not fair and is certainly not true and it dishonors the legacy of Senator Lautenberg, a great and proud American.

Some people have also argued the bill is worse than current law. That is just another cheap attempt to try and distort the tireless work that Senator Lautenberg gave to the bill. When Senator Lautenberg met with Senator Vitter, he toughened many of the most important provisions in this bill. He increased States' rights under preemption. He ensured that doctors and private citizens, including parents and workers, would have greater access to confidential business information to guarantee that those potentially exposed to harmful chemicals could receive the best possible treatment.

Most importantly, he crafted a safety standard that unlike current law, and unlike what Senator Vitter wanted, is based solely on human health and the environment, and includes no cost benefit analysis.

CSIA will establish for the first time an effective framework for the EPA to ensure that the chemicals we use every day are safe for people and for the environment. CSIA will require safety evaluations for those new chemicals and the thousands of currently untested chemicals we encounter daily. It will allow the EPA to take meaningful action against chemicals that pose a threat to human

health and safety. And it will allow State and local governments to weigh in on the whole process.

I would like to talk a little more about the last statement. CSIA balances State authority within a greatly strengthened Federal system that will allow industry to produce safer chemicals nationally. It also forces the Federal Government to finally step up and protect the health and safety of all Americans, including those in smaller States like West Virginia, where there are just not sufficient resources for us to be able to test and regulate the chemicals that need to be regulated.

These new protections will not come at the expense of the good-paying jobs provided by the chemical industry. However, on the contrary, CSIA will finally provide the regulatory certainty that we need for continued economic growth, innovation and job creation. The chemical industry directly employs over 9,000 hard-working people in my State of West Virginia and hundreds of thousands more across the United States. More than 48,000 West Virginians are employed by sectors that rely on the chemical industry for their business. And one-quarter of our Nation's GDP comes from these chemical-reliant industries.

CSIA will protect not only these jobs and their contributions to the American economy, but also protect the welfare and well-being of the American public.

I have been in the legislative process since 1982, Madam Chairman, working with colleagues on both sides of the aisle to reach commonsense compromises. Never once have I ever had a perfect bill before me. I don't know what a perfect bill even looks like, but I know when I decide to vote for a bill I ask myself three things. Will this improve the quality of life for my constituents? Is it better than the status quo? And have we worked as hard as we can to preserve our core beliefs?

For me, CSIA is a yes on all three of those. Senator Lautenberg was a smart legislator who knew it was time to move past partisan politics and craft a bill that would finally protect all Americans. We all know that Senator Lautenberg viewed TSCA reform, he viewed this bill as his legacy. He worked tirelessly for years leading up to his final days in the Senate to craft this bipartisan legislation that will protect the health and safety of all Americans. I am proud to be a small part of this legislation, and I will continue to fight for the legacy of my friend, Senator Lautenberg.

I look forward to continuing to work with my colleagues on both sides of the aisle and I am very encouraged by the commitment that Senator Vitter and Senator Udall have made to move CSIA forward in truly a bipartisan manner. I encourage the Committee to send this bill to the floor. Thank you, Madam Chair.

[The prepared statement of Senator Manchin follows:]

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U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

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I also want to thank Mike Dorsey, from the West Virginia Department of Environmental Protection, who came to Washington to testify about his support for CSIA earlier today.

We all agree that the Toxic Substances Control Act—TSCA—is inadequate and that it is long past due to reform this law. Senator Lautenberg had worked for many years to do just that—I don't think anyone here today can question his dedication to protecting the health and safety of Americans. That's why I was disheartened when I read news reports that some members of this Committee questioned Senator Lautenberg's faculties during the CSIA negotiations. He entered into these negotiations with all his years of experience, skills, and wisdom, because he knew that it was time to craft a bipartisan TSCA reform bill. To suggest otherwise and to attack the integrity of such a strong defender of public health is something that should offend all Americans.

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We all know that Senator Lautenberg viewed TSCA reform—viewed this bill—as his legacy. He worked tirelessly for years leading up to his final days in the Senate to craft this bipartisan legislation that will protect the health and safety of all Americans. I am proud to be a small part of this legislation, and I will continue to fight for the legacy of my friend Senator Lautenberg. I look forward to continuing to work with my colleagues on both sides of the aisle and I am very encouraged by the commitment that Senator Vitter and Senator Udall have made to move CSIA forward in a truly bipartisan manner. I encourage the Committee to send this bill to the floor.

Senator BOXER. Thank you, Senator. We all wish so much that Senator Lautenberg could be here with us. I want to say, I worked with him for 20 years and wrote four TSCA bills with him, four, and worked with him on numerous other things. I want you to know what a tough loss it is for all of us on this Committee. This morning each of us spoke about his legacy and each of us is going to work to make sure that that legacy is addressed. And his spirit will certainly guide us in every way.

I want to thank you for coming, I want to thank you for your work. We look forward to working with you.

I want to also say, the West Virginia witness was just terrific. He was clear, he made his point and he also said he felt that we can really fix the major problems that a lot of us have with the bill in terms of States' rights and victim rights. You would have been proud of him, he had your message on why this is key to the States. I want to thank you for recommending him if you did, in fact.

Senator MANCHIN. Yes, we did. I want to thank both of you, Senator Vitter and Madam Chairman, for allowing me to speak. And also for committing to continue on Frank Lautenberg's work. I appreciate it very much.

Senator BOXER. Thank you so very much.

Now we are going to turn back to our esteemed panel. Ms. Fisher and I were talking, and she said she felt the way the bill was drafted, S. 1009, that there was no problem getting the regulations up and running at EPA. Others of you said you looked forward and thought it would be a terrible tangle and very difficult. Ms. Fisher, why do you think that the way the bill is currently drafted it would be easy to get this up and running and the chemicals rated, et cetera? The parts about the bill you like. I know you represent a chemical company, but it is OK. I want to know what parts you like.

Ms. FISHER. That is actually two questions.

Senator BOXER. Just answer whatever you think I asked you.

[Laughter.]

Ms. FISHER. Very good. We were talking about the number of rulemakings, guidance, frameworks that EPA has to do first. I understand there is concern about that. My suggestion is two-fold. Number one, we get EPA to do a workload analysis, so we all know how long it will take to do those. I think I made the point, people have said it could take as much as 5 years before EPA moves on any chemical. That is not what we at DuPont want. We want EPA to be able to move ahead and regulate chemicals. It is why we are here.

So if we set up so much process that it will take 5 years to get the first decision, I think we all need to sit down and look at that. I think we ought to start with EPA doing their workload analysis, then we can all take a look at it and ask, "Does that make sense?" That was the point I was trying to make.

Senator BOXER. What I think I will do is I will ask them to respond to that, both S. 1009 and the last Lautenberg-Boxer bill under that one and how we would move forward. I think it was Mr. Rosenberg who talked about some of the problems getting this thing up and going under S. 1009. Could you comment on it?

Mr. ROSENBERG. Yes, thank you, Senator. Yes, the bill contains a requirement, numerous requirements for EPA to take up a number of procedural steps before EPA can even move forward with prioritizing chemicals, let alone assessing them and potentially regulating them, et cetera. A number of those steps, they have to set up, I think it is five different frameworks, they have to develop procedures and processes and criteria. There is a whole long section of the bill that is mostly laden with those requirements.

Senator BOXER. Mr. Rosenberg, would you do me a favor? Would you take a look at S. 1009 and circle the parts that you feel add a burden? Then I can share that with Senator Vitter and Senator Udall, who are the proponents of this bill as it stands.

Mr. ROSENBERG. Yes, we would be happy to do that.

Senator BOXER. Mr. McGarity, you said something that was very interesting to me. You said that you have looked at legislation over many, many years, and you never saw such a sweeping, and I don't remember exactly your words, provision that would prevent victims the ability to hold industry accountable. Am I right in remembering that about your testimony?

Mr. MCGARITY. Yes. I said I had never seen a more intrusive provision when it comes to the operation of the civil justice system in the States. There are, of course, laws out there that preempt, but there are really very few laws that explicitly preempt State litigation. There are laws that preempt State law and the Supreme Court in the Cippollone case——

Senator BOXER. So it isn't only the preemption of State law, which we have already ascertained in my case could overturn maybe even our global warming law, which certainly I don't think is the intent. Although, maybe it was.

But the bottom line here is, we have a preemption of State law but we also have, you are saying, a preemption of the right of a State to——

Mr. MCGARITY. Of individuals who are harmed to sue in State courts. Well, it doesn't stop them from suing, but it says, once EPA has made a determination, that is determinative, and Federal court rules and State court rules to the contrary don't matter.

Senator BOXER. Would you do me a favor, Mr. McGarity, because we are going to try to get a good bill that we can move forward on. Would you look at some of the other Federal statutes, whether it is food safety or the other laws, FDA, where you see language that could, from your perspective, would work for victims? Because I have heard of horrific situations where victims have gone blind, and worse. They always have that right to move forward and hold the company accountable.

So would you work with us on that and get that answer into us in the next week or so?

Mr. MCGARITY. Sure.

Senator BOXER. That would be very, very helpful. My time has expired, so I will turn to Senator Vitter.

Senator VITTER. Thank you, Madam Chairman, and thanks to all of you for your testimony. I want to particularly highlight the testimony of two folks who were in charge of this exact set of rules and regulations in law at the EPA, Steve Owens and Linda Fisher, one

under a Republican Administration, the other under a Democratic Administration. I think they have particularly significant insight.

So I want to ask both of you this. One complaint we have heard is that our Lautenberg-Vitter bill relies on the same broken safety standard as current law, and in particular does not decouple cost benefit from safety assessments. However, both the bill's safety assessment and determination sections, the language clearly states that the Administrator shall make determinations "based solely on considerations of risk to human health and the environment."

So I would like to ask both of you, I know you have reviewed this bill, do either of you see any ambiguity in that, or interpret that as not completely decoupling those different things, safety assessment versus cost?

Mr. OWENS. I will go first, Senator, thank you for the question. I think in the bill, I think it is very clear, and I think at least in my time at EPA as the Assistant Administrator, if I were looking at that language, along with the folks in our office there, as well as the General Counsel's office at EPA, we would interpret it as meaning that, the safety determination is based purely on considerations of human health and the environment and not on the cost benefit analysis.

Senator VITTER. OK, great. And Linda?

Ms. FISHER. Senator, I would agree with what Steve said. I think you have made it clear that those are decoupled. I think that is a big step forward from the current law, and I think you have made it clear that the cost benefit analysis really goes to the risk management decision piece, not the safety standard and the safety determination piece.

Senator VITTER. Great. Steve, you have unique experience, both at EPA and at the State level, which is very important. So I want to ask you, from the EPA perspective, do you believe the framework of the Lautenberg-Vitter bill is implementable for the agency and fixes many of the issues that have long been very problematic in terms of existing TSCA?

Mr. OWENS. Yes, Senator, as I said, I think the Chemical Safety Improvement Act is a significant improvement over current TSCA, with all the problems that we have experienced over the years. There are a number of things that are very important in there, the safety determination, the safety assessments, the prioritization, removal of the least burdensome requirement, and I could go on and on.

But I will also say that I think that there do need to be some tweaks made to it. One of the things that was mentioned here this morning is the absence of any deadlines, for example, for EPA action. Linda Fisher and I have been talking about that. As I often said when I was at EPA, I learned very quickly that speed is not a virtue of the Federal Government. Without deadlines, sometimes agencies don't act. I don't know if you need to give EPA a deadline for every single task in there, but at least giving them some general direction from Congress as to when to act and when to achieve certain goals would be very useful to the agency.

Senator VITTER. Great. And certainly, let me underscore what some others, and I think Linda said, certainly not anybody's goal who has been involved in this bill to have EPA spinning its wheels

in initial assessments for a decade or more. That is not anyone's goal, no one wants that.

Steve, let me ask you, from the State perspective, in your case, Arizona, what do you think this framework would mean to chemical regulation on the ground in a State like Arizona?

Mr. OWENS. In a State like Arizona, Senator, I think it would be a major benefit to the State. Our State is like New Mexico and West Virginia and others, where we have a small, relatively small environmental regulatory agency without a lot of technical expertise or resources. We didn't have it when I was there and it is certainly much less so now, given the recent budget issues that the State of Arizona has experienced.

So from the State of Arizona's perspective, I think this would be a significant benefit.

Senator VITTER. If I could just ask one more question, Madam Chair, to Mark Duvall.

Senator BOXER. Yes.

Senator VITTER. Mark, I think you have seen, and we have distributed to anybody who is interested and wants to participate in good faith, our language to make crystal clear what was always our intent, which is that we are not trying to shut down any private causes of action, we are not trying to have any significant impact there. Are you confident we will meet that goal with that clarifying language?

Mr. DUVALL. Yes, Senator, I am. It strikes me that whether or not Congress intended to preempt tort suits is a matter of congressional intent which is best expressed in the language of the bill rather than legislative history. And a savings clause and using terms such as "statutes and administrative regulations" is much clearer than broader terms such as "restrictions."

With those kinds of changes and the savings clause for good measure, I think it will be absolutely clear to everyone that there is no intention to preempt tort suits.

Senator VITTER. And that is what we in fact have. So thank you. Thank you, Madam Chair.

Senator BOXER. Thanks. I think it is important to know that the differences in the witnesses that were selected today, not to cast aspersions on anyone, because everybody is speaking your heart and what you think. So I think it is important to note that each of the Minority witnesses work with, in some capacity or other, the very companies that will be affected by this. I think it is important to note the Majority witnesses represent the public.

I say this because I think the public needs to know this. For example, where Mr. Owens did have an esteemed career in public service, he did leave it behind. And we call it the revolving door, and a lot of people do it. It is fine. But I think it is important to know that the law firms of your, I am sorry, the clients of your law firm include Ashland, Inc., British Petroleum, DuPont, Bayer Corporation, a billion dollars of fighting against asbestos claims. I just think it is important to note.

Because what is important to me is to do the best thing for the public. And at the end of the day, I believe what is good for the public is even good for the companies. That is my experience. We

have great success in our great State. We have tough laws. The companies are proud, they are proud to run a very good shop.

Now, I very much wanted to put this legislation on the fast track. As soon as we take care of State preemption, the right of victims, and the devil is in the details, one person here said, oh, there is no preemption with the right to sue, but we have Mr. McGarity who said in the clearest terms this is the most sweeping preemption of the right to sue. So clearly, do we believe, OK, the lawyer who represents the companies or a lawyer who is a professor? It is up to you.

But I frankly want to put it through many more hands so that I know what I am doing, and I am not going to be pushed into a bill that hurts the people I represent and the families I represent. So this is going to be the last round of questions for this panel. I am sure you will be relieved to know that.

Ms. Reinstein, how did you feel when you saw that S. 1009 failed to include authority for EPA to quickly address health threats from the worst of the worst chemicals, such as asbestos, which we know can kill people? What was your response?

Ms. REINSTEIN. Madam Chair, it was devastating. We have worked so hard in the last 10 years to work to pass legislation that would indeed ban asbestos. But it came at a horrific time, when Janelle Beadle was nearing the end of her life. I sat there and wondered, how on earth could our amendments be stripped from S. 1009?

Expedited action is not just smart, it is essential. What we are faced with now is a bill that is not going to work for asbestos, and I think for those of us who have buried loved ones, we want a bill that works for asbestos but other chemicals as well. I was devastated.

Senator BOXER. OK. Ms. Fisher, do you believe that families and other people who live near chemical plants should be protected from the harmful health effects caused by dangerous chemicals released by those plants?

Ms. FISHER. Yes, I do.

Senator BOXER. That is excellent. So will you work with us as we craft the next iteration of the TSCA bill to ensure that we do protect those families?

Ms. FISHER. I would be happy to work with you.

Senator BOXER. OK. I have a minute and a half left. So I would like to say to Mr. Cook and Ms. Greenwald and to Mr. McGarity, if you have anything to add, this would be the moment, if you have 30 seconds that you wanted to add, this would be the moment.

Mr. COOK. I want to thank both of you for this hearing and for getting the facts on the table, getting the information in front of everyone. We really need to have a robust debate about this.

Senator BOXER. And we sure are having it.

Mr. COOK. And we are having it now. I very much appreciate that. I do want to make sure that people understand that from our perspective and a lot of other people who have looked at the bill, there are many, many issues beyond preemption that we are concerned about. We didn't spend as much time on those issues today, but we look forward to working with you.

Senator BOXER. Well, you were very good in your testimony on those, and believe me, they matter to me a lot, the deadlines, the clarity, the fact that we protect the most vulnerable. That is missing from S. 1009.

Ms. Greenwald, anything to add?

Ms. GREENWALD. Thank you, Madam Chairman. I would just like to add two things. I want to go back to what your opening remarks were today, that this statute should set the floor but not the ceiling, for regulations. These companies operate all over the world now, in different States, where they have different Clean Water Act rules, different Clean Air Act rules, different RCRA rules. And they operate just fine. They figure out, when they go to Michigan versus California, how to operate and how to make sure they comply with those State laws. There is nothing unique about making that same provision true for this chemical bill.

The last thing I would like to mention is the 15(e), which is the private right of action, this statute strips individuals of their rights to bring a private lawsuit. Because in the real world of litigation, a plaintiff cannot prove his or her case when the determination of the agency is per se admissible and determinative. Just can't happen.

Senator BOXER. Thank you for that.

I have run out of time. Thanks to the panel. This is the last round of questioning. Senator Vitter.

Senator VITTER. Thank you, Madam Chairman.

First of all, let me just respond to some of your thoughts before your questions. I think your remarks which you claim weren't meant to be disparaging, I think they obviously were. I think it is a difference in perspective. I don't consider the affected companies the enemy. I consider them important partners. No partner should just get anything, everything they want. But for this system to work, they have to be active participants and partners. I think that is a goal of our approach, without giving them any carte blanche in whatever way.

Second, I point out that Mr. Owens served under the Obama administration's EPA. I am sure he took his duty very seriously to uphold the interests of the public, as did Linda under a different Administration. Third, I would also point out, if you are talking about motives and backgrounds, that there are several groups on the left who pure and simple fund-raise off the broken TSCA system, fund-raise off partisan divisions and benefit from that stalemate. I don't think that stalemate benefits the public, but I know it benefits them in many instances, and they actively fund-raise off that.

Let me go to my questions. If I could get 5 minutes on my clock, since prefatory comments don't seem to count against the time.

Senator BOXER. Well, they did against my time.

Senator VITTER. No, they didn't.

Senator BOXER. They did count.

Senator VITTER. Mr. Owens, you worked for the Obama administration. I would like you to specifically compare the Lautenberg-Vitter bill to what you attach with your testimony, which is the Administration's Essential Principles for Reforms of Chemical Man-

agement Legislation. That was put forth by the Administration some time ago, I think during your tenure.

Mr. OWENS. Yes, Senator, as I mentioned in my testimony and my written statement as well, I had the privilege of working on the development of those principles, starting almost the day I got to EPA. I think that the Chemical Safety Improvement Act is consistent with those principles. There are a couple of things that the principles call for, including a sustained source of funding for the agency, that aren't in the Act, and I hope that Congress will deal with that, as well as a more explicit promotion of green chemistry.

But I think everything else in the Act is perfectly consistent with the Obama administration's TSCA reform principles.

Senator VITTER. OK, thank you. You also testified that the current TSCA places big legal and procedural requirements on EPA to request the generation and submission of data on potential health and environmental effects of existing chemicals. Would the Lautenberg-Vitter bill improve EPA's ability to get what it needs in that regard?

Mr. OWENS. Oh, absolutely, Senator. That is one of, I think, there are a lot of good selling points about this bill. But that is one of the big ones, which is that it would give EPA authority to issue orders to require testing of chemicals. Currently the way it works is that EPA has to either do testing requirements by lengthy and complicated rulemaking, but even before you get to that point, the agency has to make a determination that either there is an actual risk presented by a chemical or that there is significant enough exposure that testing is required. It is sort of a catch-22, or it puts the cart before the horse, whatever you want to say. I think this bill fixes that.

Senator VITTER. OK. And Mr. Duvall, in the letter that some of the States' attorneys general sent to Senator Boxer, there was an attachment that included examples from some of the States of their State regulations. They assert that all of this would be preempted. I think they are wrong in almost all instances. Could you characterize the examples provided by the AGs in this letter?

Mr. DUVALL. Certainly, Senator. There is a long list of examples given, all of which are asserted as being preempted or potentially preempted by this bill. Yet I would point out that some of them concern products that are no even subject to TSCA's jurisdiction. I mention the California Safe Cosmetics Act and the bans on the use of bisphenol A in food packaging in Washington and Vermont.

I would also note that a number of these products are regulated by the Consumer Product Safety Commission, such as art and craft supplies. Lead in children's products, cadmium in children's products, phthalates in children's products are all regulated under the Consumer Product Safety Act as amended by the Consumer Product Safety Improvement Act. Washington State has acknowledged that its statute banning those three chemicals is preempted by that statute.

Some provisions may be preempted were EPA to take action on the specific chemicals. But by and large, many of these provisions would not be preempted by the bill.

Senator VITTER. OK, thank you.

Senator BOXER. Thank you. Senator Carper.

Senator CARPER. Thanks. Madam Chairman, I thank you and Senator Vitter both for putting this together. I know the hearing is not over but this has been just a terrific hearing. It is an important hearing and it is on a very difficult day, and I salute you both for making it work. Thank you all for your patience and for bearing with us.

A couple of you, Ms. Fisher and Mr. Owens, bring, well, you all bring unique perspectives to this important issue. But Ms. Fisher and Mr. Owens, you both served, as I understand, as EPA employees, fairly senior employees who led the Toxics office under two different Presidents, two different Administrations, one Democrat and one Republican.

So what I want to ask you to do is answer a question or two based on that unique experience. A number of concerns have been raised about the Lautenberg-Vitter bill. Some are very serious. Some may be less so. But they need to be addressed. When you think about the concerns being raised here, or maybe not here today, what are the issues you think are the most readily addressed, and what are a couple that are really hard? And the couple that are really hard, what is your advice on how to address them? Just briefly mention some of the issues that are fairly readily addressed, not as difficult, and some that are really, really tough. And for the ones that are really tough, how do we address them?

Ms. FISHER. I will start. I think Steve raised the issue, and we talked earlier, Senator Carper, while you were out of the room, about the need for more clarity around what I call pace of program or deadlines, how quickly should EPA review and make a prioritization determination of the potentially 7,000 active chemicals in commerce.

I think it can be helpful to have thoughtful deadlines, because as Steve was pointing out a few minutes ago, it does help drive agency action. It has to be thoughtful. Too often, quite honestly, I think the Congress passes deadlines that, going into the statute, people know the agency cannot make. That makes life quite complex.

So I think getting a common understanding of how long it is going to take and identifying some opportunities to put in place meaningful, thoughtful deadlines is appropriate. I think that also helps the Congress think about, will the agency have the right amount of resources to fulfill the goals that we have all set forth. So I think those two areas go together.

Earlier, some of the others raised the issues around the preemption provisions, and I think there are fixes to those. I know both Senator Boxer and Senator Vitter have expressed a lot of openness. So those are just two issues that I would bring out.

Senator CARPER. Good, thanks. Mr. Owens, what are a couple of the most difficult issues for us to resolve, and how might we resolve them? What might be reasonable common ground?

Mr. OWENS. There is one issue, preemption, which is an answer to both those questions. I think we heard some things today that, some pieces of the preemption question, like clarification about Proposition 65, or things like that, that clearly was not the intent of the bill. Those can be pretty easily clarified, I think. I think as

Linda mentioned, trying to wrestle with the preemption issue, finding that sweet spot, where this bill can be allowed to move forward, will be a real challenge for this Committee. I am very hopeful that you can do that.

It was referenced at one point, the second issue I will bring up is, some references to the fact that this really doesn't do anything to make risk management actions by the agency easier. The bill definitely does that. It removes the least burdensome alternative requirement. But to the extent people seem to think that it is the same old, same old TSCA, maybe some tweaking of the language in there to make it a little less clunky could be useful. I think it is a vast improvement over TSCA the way it is written now. But to the extent those issues have been raised here, they could be allayed by doing that.

Senator CARPER. Thank you. One last question. This is for you, Mr. Owens. EPA currently has a work plan in place for dealing with top priority chemicals. I just ask, how would the Lautenberg-Vitter bill impact EPA's current work on these top priority chemical substances?

Mr. OWENS. I will take a shot at that. The work plan chemical effort that EPA is undergoing now actually is an outgrowth of an effort that we started when I was there to do prioritization on chemicals. We developed a framework, to use that word, for prioritization of chemicals, and then after I left the agency, for family reasons, they began to work and develop their list of work plan chemicals.

I think actually it will help implementation of this bill, if it becomes law. Because EPA has experience with those chemicals. It has developed an analysis of those chemicals already, and it is sort of a template for going forward, both in terms of prioritizing and conducting assessments of chemicals.

Senator CARPER. Good. Thanks very much. Thanks, Madam Chair.

Senator BOXER. Would you like another minute?

Senator CARPER. No, we will just let these folks go. Thank you.

Senator BOXER. Thank you, Senator Carper, for those questions. They did build on some of the conversations I was having with Ms. Fisher before.

I want to thank this panel. Each of you, you just added tremendously to this task we have to find the sweet spot so we can get a good bill out of here.

I wanted to put in the record the risk management guidance from the Obama administration, just noting that it mentions children's health. And I read the risk management section of the S. 1009, I don't see the word children. So that might be an area we could really make an improvement, working together going forward.

I want to ask each of you, are you each willing to work with us and stand by to help us as we move forward on this? I want to do it quickly and I want to do it right. Is that a yes from everybody on the panel?

Thank you all, very, very much. And we will call up the next panel.

Senator VITTER. Madam Chair, if I can just address the last issue.

Senator BOXER. Yes.

Senator VITTER. The present version of Lautenberg-Vitter specifically talks about vulnerability of any sub-populations. That is clearly going to be about children, women, pregnant women. If you want to make that explicit, we can put in an explicit list. But clearly, when you are talking about potentially vulnerable sub-populations, that is obviously going to go to children, women, pregnant women, et cetera.

Senator BOXER. Yes. I am talking about your risk section, not your other section. It is missing from the risk section. So we have to fix that. And I think we can.

Thank you, everybody, very much.

We will have our final panel, Ms. Nancy Buermeyer, Senior Policy Strategist at the Breast Cancer Fund; Ms. Susan Vickers, Vice President of Community Health, Dignity Health; Ms. Maureen Gorsen, Partner, Alston & Bird, LLP. Again, thank you to this panel, and thank you for your patience. You have been here since 9:30 in the morning. Thank you.

And, I am so sorry, Dr. Jonathan Borak, Clinical Professor of Epidemiology and Public Health, Clinical Professor of Medicine at Yale; Mr. Cecil Corbin-Mark, Deputy Director, We Act For Environmental Justice; Ms. Dorothy Felix, President, Mossville Environmental Action Now; Mr. Andrew Hackman, Vice President of Government Affairs, Toy Industry Association; Ms. Ansje Miller, Eastern States Director, Center for Environmental Health.

So we are going to start with you, Nancy Buermeyer, and I know you do our State proud. You are a senior policy strategist at the Breast Cancer Fund. Welcome.

STATEMENT OF NANCY BUERMEYER, SENIOR POLICY STRATEGIST, BREAST CANCER FUND

Ms. BUERMEYER. Thank you very much. Good afternoon. I would like to thank Chairwoman Boxer, Ranking Member Vitter and members of this Committee for this opportunity to testify. I am honored to be here.

I am here to state in no uncertain terms that the 1976 Toxic Substances Control Act is hurting us. In fact, it is killing us. There are certain groups of people in certain stages of life that are disproportionately affected by exposures to toxic chemicals.

For instance, the young woman working at an automobile factory who is exposed to toxic chemicals from heated plastics every day on the job, she is at five times higher risk for being diagnosed with breast cancer, the over 60 men diagnosed with breast cancer after being exposed to drinking water contaminated with toxic solvents at the U.S. Marine Corps' Camp Lejeune, the young daughters and granddaughters who are starting puberty in elementary school, sometimes as young as 6 and 7 years old, and as a result are now at higher risk for developing breast cancer later in life.

Today I would like to bring those voices into the room. I represent the Breast Cancer Fund, the only national organization focused solely on preventing breast cancer. We do that by working to eliminate exposures to toxic chemicals and radiation linked to

the disease. Reform of the outdated and ineffective way industrial chemicals are managed in this Country has long been a priority of our organization. The Breast Cancer Fund serves on the steering committee of Safer Chemicals Healthy Families, a coalition of over 450 organizations and businesses working to reform TSCA.

Despite all of our advances in detection and treatment, we have not been able to stem the tide of women and men diagnosed with breast cancer. In fact, we are losing ground. Today, an astonishing one in eight women will be diagnosed with breast cancer in her lifetime. This represents a 40 percent increase over the risk women faced 40 years ago. And women want to know why.

A strong and rapidly growing body of scientific evidence points to toxic chemicals found in a wide range of sources. Industrial chemicals, like formaldehyde and vinyl chloride, known and suspected carcinogens, can be found in products that we use every day, from cleaning products to plastics, from furniture to shower curtains and more.

There is a lot we did not know about chemicals in 1976 when TSCA passed. We now know that timing of chemical exposure is of particular importance. Early life exposures, even fetal exposures, can have disastrous effects on long-term health and later life disease. In addition to pregnant women and children, there are other populations that are particularly vulnerable to chemical exposures. Workers are the canary in the coal mine for the danger chemicals pose to the broader population.

Fence line communities, those living next to chemical plants or other sources of chemical exposures, are another disproportionately exposed population that must be considered and protected when evaluating the safety of chemicals. And breast cancer is not the only concern. Diseases and conditions such as asthma, infertility, learning disabilities and other cancers have also been linked to chemicals. Yet the EPA does not have the authority to ban hazardous chemicals that can increase our risk for disease. This must change.

Congress has a moral imperative to pass legislation that provides the public real protection from dangerous chemicals. Current law does not meet that goal. The recently introduced Chemical Safety Improvement Act unfortunately does not meet that goal in its current form. While we understand that in the legislative process there is always give and take, we must not compromise public health.

Creating workable and health protective legislation is doable. We look forward to working with the Chairwoman and all the members of the Committee to create a bill that protects every American, including the most vulnerable among us, pregnant women, children, workers and communities disproportionately endangered by chemical exposures. We owe it to ourselves and to future generations to get this right.

Thank you for this opportunity, and I look forward to your questions and working with you further.

[The prepared statement of Ms. Buermeyer follows:]

Testimony of Nancy Buermeyer
Senior Policy Strategist
Breast Cancer Fund

Strengthening Public Health: Protecting Against Toxic Chemicals

Environment and Public Works Committee

July 31, 2013

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Good Morning. I would like to thank Chairwoman Boxer, Ranking Member Vitter and the members of the Committee for this opportunity to testify at today's important hearing.

The Breast Cancer Fund is the only national organization focused solely on preventing breast cancer. We do that by eliminating our exposures to toxic chemicals and radiation linked to the disease. Reform of the outdated and ineffective Toxic Substances Control Act (TSCA) has long been a priority of our organization. For the last four years, the Breast Cancer Fund has served on the Steering Committee of Safer Chemicals, Healthy Families, a coalition of over 450 organizations working to reform TSCA, including health professionals, health affected groups, environmental justice organizations, environmental groups and businesses.

We have all been touched by breast cancer, either personally or through a family member or friend. Despite all of our advances in detection and treatment, we have not been able to stem the tide – the tidal wave – of women, and men, diagnosed with this devastating disease. In fact, we are losing ground: today 1 in 8 women in the United States will be diagnosed with breast cancer in her lifetime. This represents a 40 percent increase over the risk women faced in 1973. Globally, breast cancer affects more women than any other type of cancer. In 2013 about 232,340 women and 2240 men in the United States will be diagnosed with breast cancer. 40,000 women die each year.[i] We know that most people with breast cancer have no family history and only 5 to 10 percent can be traced back to inherited genetic factors including the "breast cancer genes," or BRCA1 and BRCA2. While they account for a relatively small percentage of cases, the risk for those with these genes has also increased dramatically over the past decades. Today, women with one of the BRCA genes have a staggering 87 percent chance of being diagnosed with breast cancer; a number that is triple the risk faced by women born before 1940. Genes do not change that quickly, but environmental factors do.

I am here today on behalf of the three million women and men living with breast cancer today[ii], millions we have lost, and the millions who have yet to be diagnosed in the hope that the actions taken by the Committee and the Congress can reduce those numbers in the future. We look to this Committee and the Senate as a whole to show the leadership and courage to pass meaningful, strong and effective reform of the Toxic Substances Control Act (TSCA). We are heartened that this conversation has shifted from "is reform necessary?" to "what should reform look like?" This is a significant step forward. Now we all must focus on creating legislation that truly protects public health and especially the most vulnerable among us.

Most Americans assume that the industrial chemicals used in the United States have been tested for safety. Sadly, this is not the case. In our daily lives we are exposed to hundreds, perhaps even thousands, of chemicals from a wide range of sources, including cleaning and personal care products, plastics, children's toys, furniture, food, air, water, our workplaces and our neighborhoods. A strong and rapidly growing body of evidence is showing that some of those chemicals are toxic and can increase our risk for breast cancer and a number of other diseases and conditions, from asthma and learning disabilities to prostate cancer and infertility. The Toxic Substances Control Act (TSCA) has utterly failed to protect the American public from these toxic chemicals, which are contributing to a worsening public health crisis of chronic diseases.

In talking about the intricacies of federal chemical policy, we sometimes lose track of the real-life impacts of these chemicals. The child with a learning disability. The young couple struggling to conceive a child. The women – and men – who have faced the life-changing impact of a breast cancer diagnosis. I want to bring those people and those voices into the room and our discussion

today – the faces of your mothers and fathers and daughters and sons – and remind us that what we do, or don't do, to ensure that new and existing chemicals used in commerce are safe will have a direct impact on them and on future generations.

The Science

Researchers have long known that genetic and environmental factors individually contribute and interact with each other to increase breast cancer risk. Studies show that breast cancer rates can vary with environmental circumstances. The good news is that environmental factors, including chemical exposures, are more readily modified than genetic factors[iii] and therefore present a tremendous opportunity to reduce the risk of and prevent breast cancer, if we have the wisdom and political courage to reduce our exposures.

Chemicals can impact and interfere with our bodies in a number of ways. Some chemicals, called mutagens, actually change the DNA of our cells. Some do not change the DNA, but rather interfere with how the genes are expressed through a process called epigenetics. Both of these alterations can be passed down to the next generation, increasing our children's risk of adverse health impacts. Chemicals can also act as carcinogens through effects on the cell cycle and other mechanisms. Two of the leading authoritative lists of carcinogens come from the World Health Organization's International Agency on Research for Cancer, or IARC, and the U.S. National Toxicology Program, or NTP, an interagency program housed at the National Institute of Environmental Health Sciences (NIEHS). Both programs maintain and update lists of chemicals identified as carcinogens, many of which remain in commerce, and often in consumer products as well as our air, water, soil, etc.

Another class of chemicals causing increased concern for breast cancer and numerous other diseases are called endocrine-disrupting compounds or EDCs. These substances behave like our body's natural hormones and can interfere with the very sensitive and critical endocrine system that controls our development and homeostasis. This interference can happen in a number of ways, including mimicking the body's own hormones or blocking their actions. EDCs, especially chemicals that mimic estrogen, are particularly concerning for breast cancer, because increased lifetime exposure to estrogen is a known risk factor. EDCs can also interfere with the thyroid system, which regulates metabolism and reproductive health. EDCs can also impact men by increasing the risk of diseases and conditions such as prostate cancer and male genital deformities. While more needs to be known about EDCs, without strong testing requirements in TSCA we will continue to be exposed to these chemicals without regard for their impacts.

The Breast Cancer Fund bases all of our work in a strong foundation of science. We review the peer-reviewed scientific literature related to breast cancer and the environment and compile the information in an accessible way. Over the past 12 years, we have issued 6 editions of our report entitled *State of the Evidence: The Connection Between Breast Cancer and the Environment.* With the ever evolving nature of the science, we now provide the most updated information on our website's "Clear Science" section (www.breastcancerfurd.org). The existing and emerging science points to a number of themes:

Low doses matter: For many years it was believed that the risk from harmful chemicals was directly proportional to the amount of exposure – that the dose made the poison. But scientific

evidence now shows that some chemicals, especially those that disrupt our endocrine system, can exert negative effects at extremely low exposure levels – sometimes with more serious or different effects than at higher doses. It is essential that low-doses exposure be taken into account when testing chemicals for health effects and when regulating chemical exposures. Some chemicals — can have a more profound impact at lower exposure levels.

Chemical mixtures matter: We are exposed to a bewildering variety of chemicals every day, and we may be exposed to a single chemical from a variety of different pathways. And while we lack adequate information about the health effects of exposures to individual chemicals, we know even less about how chemicals act together to increase risk for diseases, including breast cancer. Evaluating the total exposure to single chemicals and the mix of chemicals people are exposed to every day would provide a missing piece of the puzzle in understanding environmental links to breast cancer.

Your occupation and where you live matters: While all of us are exposed to chemicals all around us, those on the front line, either as workers or living in communities next to chemical plants or other sources of chemical exposures, are even more at risk for increased risk of breast cancer or other diseases.

Workers often suffer the highest exposures to chemicals and are the "canary in the coal mine" for the dangers of exposures to the broader population. As just one example, a recent Canadian study discovered that the women who work in automotive plastics and food-canning have a staggering fivefold increase in pre-menopausal breast cancer as compared to similarly situated women in other occupations.[iv] These workers are exposed to endocrine-disrupting compounds in plastics, such as phthalates and bisphenol A, or toxic flame retardants called polybrominated diphenyl ethers (PBDEs), which are commonly used in the interiors of cars.

Fenceline communities, those living next to chemical plants, incinerators, Superfund sites or other sources of chemical exposures, are another vulnerable population that should be considered and protected when evaluating the safety of chemicals. While white women have the highest overall breast cancer rates, a greater proportion of African American women are diagnosed with breast cancer before age 45,[v,vi] and they are more likely to die from the disease than any other racial or ethnic group.[vii] For breast cancer specifically, we know that the levels of chemicals related to breast cancer in people's bodies can vary by race, ethnicity and socioeconomic status. As a group, African Americans have higher levels than whites or Mexican Americans of many chemicals, including PCBs, mercury, lead, PAHs, dioxin and phthalates.[viii,ix] Mexican Americans as a group have higher levels of the pesticides DDT/DDE and 2,3,5,TCP.[x] African Americans, as well as people with less formal education and people with lower socioeconomic status, are more likely to live within a mile of a polluting facility, such as a chemical plant.[xi]

Timing of exposure matters. The timing of exposure is a particularly important aspect of chemical exposures. The stage of life at which you are exposed to a chemical matters – a lot. Developing bodies are more sensitive to some chemical exposures, and the body's ability to protect itself is not fully mature. A level of exposure that might not seriously impact adults could have disastrous effects on long-term health when the exposure is in utero. Particularly sensitive stages of life, referred to as windows of susceptibility, include prenatal development, early childhood, puberty, pregnancy and lactation.

Developmental stages, times of rapid growth and differentiation are delicately orchestrated by the body's chemical messaging system, the endocrine system. These windows of susceptibility

provide an opportunity for chemicals to exert greater harm – harm that is sometimes not fully realized until years or decades later and can have profound impacts on later-life risk of breast cancer and many other diseases. More and more science shows that prenatal and early life exposures are the most concerning for a vast array of health outcomes from various cancers to diabetes.

For breast cancer the situation is even more complex than just looking at very early exposures. Unlike most organs of the body, breasts are not fully developed until adulthood, specifically a woman's first full-term pregnancy. In utero development, infancy, puberty, pregnancy and lactation are all stages during which breast tissue is developing and differentiating. Each of these stages provides an opportunity for chemicals to interfere with and disrupt these extremely sensitive processes. One of the disturbing trends in childhood development is the falling age of puberty. While the average age of first menarche has fallen by a few months relative to 40 years ago, most significantly girls' breasts are developing one to two years earlier. Evidence points to environmental chemicals, particularly endocrine disrupting compounds, as one of the culprits in this trend.[xii] Early puberty is one of the risk factors for later life breast cancer. The impact of that disruption early in life can stay with a child through adulthood, sometimes manifesting decades later. The scientific understanding of these processes is evolving quickly, but more research and data are needed, particularly on chemical impacts that might be shaping this pattern.

We urgently need to accelerate progress toward understanding the role of these environmental chemicals. In the face of scientific uncertainty, however, we cannot wait to act. We must prioritize protecting public health and investing in safer alternatives, while intensifying the study of how chemicals impact our health. That can only be accomplished with the full force of a strong chemical management system and an EPA empowered and funded to do the job.

The Failings of the 1976 TSCA

Numbers effectively tell the story of our failed chemical policy: Of the over 84,000 chemicals on the TSCA inventory, 62,000 were grandfathered in when the law passed in 1976, meaning chemical companies could keep selling them without safety testing. And in the 35 years since TSCA became law, the Environmental Protection Agency (EPA) has been able to require testing for only a few hundred of the grandfathered chemicals. Perhaps most striking, only five chemicals overall have been restricted. In fact, TSCA makes it so difficult to regulate a chemical that the EPA has not even been able to ban asbestos, a well-established human carcinogen.

The TSCA framework and requirements tie the EPA's hands in a number of ways, resulting in a regulatory system that fails to protect the public's health. Among those issues are:

Lack of Safety Data – To make sound decisions about the safety of a chemical, EPA needs adequate information on a range of possible health impacts. Unfortunately, TSCA makes it extremely hard for EPA to get that necessary safety data by placing the burden on the EPA to show they need the information rather than on the industry to show their chemical is safe.

For existing chemicals, EPA is in a Catch 22 of having to show that a chemical poses an unreasonable risk of injury to health or the environment before the agency can require testing to find out if the chemical actually poses such a risk. Even once the agency has gone through the costly and time-consuming process of obtaining the necessary data showing the risk, they must go through a lengthy rule-making process to get the additional data from the manufacturer.

For new chemicals, EPA has 90 days to review the chemical before it goes into production, but it cannot compel manufacturers to submit any safety data and very few companies do so voluntarily. This leaves EPA reliant on sometimes incomplete or imperfect models to predict the toxicity of a chemical based on similarities to other chemicals that have been tested for safety. And if the EPA fails to act, the chemical goes onto the market at the end of the review period.

Confidential Business Information – Much of the limited data that the EPA receives is designated by the chemical companies as confidential business information, or CBI. A CBI designation prohibits the EPA from sharing the information with the public, or even with state and local health and environmental agencies. The public has a right to know what chemicals they are being exposed to and states often want this information to assist them with emergency planning and alerting emergency response personnel about potential threats from toxic chemicals in local manufacturing facilities. Ironically, while available safety data cannot be designated as CBI, the identity of the chemical associated with that safety data can be withheld. EPA estimates that in about 95 percent of new chemical notices, manufacturers claim some portion of that submission as CBI. While EPA has recently stepped up its efforts to require manufacturers to better justify their claims, the agency lacks the authority and sufficient resources to adequately protect the public's right to know.

Threshold for Regulation – Even once the EPA has obtained the requested safety data, the bar set by TSCA to implement actual regulations to reduce risk is impossibly high. Not only must the agency show that the chemical exposure presents "an unreasonable risk of injury to health or the environment," but it must also demonstrate that the proposed restriction is the "least burdensome requirement" available. In proposing a restriction on a chemical, the EPA must also consider factors beyond the health impacts, including a cost/benefit analysis of the regulation. We need look no further than the agency's inability to ban asbestos, a known carcinogen with an entire disease named after it, to understand how impossibly high the bar is for EPA to act to protect public health.

The overall effect of this system is to place the burden of proving that a chemical is harmful on the EPA, instead of having chemical manufacturers bear the burden of proving safety.

Fixing Our Broken System

There is broad consensus that TSCA must be reformed. The EPA, state public health officers, health care professionals, scientists and health affected groups are all calling for swift Congressional action on this critical issue. Recent federal reports have also called for TSCA reform. The 2010 President's Cancer Panel report *Reducing Environmental Cancer Risk, What We Can Do Now*, the 2011 CDC's National Conversation on Public Health and Chemical Exposures, and the 2013 Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERCC) report *Breast Cancer and the Environment: Prioritizing Prevention* both called for TSCA to be strengthened to give the EPA the information and tools needed to protect the health of American families. The IBCERCC report cites the 2009 GAO report,[xiii] which found that although TSCA authorizes the EPA to ban, limit or regulate chemicals, the threshold to take action requires meeting a prohibitively high level of risk after conducting a lengthy and expensive cost-benefit analysis. Based on deficiencies identified in the report, the GAO added TSCA reform to its high-risk list (See 8.23 IBCERCC report).

The Breast Cancer Fund's president and CEO, Jeanne Rizzo, recently had the honor of serving as one of the co-chairs of the committee that wrote the groundbreaking *Breast Cancer and the Environment: Prioritizing Prevention* report. IBCERCC was housed at the National Institutes for Health, specifically the National Institute of Environmental Health Sciences and the National Cancer Institute, and was comprised of federal agency staff, medical and scientific experts, and breast cancer advocates. The report includes the largest to-date survey of peer-reviewed science on breast cancer and the environment, and finds that environmental factors like toxic chemical exposure increase breast cancer risk. In addition, the report identifies the gaps in research and policies, concluding that "prevention is the key to reducing the burden of breast cancer," and calling for a national, comprehensive, cross-governmental breast cancer prevention strategy. A key recommendation of the report is the urgent need to update and reform TSCA:

> "Improving the TSCA is a priority for collecting the data needed to generate and test hypotheses regarding the effects of a wider range of chemicals on breast cancer risk and, ultimately, for preventing environmentally caused disease." p. 6-35

Any effort to mitigate the environmental causes of breast cancer, or other diseases linked to exposure to environmental chemicals, must include a plan to reform TSCA.

The Chemical Safety Improvement Act Falls Short

The introduction of S. 1009, the Chemical Safety Improvement Act (CSIA) has changed the conversation in Washington, DC. No longer are we talking about if we should reform the broken chemicals management system set up by the 37-year-old Toxic Substances Control Act (TSCA). Now we are engaged in a conversation about what that reform must look like to be meaningful and truly safeguard the American public, and particularly vulnerable populations, from exposures to dangerous chemicals.

Protecting public health and the environment should be the primary and overriding goal of TSCA reform. Unfortunately, the Chemical Safety Improvement Act falls short of that goal. As written, this legislation could set back the few current protections in place, particularly at the state level, without ensuring that the EPA has the necessary authority, tools and resources to provide real federal protection. While the Breast Cancer Fund opposes the bill as it is currently written, we stand ready to work with Congress and all stakeholders to address the bill's significant flaws and craft meaningful and effective chemical policy reform.

To be true reform and to accomplish the goal of protecting America's families and workers, any effective chemicals management system must include the following elements and unfortunately the CSIA as currently written fails to meet these basic requirements.

A safety standard that is health-protective, particularly of vulnerable populations.
The safety standard must explicitly protect vulnerable populations. Pregnant women, children, workers and communities living in areas of high chemical exposures all need and deserve our protection and by protecting them, we will protect all of us and future generations.

The CSIA does not explicitly require a consideration of the health impacts of chemical exposure to our most vulnerable populations including pregnant mothers, children, workers or disproportionately exposed communities. The legislation also maintains the current TSCA safety standard which has failed to protect public health. This continued use of TSCA's flawed

"unreasonable risk of harm to health or the environment" safety standard raises a number of unsettling questions: Who decides if a chemical presents an "unreasonable risk?" And who bears the burden of proof for meeting that standard – the EPA (and therefore the public) or industry? One of the major failures of the current TSCA is that the burden falls on the EPA to prove chemicals are not safe rather than on industry to demonstrate their chemicals are safe. Any meaningful reform of TSCA must clearly shift the burden of proof to industry to demonstrate the safety of the chemicals they manufacture and market.

Finally, we are not exposed to one chemical at a time, or even just one source of a particular chemical. It is essential for the EPA to consider aggregate exposures when determining safe levels of a chemical. CSIA allows for such consideration but does not require it.

Use of the best science available. TSCA reform should ensure the use of the best available science by incorporating recommendations from the National Academy of Sciences reports on reforming the EPA's risk assessment process. Legislation must also protect the integrity of scientific review from undue industry influence and incorporate science from all sources, including government agencies and academia.

For years, the chemical industry has been waging a well-funded campaign against government and academic science showing adverse health effects and increased health risks associated with specific chemicals. The language in the CSIA reflects those chemical industry efforts to undermine and devalue government and independent science while protecting industry-funded science. To ensure the highest quality and best available science, the CSIA should require scientific procedures and guidelines developed in the bill follow the recommendations of the National Academy of Sciences for 21st century toxicology.

Require data on all chemicals. The EPA should require chemical manufacturers to demonstrate via scientific data that their chemical is safe. The absence of data should not default to assuming the chemical is safe.

The CSIA sets up a two-tiered system for EPA review of the safety of industrial chemicals. Chemicals designated as high priority must be scheduled for a safety assessment and safety determination. Low priority chemicals are those that the EPA determines as "likely to meet the safety standard," and once so designated, are set aside with no further action unless the EPA is explicitly requested to reevaluate the low priority designation of a specific chemical. Under CSIA, there is no upfront requirement for manufacturers to develop or submit scientific data showing a chemical is likely to meet the safety standard of not presenting an "unreasonable risk of harm to health or the environment." In fact, the burden falls to the EPA to find information that is "reasonably available to the Administrator" including requiring the EPA to actively search for publicly available data. The EPA can request or require more data, by consent agreement or order, but this adds an addition level of administrative burden, a burden that should be industry's from the beginning. The bill should make clear that no chemical should be designated as low priority without sufficient data to affirmatively show it is safe.

Action on the worst chemicals. For some chemicals we have enough scientific evidence showing harm to act now to reduce exposures. TSCA reform must allow the EPA to take fast action on the worst chemicals, including persistent, bioaccumuative toxins (PBTs): toxic chemicals that are persistent in the environment and bioaccumulate in organisms, including humans.

Instead of allowing for fast action on the worst chemicals, CSIA retains TSCA's impossibly high regulatory burden when the EPA identifies the need to ban or phase out a toxic chemical. Since these actions would be reserved for the most dangerous chemicals, this provision would have the exact opposite effect of what is needed – creating regulatory barriers that will slow down or halt altogether needed restrictions rather than expediting action on the worst chemicals.

Include sufficient deadlines and timetables. Enforceable deadlines are essential, particularly given the history of the chemical industry's ability under current TSCA process to delay evaluation and regulation of chemicals for years and sometimes decades. CSIA provides virtually no deadlines or timelines for completing critical tasks such as safety assessments and safety determinations. While there are a few deadlines for creating procedural guidelines, language like "promptly," "every effort to complete…in a timely manner," "from time to time," "expeditiously completing," "reasonable extensions," "reasonable period," and "as soon as possible" take the place of specified timetables and deadlines. In our criminal justice system there is an expression that "justice delayed is justice denied." In this case, chemical regulation delayed allows for dangerous exposures that threaten public health.

Protecting the public's right to know about the health hazards of specific chemicals. Reform should require that the public have access to information regarding the safety of chemicals, including the identity of hazardous chemicals. State and local agencies also need chemical identity and safety data to allow them to do their job of protecting citizens from hazardous exposures.

The CSIA does not go far enough to ensure the public has adequate access to information on the safety of industrial chemicals that end up in their environment, workplaces, communities and consumer products. The bill would allow the EPA to share CBI with state and local authorities and medical personnel with certain conditions, which is a step forward. However, the process for sharing the information in most cases calls for alerting the submitter of the CBI claim before releasing the data and provides the opportunity for judicial review, allowing the submitter to sue to keep the information confidential. These judicial reviews could prevent the sharing of the information or at the very least cause significant delays.

Currently, the EPA has little authority and even fewer resources to challenge CBI designations, so the vast majority of claims are simply accepted without serious review of their legitimacy. Chemical identity, particularly of a hazardous substance, is critically important for manufacturers to make safer choices for their products, for workers to protect themselves and their families from unsafe exposures, for retailers crafting policies to protect their customers, for scientists to conduct effective research and ultimately for consumers wanting to make informed purchases to protect their families. Given the historic and ongoing abuse of CBI, it is particularly troubling that the CSIA leaves all current CBI claims in place, grandfathering them in with no requirement or incentive for the EPA to review or substantiate the need for that information to be held as confidential.

Allow the states to continue to protect their citizens. Finally, TSCA reform must respect the right of states to protect their residents if the federal government fails to do so or is slow to act. With the EPA's hands tied by the complete failure of TCSA, citizen demand has driven states from around the country to step up to provide protection from harmful chemical exposures through legislation on a variety of chemicals and uses. These laws not only protect citizens within the state borders, but have also had a positive impact on manufacturing practices and products throughout the country. States must continue to have that ability.

CSIA does not adequately protect the right of states to safeguard their citizens from harmful exposures when the federal government can't or won't take action. The CSIA could roll back the current state protections in place and would stifle future state protections. State laws that are in place when the CSIA is enacted would be pre-empted once the EPA has completed a safety determination of the particular chemical in question. However, completion of the safety determination is not the same as having federal safety protections in place. The process and timeframe between issuing a safety determination and issuing of a final rule to implement needed restrictions can be a very long one, including the protracted process of rulemaking and the possibility of lawsuits that could delay implementation indefinitely.

Under CSIA, states would be barred from passing future laws once a chemical is designated as low priority or designated as high priority and scheduled for a safety assessment and determination. Given the lack of deadlines in the bill, once scheduled a chemical could sit for any number of years before action is taken, during which time the state's hands are tied and the public unprotected. Once a chemical is designated as low priority, which is designed to be basically an educated guess by the EPA as to whether or not a chemical will meet the safety standard, the states are also prohibited from taking any action on that chemical.

Conclusion

Chemicals policy reform is a public health necessity. For too long industry has argued against updating TSCA by saying that more protective chemical policy is bad for the economy and will cost jobs. The choice between jobs and safe chemicals is a false dichotomy. Chemical policy reform that encourages green chemistry can stimulate innovation and economic growth – and we have the best and the brightest in this country ready to meet that challenge. And consider the cost to the economy of doing nothing. The financial drag of chronic disease on the economy is staggering, both in terms of health care costs and lost productivity. Taking action to reduce that burden will help not hurt the economy.

For the reasons outlined in this testimony, it is urgent and essential that we create a chemicals management system that protects all of us…at all stages of our lives. Congress has a moral imperative to pass legislation strengthening the way chemicals are regulated to provide the public real protection from dangerous chemicals. TSCA does not meet that goal. CSIA in its current form does not meet that goal. But creating workable and health protective legislation is doable. While we understand that compromise is always part of the legislative process, we must not compromise public health. There are core values that must be addressed before any legislation can truly be called chemicals policy reform. The opportunity is before us to work together with all stakeholders in a bipartisan way to address the outstanding issues and concerns. We owe it to the women and men facing breast cancer and all of the individuals dealing with diseases linked to chemical exposures to rise to this opportunity.

I would like to leave you with this quote from Florence Williams' critically acclaimed book *Breasts: A Natural and Unnatural History*:

> *Breasts are bellwethers for the changing health of people. If we're becoming more infertile, producing increasingly contaminated breast milk, reaching puberty earlier and menopause later, how can we fulfill our potential as a species? ... Breasts carry the*

burden of the mistakes we have made in our stewardship of the planet, and they alert us to them if we know how to look." [xiv]

We look forward to working with the Committee members to create a bill that meets the challenges outlined here and protects all of our citizens. The Breast Cancer Fund stands ready to help meet the challenges of crafting meaningful TSCA reform and I thank you again for the opportunity to testify. I look forward to answering questions from the Committee.

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Environment and Public Works Committee Hearing
"Strengthening Public Health: Protecting Against Toxic Chemicals"
July 31, 2013

Responses to Senator Boxer's Follow-Up Questions for Written Submission

1. **Please explain the growing body of scientific evidence showing that exposure to certain toxic chemicals, even at very low levels, can contribute to an increased risk of breast cancer?**

A U.S. woman's lifetime risk of breast cancer increased steadily and dramatically from the 1930s, when the first reliable cancer incidence data were established, through the end of the twentieth century[i]. Between 1973 and 1998 breast cancer incidence rates in the United States increased by more than 40 percent[ii]. Today a woman's lifetime risk of breast cancer is 1 in 8[iii]. Our genetic makeup does not change quickly enough to explain this dramatic increase in breast cancer risk, so other external factors must be in play. The Breast Cancer Fund looked to the environment for those answers and found overwhelming evidence of the contribution of chemicals to breast cancer risk.

For over a decade, the Breast Cancer Fund has been identifying and summarizing the peer-reviewed science linking toxic chemicals to increased risk of breast cancer. We have translated that science into a format that is easily understood by the public in a published document entitled *State of the Evidence: The Connection Between Breast Cancer and the Environment.* Starting in 2002, we have published six hard copy editions of *State of the Evidence* (SOE) and have just finished transitioning the report to a dynamic web format at www.breastcancerfund.org/clear-science/. The growth of the science linking chemicals to breast cancer risk over this time span has been remarkable. Our first SOE included 138 scientific references; just since our 2010 report, over 300 new articles have come out and our website currently cites over 900 references, a relatively small subset of the thousands of journal articles available today.

The current body of evidence is far too vast to thoroughly summarize here, but I will focus on the particularly relevant body of literature on endocrine-disrupting compounds and their implications for low-dose exposures. Our full analysis of the science, including chemical specific information, is available at the "Clear Science" section of the website address mentioned above.

Exposures to breast carcinogens – chemicals that directly cause breast cancer – are an obvious concern. For example, the chemical benzene is a known carcinogen found in gasoline fumes, automobile exhaust, cigarette smoke and industrial burning. Exposure to benzene presents a serious occupational hazard for workers in chemical, rubber, shoe-manufacturing, and oil- and gasoline-refining industries. Other carcinogens are used in household cleaning products, plastics and personal care products. A 2007 comprehensive review of laboratory animal studies identified 216 chemicals associated with mammary gland tumors in at least one study[iv].

Low-dose Exposures and Endocrine-disrupting Compounds

For many years it was believed that the risk from harmful chemicals was directly proportional to the amount of exposure—that the dose made the poison. Scientific evidence now shows that some chemicals can exert negative effects at extremely low levels of exposure - sometimes with more serious or different effects than at higher doses. Except in cases of accidental or occupational exposures, most exposures to chemicals are at "very low doses." Most chemical safety studies look at the toxic effects of

higher doses of chemicals and then assume decreasing toxicity with lower doses. Yet substances that disrupt the body's own hormones — known as endocrine-disrupting compounds (EDCs) — can exert important biological effects at low doses similar to people's real-life exposures. These effects are often qualitatively different from those found in traditional toxicology experiments.

Chemicals used in everyday products—plastics, cleaning products, cosmetics—and industrial processes—manufacturing, waste disposal—can affect the body's development, growth and hormone balance by mimicking, blocking or disrupting the body's natural hormones. In addition to their presence in consumer products, an often unanticipated fate of these chemicals include their dispersal into our soil, dust, water resources and air, and their subsequent uptake into wildlife and human bodies, where they exert effects that disrupt the delicate balance of the endocrine system.

Breast development is a process guided by naturally occurring hormones, minuscule amounts of which exert striking effects in breast tissue at the critical stages of prenatal development, puberty and pregnancy. These two features of naturally occurring hormones—that they exert extreme effects in small amounts and that they have the strongest effects at specific developmental stages—also characterize endocrine-disrupting compounds. Yet routine chemical safety testing does not capture low-dose effects or address the effects of chemical exposure during critical stages of development.

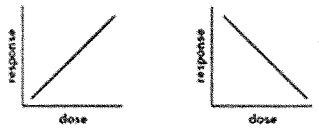
EDCs can mimic, antagonize or complexly disrupt particular endocrine pathways, often interacting with hormone receptors and altering the balance of cellular responses. When these exposures occur during early (especially fetal) development, consequences can be severe, increasing the probability of later negative health outcomes including cancers, neurodevelopmental and neurodegenerative diseases, metabolic disorders, asthma and immune disorders. Substantial evidence of the fetal origin of disease[v] and the influence of EDCs has been documented in human studies and supported by hundreds of articles from experimental animal studies[vi,vii]. A particularly extensive literature supports the hypothesis that early developmental exposures to EDCs including (but not limited to)diethylstilbestrol, bisphenol A, phthalates, atrazine and other pesticides and herbicides, and heavy metals including cadmium, can increase risk for later development of breast cancer.

Two important characteristics of EDCs make them different from many non-endocrine toxicants associated with the development of various disease states: (a) low-dose effects, and (b) non-monotonic response curves. These are critical properties for understanding the scientific literature linking EDCs to disease, including breast cancer.

As mentioned above, most exposures to chemicals are at low doses. In 2001, a panel of expert scientists convened by the National Toxicology Program defined "low-dose effects" as "biological changes that occur in the range of human exposures or at doses lower than those typically used in the standard testing paradigm of the U.S. Environmental Protection Agency for evaluating reproductive and developmental toxicity"[viii]. Most toxicology studies look at higher doses of chemicals and their effects on well-established experimental endpoints, and then extrapolate down to lower doses, assuming a linear relationship between dose and negative health outcomes. Yet many EDCs have been shown to exert important biological effects, often different from those studied in traditional toxicology experiments, at very low doses of exposure. These low-dose effects are especially prevalent in early developing tissues, before the time that complex hormonal regulation is established and during the developmental period when even minuscule levels of naturally occurring hormones have been shown to have significant effects on developing organs, including the breast (see Vandenberg et al., 2012 for review).

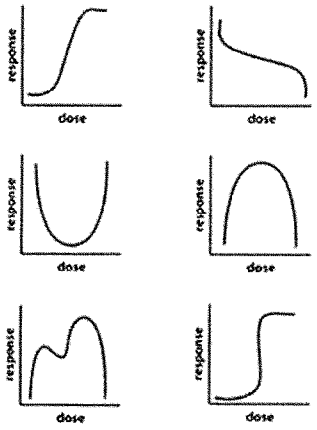
Dose is Complicated

When considering dose-response relationships, often with the goal of ultimately determining the "lowest observed adverse effect level" (LOAEL), traditional toxicology and regulatory science assumes that a higher dose will have greater impact on health outcomes than will low doses, and that in simple terms, the relationships will be fairly linear[vi]. Using this logic, risk assessors often infer the effects of low doses based upon tests conducted at higher doses. According to these models, high doses have great effects, and the dose-response curve has a consistent slope, whether positive or negative.



A linear dose-response relationship is a consistent straight line.

Yet this assumption of a consistent slope sign (positive or negative), or monotonicity, is inappropriate when studying EDCs. Instead, non-monotonicity, or changes in slope directions on dose-response curves might best be used as models for dose-response curves when studying EDCs. A recent extensive review of the literature on EDCs [vi] concluded that non-monotonic dose-response curves "are not the exception, but should be expected and [are] perhaps even common" (p. 27).



Not all relationships between exposures and responses are linear.

If dose-response curves are non-monotonic, and therefore the slopes of the dose-response curve can change significantly over the range of doses, then one cannot draw conclusions about low-dose effects by extrapolating from higher-dose effects, nor can one assume safety or lack of response at doses below those often studied in traditional toxicology studies[vi].

This issue is critical in seriously and rigorously addressing the increasing literature demonstrating low-dose response to EDCs, especially at developmentally sensitive times. Additionally, non-monotonic dose-response curves have serious repercussions for regulatory policy and practice.

While I have focused on low-dose exposures here, there are several other themes that are evident in scientific literature on breast cancer and the environment that I cover in more detail in my written statement. Windows of susceptibility, vulnerable populations, aggregate exposures and mixtures of chemicals are all areas where mounting evidence shows their importance as considerations in an assessment of how chemicals impact human health.

a. **Do you believe that TSCA reform legislation must direct EPA to consider these effects before determining that a chemical is safe?**

Absolutely. For TSCA reform legislation to be truly health protective, scientists and regulators must accurately and completely identify the potential toxicity of a chemical. Failure to incorporate the most recent scientific concepts, such as the impact of EDCs and low-dose exposures, timing of exposure, vulnerable populations and mixtures of chemicals, will result in a false sense of safety and leave or allow dangerous chemicals in commerce to the detriment of public health.

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Senator BOXER. Thank you so much. Ms. Susan Vickers, Vice President of Community Health/Dignity Health.

STATEMENT OF SUSAN VICKERS, RSM, DIGNITY HEALTH, VICE PRESIDENT OF COMMUNITY HEALTH

Ms. VICKERS. Madam Chair, Ranking Member Vitter, thank you for the opportunity to testify today.

I am a Sister of Mercy as well as Vice President of Community Health for Dignity Health. Our mission is to deliver compassionate, high quality, affordable care in the communities we serve, with particular focus on the needs of the poor, vulnerable and disenfranchised. We are committed to preventing the diseases that are disabling patients and driving up the cost of health care for families across the Nation. That is why I am here today.

We are deeply concerned that our current law, TSCA, is woefully inadequate to protect the public from hazardous chemicals. We believe the moral and operational imperatives are here now for stronger chemical regulation.

As the Committee works to modernize TSCA, be assured that Dignity Health supports your leadership and welcomes the much-needed debate and bipartisan dialog that the Chemical Safety Improvement Act has generated about the need to fix our current system. But please be clear about our position. S. 1009, as currently written, falls well short of strengthening public health protections and addressing toxic chemical threats. We strongly believe that it must be significantly amended to strengthen, rather than weaken, TSCA.

Let me briefly address three of the significant shortcomings in the legislation by way of policy recommendations that should be part of any final TSCA reform legislation. First, and we have heard this from other panelists, vulnerable populations should be adequately defined and explicitly protected. Such vulnerable populations as developing embryos, infants, pregnant women and people who live in communities with significant existing chemical and non-chemical environmental exposures must be protected.

Evidence clearly shows that these groups are not only disproportionately exposed to chemicals, but also more biologically susceptible to the impacts of toxic exposures. And those impacts can be long-lasting and costly.

Second, all chemicals should be assessed based on adequate information to determine the extent to which they pose risks to human health or the environment. A thorough safety review of all chemicals is necessary, and there must be a minimum set of screening criteria in order to decide whether a chemical is of high or low priority.

As written, the bill allows a chemical to be deemed of low priority based only on available data, which unfortunately are inadequate for most chemicals. Once a chemical is designated a low priority, the EPA would not be able to require additional safety data and States would be prohibited from taking action. We have heard that this must be amended to preserve State authority to take action on chemicals determined either high or low priority.

Third, there must be a clear and direct path to get dangerous chemicals out of the marketplace. One of the flaws of TSCA is that

the standard for action is so high that few chemicals have been phased out of commerce despite clear evidence of harm or potential for harm. S. 1009 requires an extra level of analysis. These cumbersome provisions could have the perverse impact of slowing down action on chemicals most in need of regulation.

We urge the Committee to work together to strengthen what is currently the most viable vehicle for TSCA reform, the Chemical Safety Improvement Act, so that it provides the strongest protections to human health and the environment.

Thank you for the invitation to provide testimony and for the leadership of this Committee. Be assured that we are willing to work with you as you advance comprehensive chemical policy that protects the health of our people and our planet. Thank you.

[The prepared statement of Ms. Vickers follows:]

Dignity Health

TESTIMONY OF SUSAN VICKERS, RSM – DIGNITY HEALTH
VICE PRESIDENT OF COMMUNITY HEALTH

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

HEARING ON

"Strengthening Public Health Protections by Addressing Toxic Chemical Threats"

July 31, 2013

Chairwoman Boxer, Ranking Member Vitter, Members of the Committee, good afternoon, and thank you for the opportunity to testify before you today. I'm Susan Vickers, a Sister of Mercy and the Vice President of Community Health for Dignity Health.

Dignity Health employs more than 60,000 caregivers and staff in California, Nevada, and Arizona at 150 ancillary care sites and 39 acute care hospitals. We're the 5th largest hospital provider in the nation and the largest private, not-for-profit hospital system in California. Our mission is to deliver compassionate, high quality affordable care in the communities we serve, with particular focus on the needs of the poor, vulnerable, and disenfranchised. Dignity Health is committed to *preventing* the diseases that are disabling patients and driving up the costs of care for families across the nation.

FRAMING THE ISSUE

Right now, individuals, families, and communities are struggling with diseases and disorders that can be directly linked to industrial chemicals found in consumer products, the workplace and schools, the environment, our food and water. In our hospitals, we see firsthand the impacts of these chemicals on people's lives.

- Leukemia and other childhood cancers have increased by more than 20 percent since 1975.[i] We treat these children and help their families through this horrific experience.
- Infertility rates continue to rise, affecting 40 percent more women in 2002 than in 1982.[ii,iii] We care for these women and come to know their struggles.
- Asthma approximately doubled in prevalence between 1980 and 1995 and has continued to rise, with nearly 1 in 12 Americans suffering from the condition as of 2009.[iv,v] We are constantly mindful of the health and safety of our workers, knowing that health care workers are a group of people who suffer disproportionately from asthma.[vi]

While it is true that a person's overall health and the onset of most diseases result from the combination of several factors, certainly the chemicals we are exposed to—starting from the time we are in the womb—is an important one.

Although mounting evidence links chemical exposures to negative health outcomes, the federal Toxic Substances Control Act, which was created to protect the public from hazardous chemicals, has proven woefully inadequate. The lack of pre-market testing of chemicals and insufficient federal authority to regulate problematic chemicals means the health care sector must assess—on its own—the merits of claims that chemicals may cause harm.

DIGNITY HEALTH'S COMMITMENT

The health care sector is in the unique position of both serving the needs of those who suffer the impacts of inadequately regulated chemicals and also being a major downstream user of chemicals. Dignity Health has worked hard to determine the extent to which toxic chemicals can be found in the supplies we use and processes we implement in the delivery of care and also to help create a market for safer alternatives.

We created purchasing guidelines to assess the chemical content of the products we purchase and to reduce the toxicity of these products. We request, although at times with little success, product chemistry data from suppliers and prioritize chemicals of high concern, like PBTs (persistent, bioaccumulative toxics), for elimination. We create contractual obligations with manufacturers, suppliers, and distributors to avoid identified products that contain chemicals of concern. Dignity Health has eliminated virtually all mercury from our hospitals and has created a competitive marketplace for PVC/DEHP (polyvinyl chloride/diethylhexyl phthalate) free IV bags by urging the development of a safer alternative product and moving millions of dollars from one vendor to another who met our needs and could provide these products.

We develop goals and metrics to measure our progress and evaluate our results, and share our successes and lessons learned with others. At Dignity Health, we are also concerned with the impact of chemicals in products on the health and safety of our staff and visitors. We are identifying where chemicals of concern are used in our facilities and evaluating hazards in our hospitals that can lead to occupational and environmental problems.

But there is only so much an individual organization can do. And it is certainly beyond the capacity of individuals in the communities we serve to evaluate and ensure the safety of chemicals in products in their homes, schools, and workplaces.

The moral and operational imperatives are here, now, for stronger chemical regulation.

OUR POLICY POSITION

Dignity Health has adopted the following four guiding principles for chemicals policy:[vii]
1) Know and disclose product chemistry; 2) Assess and avoid hazards; 3) Commit to continuous improvement; and 4) Support public policies and industry standards that advance the implementation of the above three principles.

These principles help to guide our efforts, including advocacy for the modernization of the Toxic Substance Control Act (TSCA).

As health care providers in the midst of health care reform, modernization of TSCA will help to achieve the Triple Aim of bending the health care cost curve, elevating the quality of care, and improving population health (which in our mind, includes community and environmental health).

A modernized TSCA, however, must achieve the strongest protections for public health and the environment. The most recently introduced legislation that would overhaul TSCA—S. 1009, the Chemical Safety Improvement Act (CSIA)—falls well short of strengthening public health protections and addressing toxic chemical threats. CSIA has generated much-needed debate and bipartisan dialogue about the need to fix our current system, which we very much welcome. However, we believe CSIA must be significantly amended to strengthen rather than weaken TSCA. I would like to briefly address three of the significant shortcomings in the legislation by way of policy recommendations that should be part of any final TSCA-reform legislation.

- **First, vulnerable populations should be adequately defined and explicitly protected.**
  Vulnerable populations, including developing babies and infants, pregnant women, and people who live in communities with significant existing chemical and non-chemical environmental exposures, must be protected. Evidence clearly shows that these groups are not only disproportionately exposed to chemicals but they are also more biologically susceptible to the impacts of toxic chemicals, and those impacts can be long-lasting and costly. Under the CSIA, the term "vulnerable populations" is not defined. The bill also does not explicitly require protection of these groups when making a safety determination for a chemical.

- **Second, all chemicals should be assessed based on adequate information to determine the extent to which they pose risks to human health or the environment.**
  A thorough review of all chemicals for safety is necessary to assure that the chemicals used in commerce will be safe. Under the CSIA, there is no minimum set of screening criteria in order to decide whether a chemical is of high or low priority. As written, the bill allows a chemical to be deemed of low priority based only on available data, which unfortunately are inadequate for most chemicals. Once a chemical is designated a low priority, the U.S. Environmental Protection Agency (EPA) would not be able to require additional safety data, and States would be prohibited from taking action on that chemical.

- **Third, there must be a clear and direct path to get dangerous chemicals out of the marketplace.**
  One of the flaws of TSCA is that the standard for action is so high that few chemicals have been phased out of commerce, despite clear evidence of harm or the potential for harm from certain chemical exposures. The CSIA requires an extra level of analysis and red tape before EPA would have the authority to phase out the production and use of a chemical, even after a chemical fails a safety determination. The agency will only want to pursue this option for the very worst chemicals, yet these cumbersome provisions could have the perverse impact of slowing down action on those chemicals most in need of regulation.

Dignity Health urges the Committee to work together to strengthen what is currently the most viable vehicle for TSCA reform—the Chemical Safety Improvement Act—so that it provides the strongest protections to human health and the environment.

Thank you again for the invitation to provide testimony today and for the leadership of this committee. Dignity Health will work with you to advance comprehensive chemical policy that not only protects all in America but also keeps central the humankindness[viii] we share with one another, as well as for the vitality of our nation and our earth.

I look forward to answering any questions you may have.

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[i] *America's Children and the Environment: Measures of contaminants, body burdens, and illnesses [Internet]*. Washington, DC: Environmental Protection Agency; [updated 2011 March 8; cited 2003]. Available from: www.epa.gov/ace/publications/index.html; www.epa.gov/ace/child_illness/d5-graph.html.

[ii] Chandra A, et al. Impaired fecundity in the United States: 1982–1995. *Family Planning Perspectives 1998;* 30(1):34-42.

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[iv] Woodruff T, et al. Trends in environmentally related childhood illnesses. *Pediatrics*, 2004;113(4):1133-1140.

[v] Vital Signs: Asthma prevalence, disease characteristics and self-management education – United States, 2001-2009 [Internet]. Atlanta: U.S. Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report 2011 60(17):547-552; [2011 May 6]. Available from: www.cdc.gov/mmwr/preview/mmwrhtml/mm6017a4.htm.

[vi] Pechter, E., Davis, L., Tumpowsky, C., Flattery, J., Harrison, R., Reinisch, F., Reilly, M., Rosenman, K., Schill, D., Valiante, D., Filios, M., "Work-Related Asthma Among Health Care Workers: Surveillance Date from California, Massachusetts, Michigan, and New Jersey, 1993-1997," *American Journal of Industrial Medicine*, 47:265–275 (2005), http://www.cdph.ca.gov/programs/ohsep/Documents/hcw.pdf.

[vii] Dignity Health, *Sustaining Our Healing Ministry: Fiscal Year 2012 Social Responsibility Report, p. 35.* http://www.dignityhealth.org/stellent/groups/public/@xinternet_con_sys/documents/webcontent/stgss045842.pdf. These principles were developed by BizNGO Working Group, a unique collaboration in which Dignity Health has been actively engaged that promotes the creation and adoption of safer chemicals and sustainable materials in a way that supports market transitions to a healthy economy, healthy environment, and healthy people. http://www.biznge.org/guidingPrinciples.php.

[viii] Dignity Health, Hello Humankindness. https://hellohumankindness.org/. Also, attached to this testimony is a copy of an ad with the heading *The Earth's Health is Our Health* that has been released early in July 2013 in the Wall Street Journal and Washington Post, New Yorker magazine, and other print and media venues in Arizona, California and Nevada.

The Earth's health is our health.

Whether it's good soil, pure water, or clean air—our health is deeply connected to the health of our planet. Yet the very health care industry that's meant to heal us is a major contributor to environmental harm.

And humankindness is the answer.

By shining the light of humankindness on our own hospitals and care centers, we're helping to create a healthier future for our environment and the people living in it. Today, we can say we've transitioned to products free of PVC and DEHP, eliminated the use of mercury, and now power our Marian Regional Medical Center with methane from a nearby landfill.

These actions may win us recognition, but they also create clout to take on bigger challenges. We're now championing the modernization of the Toxic Substances Control Act in Congress to help ensure the chemicals and products we use are safe for humans, animals, and the ecosystem on which we all depend.

I am a woman of faith, and I believe we are called to respond when the earthly home we have been blessed with is threatened. Let's join together to protect the world around us. In doing so, we tap into a greater power to heal, to inspire, and to love.

And that's something we can all believe in.

Mary Ellen Lociejewski, OP

Sister Mary Ellen Lociejewski, OP
Director of Ecology, Dignity Health

Hello humankindness

Learn more at hellohumankindness.org

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Attention: Ms. Mara Stark-Alcala

Via Electronic Submission
Mara_Stark-Alcala@epw.senate.gov

September 4, 2013

The Honorable Barbara Boxer
Chair, Senate Committee on Environment and Public Works
410 Dirksen
Senate Office Building
Washington, DC 20510

The Honorable David Vitter
Vice Chair, Senate Committee on Environment and Public Works
410 Dirksen
Senate Office Building
Washington, DC 20510

Dear Senators Boxer and Vitter:

Thank you again for the opportunity to appear before the Senate Committee on Environment and Public Works on July 31, 2012 and deliver testimony at the hearing entitled, "Strengthening Public Health Protections by Addressing Toxic Chemical Threats." We are grateful to provide answers to Senator Boxer's follow-up questions.

Dignity Health commends your leadership and the work of the Committee to work on this important topic. Dignity Health is committed to its mission of delivering compassionate, high quality, affordable care to the communities we serve in California, Arizona, and Nevada, with particular focus on the needs of the poor, vulnerable, and disenfranchised. As we continue to do our part to successfully implement health care reform, we are working to meet the triple aim of advancing quality and the patient-centered experience of care, reducing health care costs, and improving the health of populations. Dignity Health believes that reforming the Toxic Substance Control Act (TSCA) is an essential component to achieving transformation in health care.

We seek passage of chemical legislation that will achieve the strongest protections for public health and the environment. S. 1009 presents as an opportunity to modernize TSCA, and we are heartened by the direction of the Committee to continue the bi-partisan work of amending the Chemical Safety Improvement Act. Dignity Health is pleased to offer to the Committee our responses to the follow-up questions below as the Committee works to further improve upon S. 1009.

1. ***Do you agree that TSCA reform legislation should explicitly require EPA to protect pregnant women, infants, children, and the elderly when making decisions on whether a chemical is safe to use?***

Yes, Dignity Health wholeheartedly agrees that TSCA reform legislation should explicitly require EPA to protect vulnerable populations, including women, infants, children, and the elderly, when making chemical safety and use determinations.

Vulnerable populations should be adequately defined and explicitly protected. Vulnerable populations, including developing babies and infants, pregnant women, and people who live in communities with significant existing chemical and non-chemical environmental exposures, must be protected. Evidence clearly shows that these groups are not only disproportionately exposed to chemicals but they are also more biologically susceptible to the impacts of toxic chemicals, and those impacts can be long-lasting and costly.

Right now, individuals, families, and communities are struggling with diseases and disorders that can be directly linked to industrial chemicals found in consumer products, the workplace and schools, the environment, our food and water. In our hospitals and in the communities we serve, we see firsthand the impacts of these chemicals on people's lives.

- Leukemia and other childhood cancers have increased by more than 20 percent since 1975.[i] We treat these children and help their families through this horrific experience.
- Infertility rates continue to rise, affecting 40 percent more women in 2002 than in 1982.[ii,iii] We care for these women and come to know their struggles.
- Asthma approximately doubled in prevalence between 1980 and 1995 and has continued to rise, with nearly 1 in 12 Americans suffering from the condition as of 2009.[iv,v] We are constantly mindful of the health and safety of our workers, knowing that health care workers are a group of people who suffer disproportionately from asthma.[vi]

Dignity Health is well aware of the health disparities that exist in our country. Vulnerable populations must be front and center of our discussions and explicitly included in a comprehensive chemical policy. The United States Health & Human Services in their Action Plan to Reduce Racial and Ethnic Health Disparities points to a study by Murray et al that shows a difference of 33 years between the longest living and the shortest living groups in the U.S.[vii] In another study, *The Economic Burden of Health Inequalities in the United States,* by the Joint Center for Political and Economic Studies, concludes that "the combined costs of health inequalities and premature death in the United States were $1.24 trillion" between 2003 and 2006.[viii] Health disparities arise from both biologic factors as well as socio-economic determinants, including environmental factors. If we are to close the health disparities gap and advance health equity, a robust chemical legislation must recognize and protect those individuals and groups who are especially affected, in doing so we would in earnest have a robust chemical safety law that works for all. Any chemical law that is passed must ensure that all people have the opportunity to reach their full potential for health.

2. ***Your testimony states that "S. 1009...falls well short of strengthening much-needed health protections and addressing toxic chemical threats." Can you please provide just three examples of how S. 1009 falls short of strengthening much-needed health protections?***

Three ways in which the Chemical Safety Improvement Act (CSIA) falls well short of strengthening much-needed health protections include:

- **First, "vulnerable populations" is not defined or explicitly protected.**

  As noted above, vulnerable populations must be protected due to their disproportionate exposure to and impact from chemicals. Under the CSIA, the term "vulnerable populations" is not defined. The bill also does not explicitly require protection of these groups when making a safety determination for a chemical.

- **Second, not all chemicals are thoroughly assessed to determine if they pose hazards to human health or the environment.**

  A thorough review of all chemicals for safety is necessary to assure that chemicals used in commerce will be safe. Under the CSIA, there is no minimum set of screening criteria in order to decide whether a chemical is of high or low priority. As written, the bill allows a chemical to be deemed of low priority based only on "available" data, which unfortunately are inadequate for most chemicals. Once a chemical is designated a low priority, the U.S. Environmental Protection Agency (EPA) would not be able to require additional safety data, and States would be prohibited from taking action on that chemical. This would effectively give some chemicals a free pass without a thorough safety review. It would also eliminate the ability of State agencies to backstop the EPA. Last, by requiring EPA to focus staff time on chemicals to categorize as "safe," it diverts precious agency resources away from its mission of protecting people and the environment from hazardous substances. The agency should be focusing on chemicals of concern rather than chemicals of likely low concern.

- **Third, there is not a clear and direct path to get dangerous chemicals out of the marketplace.**

  One of the flaws of TSCA is that the standard for action is so high that few chemicals have been phased out of commerce, despite clear evidence of the potential for harm from certain chemical exposures. The CSIA requires an extra level of analysis and red tape before EPA would have the authority to phase out the production and use of a chemical, even after a chemical fails a safety determination. EPA will only want to pursue this option for the very worst chemicals, yet these cumbersome provisions could have the perverse impact of slowing down action on those chemicals most in need of regulation.

Without addressing these fundamental points and unless significant amendments are made to S. 1009, Dignity Health will not be able to support the Chemical Safety Improvement Act as currently written. Dignity Health will continue to remain very engaged in this issue. We are committed to working with Congress and the various organizations with which we share common ground and are building a broad base of support for meaningful TSCA reform. Should you have further questions or need more information, please do not hesitate to contact me at susan.vickers@dignityhealth.org or 415.438.5511 or Rachelle Wenger, Director of Public Policy & Community Advocacy at rachelle.wenger@dignityhealth.org or 626.744.2209.

Sincerely,

Susan Vickers, RSM

Susan Vickers, RSM
Vice President, Community Health

[i] *America's Children and the Environment: Measures of contaminants, body burdens, and illnesses [Internet]*. Washington, DC: Environmental Protection Agency; [updated 2011 March 8; cited 2003]. Available from: www.epa.gov/ace/publications/index.html; www.epa.gov/ace/child_illness/d5-graph.html.

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[viii] Joint Center for Political And Economic Studies. Patient Protection and Affordable Care Act of 2010: Advancing Health Equity for Racially and Ethnically Diverse Populations. Washington, DC; 2010.

Senator BOXER. Thank you, Sister, for this, and for your life's work.

Ms. Maureen Gorsen, lawyer, partner in the law firm of Alston & Bird.

STATEMENT OF MAUREEN F. GORSEN, ESQUIRE, PARTNER, ALSTON & BIRD LLP

Ms. GORSEN. Madam Chair, members of the Committee, thank you very much for asking me to testify today. I hope that my testimony will be useful to the Committee.

I am an environmental lawyer, have been an environmental lawyer for 20 years. Half of that time I have been in California public service, the other half of that time in private sector representing industry. I was the General Counsel of Cal/EPA, I was also the Director of the Department of Toxic Substances Control, where I led the Green Chemistry Initiative that California is so famous for. And in previous administrations, I was general counsel of the resources agency as well as I served as a California State Parks and Rec commissioner, which was the most fun position I had.

I am very excited to be here. We really are making history today. This bill really strengthens TSCA in a marvelous and wonderful way. When I led the California Green Chemistry Initiative in 2006, we really didn't hold out much hope for Federal leadership on this issue. Things seemed to be at a stalemate, and we really felt we needed to take this on ourselves.

What I see in this bill is a sea change. The idea that the burden of proof to prove something is safe is on the manufacturer as opposed to the government was a heretical notion in 2006. We didn't dare hope that the Federal law would change in that direction. The grandfathering provision that now EPA will have the ability to examine the 10,000 active chemicals in commerce, that also was not within the realm of possibility at that time.

California has a new bill. It was passed in 2008, the California Safer Products Consumer Act. It has authorized California State government to look at every chemical ingredient in the products sold in California and require a lot of information from manufacturers. None of the activities that the California government is involved in now are preempted by this statute. The law is intended to take effect starting October of this year. California starts to implement it in 2014. And they only think they will be able to handle three to five chemicals in the first round, in the first 5 years.

So overall, giving EPA authority to now look at the 10,000 chemicals that are currently in commerce can only benefit California. It is highly unlikely that they would both look at the same three to five chemicals in the first few years. So the idea of preemption probably won't occur.

To the extent that California is preempted, it is only once EPA acts. So once the EPA makes a decision, a safety determination, which is years down the road, and they will decide the scope of that preemption. So there are total preemption statutes and there are partial preemption statutes. This is a narrowly customized partial preemption in that EPA will decide the scope of the preemption when they make their decision.

I don't think we are in a race to the bottom. I don't see EPA setting standards lower than California. But even if they don't see eye to eye and California wants to take something more restrictive than what EPA wants to do, I think the waiver provision is not illusory. I think that California will be able to advocate and get the higher standards that it wants.

The words in this bill are compelling local interest. There is a similar preemption in the Clean Air Act for products. And California, that statute, the Clean Air Act is a total preemption for 49 States with a partial preemption for California. California can receive a waiver if they can prove compelling and extraordinary circumstances. So that standard is arguably higher than the standard here which is compelling local interest.

EPA has granted California a waiver over 50 times under the Clean Air Act, so California has been able to meet that standard many, many times.

Last, with respect to vulnerable populations, California has a biomonitoring program and a Cal-Enviro Screen program that are going to be producing a lot of data about what is in people's bodies based on demographic data in California. I think that information will benefit the EPA safety determinations and risk prioritizations, and similarly, the data that EPA is able to garner will inform California as it implements those programs.

I think we are at an amazing point in history and I am very happy to be here, and I am happy to answer any questions that you have.

[The prepared statement of Ms. Gorsen follows:]

WRITTEN TESTIMONY OF MAUREEN F. GORSEN

PARTNER, ENVIRONMENTAL AND LAND USE GROUP

ALSTON & BIRD, LLP

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

OF THE

UNITED STATES SENATE

JULY 31, 2013

Madam Chair, distinguished members of the Committee and staff – good afternoon. Thank you for inviting me to testify today on the topic of public health protections that address potential threats from toxic chemicals, particularly as they relate to children and sensitive subpopulations. I hope my testimony will prove useful to the Committee.

I have been an environmental attorney since 1993, and spent half of that 20-year career in California state government service. Currently, I am a partner in the environmental and land use practice of the law firm of Alston & Bird, based in Sacramento. From 2003 to 2009, I served in two positions at the California Environmental Protection Agency (Cal/EPA), first as the Deputy Secretary for Law Enforcement and Counsel for Cal/EPA, and then as the Director of the California Department of Toxic Substances Control. Cal/EPA and its subdivisions implement and enforce the federal and state pollution control laws, such as the Clean Air Act, the Clean Water Act, CERCLA, RCRA, and Proposition 65. For most of the 1990s, I served as General Counsel of the California Natural Resources Agency where I had responsibility for policy, implementation and enforcement for state and federal laws governing the conservation of water, forests, coastal areas, flora and fauna such as the Endangered Species Act. I have also served as a Commissioner on the California State Parks and Recreation Commission. As a result of my California government service, I have had much opportunity to understand and appreciate how environmental conditions may be impacted by law and regulation.

This is particularly true with respect to the subject of this hearing. I led the Green Chemistry Initiative in California from 2006 to 2008 which resulted in the adoption of California's unique, first of their kind, laws providing overarching regulatory authority to Cal/EPA to collect data and information about the toxicity of chemicals in consumer products, and to require manufacturers to examine safer alternative ways to make those products.

The recent developments in Congress – the introduction of a bipartisan bill to strengthen TSCA, are a wonderful and unexpected surprise. Back in 2006 when California started the Green Chemistry Initiative, we did not hold out much hope for federal leadership or action on these issues. If the Chemical Safety Improvement Act is enacted, I believe that most of us who worked at the incipient phases of the Green Chemistry Initiative will feel quite proud that, in the great tradition that is California, we started something that spread eastward and was the impetus for positive change on the national level.

After 8 years of toiling in relative isolation to design a regulatory system to understand and regulate the risks posed by chemicals in consumer products, the announcement that a bipartisan compromise had been reached to update and strengthen TSCA has taken California by surprise. Some of the initial reactions by California's regulators evidence this shock.

"*cripples the police powers in California*"

An allegation has been raised that this bipartisan compromise somehow "takes away" historical or traditional police powers. This is false.

California's police powers are guaranteed by the 10th Amendment to the US Constitution. Police power is the capacity of the states to regulate behavior and enforce order within their territory for the betterment of the health, safety, morals and general welfare of their inhabitants.

For most of their now 50-year history, environmental laws have governed facilities, not products. California's traditional police powers and historical regulation of the environment has governed the emissions and wastes of facilities located within the state's geographical boundaries, to protect the environment and population located near the facility.

In 2006, California started the Green Chemistry Initiative to explore how it could stretch the application of 40 years of environmental laws governing emissions and wastes from facilities that impact air, water and land, to address the potential impacts to the environment and California's population from ingredients in consumer products. One of the outcomes was the conclusion that those laws could not be stretched in this way, as they were not designed to address products and their raw material and supply chain decisions made around the globe. A new law was needed. New authorities were needed. Indeed, this resulted in California enacting a brand new safer consumer products law.

We, in California, are in a brand new era of environmental law.

California's new law to address chemicals in products was passed in 2008, five years ago, and California has yet to commence implementation of the law. They have plans to start implementing the law in 2014 but even then they believe they will only be able to look at 3-5 chemical/product combinations in the first five years of the program. Therefore, it

cannot be said that the CSIA is "taking away" any historical police power. They haven't even begun to exercise it.

Having a strong federal program that will address every single chemical, and their use in industrial and consumer products, currently active in commerce can only enhance the California program, and allow California to focus on those 3-5 chemical/consumer product combinations that impact California's environment and public health more particularly. And it will most definitely help the rest of the nation, which has yet to arrive at this new era of environmental law.

"severely compromises California's authority to supplement and complement federal efforts to regulate the safety of chemicals"

An allegation has been raised that the bipartisan compromise will prevent California from supplementing federal efforts and making more strict restrictions in California where deemed necessary.

California is a unique and special state. Both the highest and lowest elevation points in the lower 48 states are located in California and less than 150 miles apart – Mt. Whitney (14,505 ft) and Death Valley (-282 ft). Traveling horizontally across California from the Pacific Ocean to Nevada, one can cross 5 microclimates in less than 200 miles. Its geography does present unique environmental and public health issues that require special and individualized attention, and that may require stricter environmental restrictions than are necessary in other states.

With multiple mountain ranges and valleys creating ripe conditions for smog formation, parts of California have long suffered from intolerable air quality. Due to this particularized burden, the federal Clean Air Act has a waiver provision specific to California. California alone among the 50 states can obtain a waiver from EPA to set its own, more restrictive, motor vehicle emission standards.

Before implementing its own standards, however, California must first be granted a "waiver" from U.S. EPA

Under Clean Air Action Section 209, EPA shall grant a waiver unless it finds that California:

- was arbitrary and capricious in its finding that its standards are in the aggregate at least as protective of public health and welfare as applicable federal standards;
- does not need such standards to meet compelling and extraordinary conditions; or
- has proposed standards not consistent with Section 202(a) of the Clean Air Act.

The standard to obtain a waiver under the Chemical Safety Improvement Act is quite similar in wording and arguably appears to be less strict than the Clean Air Act requirement. The Chemical Safety Improvement Act waiver requirement requires the

State to show a "compelling local interest" in order to impose stricter requirements on chemicals and products entering California for sale than the EPA has determined.

While it cannot be known now how EPA will interpret and apply the words "compelling local interest" in the context of TSCA/CSIA implementation, we can look to how EPA has interpreted and applied the similar words, "compelling and extraordinary," in the Clean Air Act waiver requirements.

Under the Clean Air Act, EPA has found that California has a need for stricter regulation to meet "compelling and extraordinary conditions" numerous times. In fact, US EPA has approved over 50 waivers for California to implement more stringent vehicle emissions rules.

It seems likely that if California has been able to make the case for "compelling and extraordinary" conditions under the Clean Air Act, it will be able to make the case for "compelling local interests" where the facts and circumstances warrant it.

It is not clear how often the facts and circumstances will warrant it. As the California Attorney General's office noted in their letter to Senator Boxer, there may not be that many instances where a waiver is warranted, "since dangerous chemicals don't act differently in different locations" and that "risks from exposure to chemicals in the home, at the office or at retail establishments do not vary from one state to the next." (Letter from California Attorney General to Senator Boxer dated June 11, 2013.) Thus, to the extent that EPA acts to protect the public and environment from dangerous chemicals, Californians will benefit as much as citizens in other states.

For these reasons, it is not accurate to conclude that the Chemical Safety Improvement Act "severely compromises California's authority to supplement and complement federal efforts to regulate the safety of chemicals."

"California programs are threatened"

An allegation has been raised that important California programs are threatened. Examples included AB 32 – California's climate change law, Proposition 65 and its consumer product VOC regulations.

Across the board, as general matter, California does have stricter standards to protect air, water, and land whether they are acting as the delegated authority under a federal law or implementing and enforcing a state law. The bill has an explicit exemption for state restrictions stemming from federal laws or state laws to protect air, water, waste, so California will continue to implement their stringent environmental standards.

All existing California laws will continue to be in force and in effect as the bill never preempts an entire law. To the extent that the bill contains strong federal preemption, it only extends to how a state can regulate an individual chemical in TSCA-like ways, and the specific scope of that preemption will be decided by EPA on a case-by-case,

chemical-by-chemical basis. Thus, the preemption on any and all existing state law and regulation will be decided by EPA and customized by EPA in their safety determination.

Thus, all California laws currently governing reduction of ozone in non-attainment areas, reduction of hexavalent chromium in drinking water, reducing of various chemicals to meet Proposition 65 warning levels, will continue to be in force and effect until such time as EPA acts to make a safety determination.

AB 32 (California's Global Warming Solutions Act of 2006) is not undermined by the Chemical Safety Improvement Act. With respect to California's program to address climate change, California is under no illusion that it can address this problem solely within its geographical boundaries. The very hope is that California is incurring great expense to take a leadership position, to develop the methodologies and regulatory tools that could one day be the foundation for a national climate change regulatory program. It is remarkable that California can take credit for acting first, taking the lead and playing a role in bringing about a strong federal program to regulate chemicals in products, and is not seizing on this.

"higher degree of protection needed in California"

California is a leader in protecting sensitive subpopulations.

California is currently implementing the first state level biomonitoring program. Cal. Health and Safety Code §§ 105440-105444. The program will engage in the systematic collection and chemical analysis of blood, urine, breast milk of a representative sample of Californians, that will also correlate the findings to demographics. The program will determine baseline levels of environmental contaminants in a representative sample of Californians, establish time trends in chemical levels, and assess the effectiveness of current regulatory programs.

California is also implementing the first state-level environmental health screening tool, CalEnviroScreen 1.0. Visually compelling, it is the nation's first comprehensive screening methodology to identify California communities that are disproportionately burdened by multiple sources of pollution. It measures a broad range of pollutants (*e.g.* pesticides, diesel exhaust), locations of hazardous waste facilities and toxic cleanup sites, as well as health indicators (*e.g.*, asthma rates, low birth weight) and population characteristics (*e.g.*, poverty, elderly, percentage non-white). The factors result in scores, and are graphically illustrated with colors that become more intense as the pollution burden increases.

The results of these programs will be used by California regulatory agencies to identify communities with disadvantaged or sensitive populations that may be disproportionately affected by environmental harms to assist the state prioritize clean-up activities, administer environmental justice grants, and to fund projects in disadvantaged communities with the cap and trade auction revenue under AB 32.

The bill requires EPA to consider the "vulnerability of exposed subpopulations" in conducting its safety assessments. The bill also requires EPA to give higher priority to "relevant data and information from a Governor of a State or a State agency with responsibility for protecting health and the environment." For these reasons, it can be anticipated that the results of these studies will greatly inform the regulatory reviews of California under its safer consumer products laws, and be introduced as evidence of the need for greater protections for those populations in the prioritization and safety determinations by EPA authorized by this bill.

These programs will not be preempted by the Chemical Safety Improvement Act. Rather, it is quite likely that they will benefit from the increased amounts of data and information gathered by EPA during its safety assessments, which will be valuable to craft more precise and efficient solutions for California.

Conclusion

Given that California has yet to regulate a single chemical under its 2008 law, and has plans to only address 3-5 chemicals in the next 5 years, the first time that the issue of preemption could be raised is in about 6 years when California's review of those 3-5 chemicals is complete and they are ready to take a regulatory action regarding them. It wouldn't take that much coordination and communication between Cal/EPA and US EPA on their respective program's prioritization of chemicals to avoid the issue of preemption entirely. But even if, through what would then probably be described as an appalling lack of communication, they both choose to examine the same 3-5 chemicals in the next 5 years and have different opinions as to their safety or the scope of restrictions that ought to apply, California will have the opportunity to participate in the EPA safety determination process, provide its data and assessment evidence to bear on EPA's determination, and, if the EPA determination fails to meet California's needs, will have the opportunity to seek a waiver to impose a higher restriction on the sale of that chemical in California. Two agencies working on these issues, rather than one agency working in isolation in a single state, brings more resources and expertise to the important issue of chemical safety which will benefit all Californians, and can be shared with the rest of the country.

In sum, the Chemical Safety Improvement Act is likely to make all Californians safer from harmful chemicals in that it will authorize for the first time EPA to examine the safety of every single chemical in active commerce. In 2006, when the California Green Chemistry Initiative started, we did not imagine that Congress would ever act to grant EPA a brand new regulatory program with sweeping authorities to examine the safety of ingredients of consumer products and place restrictions on them. We may be in, what one of my old law professors termed, "a national moment," when the greater good of the nation transcends quotidian self-interests. The bill is a bipartisan compromise that indicates that industry is willing and ready to be regulated by EPA in a way that seemed rather unfathomable in 2006.

I hope my testimony is helpful to the Committee.

Thank you.

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September 4, 2013

Attn: Mara Stark-Alcala
Senate Committee on Environment and
Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Re: Written Submission in Response Follow-Up Questions in Letter Dated August 20, 2013

Dear Ms. Stark-Alcala:

The letter responds to the questions submitted by Senators Boxer and Vitter for the hearing record of the Senate Committee on Environment and Public Works and requested by the Senators in their letter dated August 20, 2013.

Specifically, the questions addressed to me are as follows:

Senator Boxer:

1. *Attached are copies of a letter from California Attorney General Kamala Harris; a letter from other Attorneys General, and a letter from State legislatures from across the Country. Your testimony disagreed with the points made by the Attorneys General and state legislators. Do you have anything to add to your testimony in light of these letters?*

QUESTION 1: Below, the main concerns raised by the three letters attached to question 1 are briefly restated. To reduce redundancy, a single response below is provided where the same concern is raised in the three letters and five questions. .

State of California Attorney General Letter, dated June 11, 2013

The State of California AG letter raises 6 concerns. The response which corresponds to each point is identified by the letter guide.

1) *Page 1, para 1. "S. 1009 . . . cripples police powers."* See also, *page 3, para 2-4. "takes away historical police powers"* See Response A.

2) *Page 1, para. 1. "severely compromises California's authority" Page 1, para 2. "California has been a leader . . . many of the innovative laws that California has enacted are in jeopardy"* See Response B.

a) *Page 1, para 3. "California's green chemistry laws are groundbreaking"* See Response B.

b) *Page 2, para 1, 2. Explains what Prop 65 does.* See Response B.

3) *Page 3, para 3. "prohibited from enforcing existing state laws or from adopted new laws regulating chemical substances" if high priority "even before fed regs or orders become effective " Page 3, para 5-6. "states must retain the ability to ban the use of that chemical in-state, in order to protect its resident's health and safety."* See Response C.

4) *Page 3, para 4. "States are barred from adopting and enforcing new laws regulation "low priority" . . . which "creates a gaping and permanent regulatory vacuum."* See Response D.

5) *Page 4, para. 1-2. "States play a vital role as co-enforcers of federal standards."* See Response E.

6) *Page 4, para. 3-5. "States should have a reasonable opportunity to obtain a waiver to enforce a higher degree of protection within their borders."* See Response to Question 3.

National Caucus of Environmental Legislators letter dated June 30, 2013

The National Caucus of Environmental Legislators letter raises 4 concerns.

1) *Page 1, para 1. "would preempt the existing rights of states to regulate toxic substances . . . without any assurance whatsoever that the federal government will actually regulate these chemicals . . ." Page 1, para. 4. "prohibit[] states from enforcing their existing laws or from adopting new laws regulating chemical substances determined by the EPA to be a "high priority." This prohibition takes effect prior to federal regulations even being proposed, much less promulgated . . . "* See Response C.

2) *Page 1, para 5. "States would not be allowed to adopt any new laws regulating chemical substances deemed a "low priority." Further the legislation bars the EPA Administrator from regulating those substances after only a preliminary safety assessment which is immune from judicial review."* See Response D.

3) *Page 2, para 2. "no avenue for states to enforce federal law"* See Response E.

4) *Page 2, para 2. "S.1009 sets an extremely high bar for states to achieve any waiver." Page 2, para 1. "revokes state's authority to prohibit the use of a chemical substance without having to apply to the EPA for a waiver on the substance."* See Response to Question 3.

State Attorneys General, A Communication from the Chief Legal Officers of the Following States: CA,CT, DE, HI, MD, MA, OR, VT, WA, dated July 31, 2013

The State Attorney General Communication letter raises 3 concerns.

1) *Page 1, para 4. "S. 1009 would preempt states from enforcing existing laws or from adopting new laws regulating chemicals that EPA designates as "high priority" months or even years before any federal regulations protecting health or the environment become effective." Page 2, para 2. "S.1009 revokes state authority to ban any in-state use of chemicals that the Administrator has regulated."* See Response C.

2) *Page 2, para 1. "states would be barred from adopting and enforcing new laws regulating "low priority" chemicals" as the bill precludes any federal regulation of these chemicals and prohibits judicial review of the EPA's priority designation."* See Response D.

3) *Page 2, para. 3. "waiver is too strict and illusory"* See Response to Question 3.

Response A

A concern is raised that S. 1009 would "cripple" or somehow "takes away" historical or traditional police powers of states.

A state's police powers are guaranteed by the 10th Amendment to the US Constitution. Police power is the capacity of the states to regulate behavior and enforce order within their territory for the betterment of the health, safety, morals and general welfare of their inhabitants.

For most of their now 50-year history, environmental laws have governed facilities, not products. More akin to regulation by the FDA, TSCA regulates chemicals found in products in commerce, not facilities located within state boundaries. State's traditional police powers and historical regulation of the environment has governed the emissions and wastes of facilities located within the state's geographical boundaries, to protect the environment and population located near the facility.

S. 1009 contains express authority for states to continue to exercise these police powers and provides that action by EPA under S. 1009 shall not compromise this power.

Response B

California does have many unique and groundbreaking laws, among them are the California safer consumer product laws and Proposition 65. None of these laws are in jeopardy. They will remain in full force and effect.

California can continue to implement and enforce Prop 65, adding new chemicals to its list, requiring warning labels, etc. As an existing law, the only time when CSIA could possibly preempt Prop 65 is after EPA made a safety determination on a specific chemical and that safety determination contained a scope of restrictions that covered warning labels. When and if S. 1009 preempts the need for a manufacturer to post a warning label for a product containing a Prop 65-listed chemical, is dependent on EPA acting on that same chemical, making a safety determination and specifying in that safety determination a requirement for a warning label that would apply nationally.

Importantly, S. 1009 gives EPA the broad authority to prioritize, list and regulate chemicals for a far broader range of hazard concerns than Prop 65. Prop 65's reach is limited to chemicals exhibiting only two hazard traits, carcinogenic or reproductive toxic effects. Prop 65 is useless when it comes to a whole host of environmental and health concerns, such as endocrine disruption, genotoxicity, neurotoxicity and bioaccumulation. S. 1009 would provide California's protection from chemicals that have these toxic effects, where Prop 65 fails. Also, S. 1009 give EPA broad regulatory authorities to restrict, ban or phase out use of these chemicals, whereas Prop 65 is limited to warning labels.

Similarly, California can continue to implement its safer consumer product laws, the groundbreaking laws passed in 2008 to address chemicals in products. Five years in the making, California has just adopted regulations to implement those laws which will take effect on October 2013. California has plans to commence implementing the law in 2014 but they have stated they will only be able to look at 3-5 chemical/product combinations in the first five years of the program.

Having a strong federal program that will address every single chemical currently active in commerce can only enhance the California program, and allow California to focus on those 3-5 chemical/consumer product combinations that impact California's environment and public health more particularly. And it will most definitely help the rest of the nation.

Response C

A concern is raised that states would be "*prohibited from enforcing existing state laws or from adopted new laws regulating chemical substances" if high priority "even before federal regulations or orders become effective."*

This concern appears to be based on a misunderstanding or misreading of S. 1009. Existing laws can be enforced. States can continue to implement and enforce all existing laws after a "high priority" designation yet before EPA acts to regulate that high priority chemical.

Once EPA decides that a chemical is a "high priority," then EPA will be conducting a full-blown and thorough safety assessment that will involve comprehensive review of testing and toxicity data. S. 1009 does bar States from adopting new laws once this EPA high priority designation is made. It is not clear that this will be a serious practical concern, as states don't currently have commerce-wide chemical regulatory programs as contemplated by TSCA or S. 1009. However, if a state felt it important to jump ahead of EPA (even though up until that point, its Legislature had not enacted any law on that chemical), then the State can seek a waiver from EPA.

Response D

The concern is raised that States would be prevented from passing new laws to regulate chemicals that are designated by EPA as a "low priority." And also the concern is raised that this decision by EPA to place something in the "low priority" category is not subject to judicial review. These concerns are misplaced.

Under S. 1009, the decision to designate something as "low priority" means that EPA found it to be likely to meet the safety standard. EPA already does something similar to this now under its Design for the Environment program, where it publishes a "Safer Chemicals Ingredients List." See http://www.epa.gov/dfe/saferingredients.htm. Due to the relative safety of these chemicals, it is unlikely that a State would be motivated to pass laws to regulate them. In fact, there does not appear to be any clamoring by States to do so for EPA's Safer Chemicals Ingredients list.

However, if a State had a concern about one of these "low priority" chemicals, S. 1009 provides for an expedited process for States to seek a reevaluation of the prioritization as a "high priority" and requires EPA to respond to the State's request in less than 180 days. As S. 1009 appears to contemplate a rolling prioritization process where EPA can reevaluate and revise the prioritization based on new information as it arises, the list is dynamic and not subject to judicial review. Under this prioritization scheme, States are perched in the strongest position to have a chemical listed as a "high priority."

Response E

A concern is raised that "*states play a vital role as co-enforcers of federal standards*" and S. 1009 provides "*no avenue for states to enforce federal law.*"

TSCA is fundamentally different than most environmental laws, which regulate emissions and wastes from facilities located within a state's geographical boundaries. TSCA regulates chemical ingredients in products sourced globally and sold nationally. TSCA is therefore more like other federal regulatory schemes governing products in commerce, such as those of the FDA and the CPSC.

Here is an excerpt from EPA's website on how EPA and state agencies work together to enforce environmental laws.

> *Some of the federal environmental statutes, such as the Clean Air Act, Clean Water Act, and RCRA, have provisions that allow a state to carry out a particular program if EPA has approved it. Generally, EPA approves a state's program if it determines that the state has adequate legal authority and resources to operate the program. Once EPA approves a state's program, permitting and enforcement are primarily carried out by the state. Other environmental statutes, such as the EPCRA, TSCA (except the lead program), and Superfund, do not have provisions for state operation of the program. [emphasis added]*

See *http://yosemite.epa.gov/r10/enforce.NSF/Our+Office/Introduction+to+Enforcement*

Senator Vitter:

***QUESTION 2**: Ms. Gorsen, you are the former Director of California's Department of Toxic Substances Control (DTSC). Do you believe that the Chemical Safety Improvement Act (CSIA) preempts California's green chemistry regulations or state laws to collect information, implement reporting, or protect the state's water and air?*

All of California's green chemistry laws and other state laws to collect information, implement reporting and protect the state's water and air will remain in effect, including Proposition 65. The preemption contained in S. 1009 is quite limited and narrow and would apply only to a specific chemical, not an entire law or regulation, and would apply to that specific chemical only after EPA acted on that chemical, and would apply only to the extent of the scope customized and defined by EPA when it acted on that specific chemical. Given that S. 1009 would give EPA the authority to act on over 10,000 chemicals and California has stated it will only be able to address 3-5 chemicals in the next five years, the practical instances of when this narrow, customized preemptive effect could occur would be infrequent, if not rare. (Chance of preemption occurring in next five years would be 5/10,000 or a 0.05% chance).

***QUESTION 3**: Ms. Gorsen, there has been some discussion today about the waiver provisions we have provided for states in the Chemical Safety Improvement Act. As a former California state regulator, do you believe that the waiver provision as currently drafted is something that the state of California can effectively utilize?*

Yes, California can effectively utilize the waiver provision in S. 1009. Currently, the federal Clean Air Act has a waiver provision specific to California for motor vehicle emissions. California alone among the 50 states can obtain a waiver from EPA to set its own, more restrictive, motor vehicle emission standards.

The standard to meet the waiver provision under Clean Air Action Section 209 has similar wording to that contained in S. 1009. California must, among other things, show EPA that it needs stricter standards to meet "compelling and extraordinary conditions."

The standard to obtain a waiver under S. 1009 is arguably less strict than the Clean Air Act requirement. The Chemical Safety Improvement Act waiver requirement requires the State to show a "compelling local interest" in order to impose stricter requirements on chemicals and products entering California for sale than the EPA has determined.

While it cannot be known now how EPA will interpret and apply the words "compelling local interest" in the context of TSCA/CSIA implementation, we can look to how EPA has interpreted and applied the similar words, "compelling and extraordinary," in the Clean Air Act waiver requirements. Under the Clean Air Act, EPA has found that California has a need for stricter regulation to meet "compelling and extraordinary conditions" numerous times. In fact, US EPA has approved over 50 waivers for California to implement more stringent vehicle emissions rules. It seems likely that if California has been able to make the case for "compelling and extraordinary" conditions under the Clean Air Act, it will be able to make the case for "compelling local interests" where the facts and circumstances warrant it.

***QUESTION 4**: Do you think California's environmental, health and safety protections would be made weaker by the CSIA?*

No. California's programs would be supplemented with the information that EPA can generate on over 10,000 chemicals and with the new authorities it would be granted under S. 1009. Currently, with is green chemistry laws, California must go it alone and has stated it only has resources to address 3-5 chemicals in the near term. With its Prop 65 law, California only has the ability to require warning labels, and is limited to addressing only chemicals which have one of two hazard traits, carcinogenic or reproductive toxicity. California's current protections for chemicals are either limited in scope or resources. With the authority granted by S. 1009, EPA will be able to regulate chemicals with hazard traits of considerable concern, such as endocrine disruption, mutagenicity, bioaccumulation, persistence, neurotoxicity – not just carcinogens or reproductive toxins, and will have broad sweeping regulatory authority over those chemicals – not just the ability to require a label.

Moreover, S. 1009 shifts the burden of proof regarding the safety of chemicals in commerce to the manufacturer, rather than the government. S. 1009 gives EPA broad powers to require manufacturers to generate testing methods and data. All Californian's will benefit from the broad authorities and regulatory powers that S. 1009 gives EPA.

***QUESTION 5**: Do you think that the CSIA will "cripple" California's Safer Consumer Products laws or regulations?*

No, California's Safer Consumer Product laws and regulations will remain in full force and effect. California can continue to implement and enforce them. As stated above, if and only if EPA acts on the same individual chemical as California is regulating would the preemption issue be raised. Even then, the scope of the preemption would be customized and specifically described in the EPA safety determination for a specific individual chemical. At this point, it cannot be known how EPA will choose to treat existing state chemical restrictions within those safety determinations. As has been the case for many environmental issues, it cannot be assumed that EPA will act to water down California's work. It is often the case that EPA takes the California standard and then applies it nationally.

I hope that these responses are helpful to the committee.

Sincerely,

Maureen F. Gorsen

Senator BOXER. Thank you so much.

Our next witness is Dr. Jonathan Borak, Clinical Professor of Epidemiology, Yale School of Medicine.

STATEMENT OF JONATHAN BORAK, M.D., FACOEM, FACP, DABT, CLINICAL PROFESSOR OF EPIDEMIOLOGY AND PUBLIC HEALTH, CLINICAL PROFESSOR OF MEDICINE, YALE UNIVERSITY

Dr. BORAK. Thank you, Madam Chairman and the members of the Committee, for giving me this opportunity to comment on the Chemical Safety Improvement Act.

My comments are made on behalf of the American College of Occupational and Environmental Medicine, also known as ACOEM. They also reflect my personal views. Let me first introduce ACOEM, the American College of Occupational and Environmental Medicine, which is a professional organization of more than 4,000 occupational physicians and other health care professionals. ACOEM provides leadership to promote optimal health and safety of workers, workplaces and environments.

As for myself, I am Clinical Professor in Epidemiology and Medicine at Yale University and Adjunct Professor at the Johns Hopkins University. I have listed a number of other of my credentials that I am simply going to bypass at the moment in the pursuit of brevity.

The Chemical Safety Improvement Act represents an important and overdue upgrade to the Toxic Substances Control Act. Most importantly, it provides a mechanism that allows the EPA to more effectively identify and label those chemicals in commercial use that pose potentially significant risk and harm to health and the environment. As the Committee knows well, the original TSCA legislation grandfathered more than 60,000 chemicals without adequate review of their potential risks. Under CSIA, those chemicals will be subject to agency scrutiny.

Under CSIA, EPA would determine whether a chemical poses an unreasonable risk solely on the basis of its effects on human health and the environment. This is an important change from TSCA, which also required a cost benefit analysis. This promises to streamline the assessment process and make it more responsive.

Likewise, major improvement in CSIA is the removal of the least burdensome requirement for the methods implemented by EPA to protect and manage against unreasonable risks. The historical failure to ban asbestos is evidence of the need for such a change in the law.

The stratification of chemicals into two groups, high and low priority, will be a hopefully efficient, albeit simple way to prioritize those chemicals that may pose unreasonable risks, and which therefore require additional safety measures. By such prioritization, greater scrutiny and research efforts can be focused on specific agents for which such efforts are most needed.

Importantly, the safety assessments under Section 6 would specifically conifer "the vulnerability of exposed sub-populations" which my ACOEM colleagues and I presume is reference to at least children, pregnant women and their fetuses. Such concerns for chil-

dren and pregnant women are currently found only with regard to radon and lead in Title 3 and Title 4 of TSCA.

Notably, TSCA Title 1, the Control of Toxic Substances, does not require EPA to consider vulnerable sub-populations. CSIA addresses that important deficiency.

I also note that while CSIA is an important step in modernizing TSCA and the regulation thereby of chemicals more generally, it is neither perfect nor complete. In particular, CSIA would be improved by more explicit discussions of vulnerable sub-populations, which I hope would extend beyond pregnant women and children. Depending on the specific chemicals of concern, relevant sub-populations might include workers and others with risks of unique or significantly greater than ambient exposure levels.

Likewise, sub-populations characterized, for example, by age or co-existing medical conditions may be uniquely vulnerable to certain types or specific exposures. Also, depending on the characterization and risks of such vulnerable sub-populations, it would be important to ensure the safety measures are in fact adequately protective.

In addition, while recognizing the difficulties of imposing fixed schedules on processes as large and complex as the proposed TSCA reforms, CSIA would be improved by the setting of more specific performance deadlines.

Nevertheless, as currently written, CSIA is an important step in addressing and correcting serious flaws in the current TSCA. It is also an example of the substantial benefits that we all derive from bipartisan legislative cooperation. Accordingly, ACOEM urges support for the bipartisan Chemical Safety Improvement Act, and we offer our services in the future to assist in any further modifications and changes that are deemed useful and warranted.

Thank you.

[The prepared statement of Dr. Borak follows:]

AMERICAN COLLEGE OF
OCCUPATIONAL AND
ENVIRONMENTAL MEDICINE

Testimony of

Jonathan Borak, MD, FACOEM, FACP, DABT

on behalf of the

American College of Occupational and Environmental Medicine

presented to the

Committee on Environment and Public Works
United States Senate

"Strengthening Public Health Protections by
Addressing Toxic Chemical Threats"

July 31, 2013

Thank you for this opportunity to present comments on the recently introduced Chemical Safety Improvement Act (S. 1009). My comments are made on behalf of the American College of Occupational and Environmental Medicine ("ACOEM"), but they also reflect my strongly felt personal views.

Allow me first to introduce myself and ACOEM. The American College of Occupational and Environmental Medicine (ACOEM) is a professional organization of more than 4,000 occupational physicians and other health care professionals. ACOEM provides leadership to promote optimal health and safety of workers, workplaces, and environments.

As for myself, I am Clinical Professor of Epidemiology & Public Health and Clinical Professor of Medicine at Yale University, a faculty member of the Yale Occupational and Environmental Medicine Program, and Adjunct Associate Professor of Medicine at The Johns Hopkins University. Among my Yale activities, I direct and teach required graduate-level courses in Toxicology and Risk Assessment.

The following provides an overview of my background and professional activities.

- I am Board Certified in Internal Medicine, Preventive Medicine (Occupational Medicine) and Toxicology (American Board of Toxicology) and I am a Fellow of the American College of Occupational and Environmental

Medicine, the American College of Physicians, the Royal College of Physicians of Canada, the Academy of Toxicological Sciences, and the American Industrial Hygiene Association.

- I am a member of the Editorial Boards of Journal of Occupational and Environmental Medicine, Journal of Occupational and Environmental Hygiene, and Occupational Medicine. I have authored and/or edited numerous books and scientific articles addressing the human health effects of industrial chemicals.
- I was a founding member of US EPA's National Advisory Committee to Develop Acute Exposure Guideline Levels for Hazardous Substances, a member of the National Research Council Committee on Toxicologic Assessment of Low-Level Exposures to Chemical Warfare Agents, and a member of a National Institute of Environmental Health Sciences review panel on Partnerships for Environmental Public Health.
- I served as an elected Director of ACOEM, as Chair of the ACOEM Council on Scientific Affairs, and as a member of numerous ACOEM councils and committees. I was also President of the Occupational and Environmental Medicine Association of Connecticut, and Chairman of the Connecticut State Medical Society Committees on Preventive Medicine and Emergency Medical Services.

The Chemical Safety Improvement Act ("CSIA") represents an important and overdue upgrade of the current Toxic Substances Control Act ("TSCA"). Most importantly, it

provides a mechanism that allows the EPA to more effectively identify and label those chemicals in commercial use that pose potentially significant risks of harm to health and the environment.

The CSIA requirement that EPA review all chemicals in commerce addresses the significant flaw in the current TSCA that allows a majority of commercial chemicals in be grandfathered without sufficient review of their potential risks.

The stratification of chemicals into two groups, "high" and "low" priority will be an efficient, albeit simple way, to prioritize those chemicals that may prove harmful and that deserve additional safety measures, ranging from additional warnings and labels to outright usage bans. By establishing such chemical-specific priorities, greater scrutiny and research efforts can be focused on those particular agents for which such efforts are most needed.

In addition, CSIA specifically addresses concern about vulnerable populations, most notably children and also pregnant women and their fetuses. The current TSCA does not require EPA to consider the particular effects of chemical on such vulnerable individuals.

It must also be acknowledged that while CSIA is a necessary step in the process of modernizing TSCA and, more generally, in the enhancement of the process by which chemicals are regulated in the United States, it is neither perfect nor complete. It would be improved by the setting of performance deadlines and the establishment of measures to monitor and ensure that safety measures are adequately protective of

vulnerable populations, including workers and others with risks of unique or significantly greater-than-ambient exposure levels.

Nevertheless, as currently written, CSIA is an important step in addressing and correcting serious flaws in the current Toxic Substances Control Act. It is also an example of the substantial benefits that we all derive from bipartisan legislative cooperation.

Accordingly, ACOEM is urging support for the Chemical Safety Improvement Act because it is an important step forward towards modernizing the Toxic Substances Control Act (TSCA), which is seriously flawed and needs fundamental reform.

I look forward to answering your questions.

Borak Response to Senator Vitter Questions
8/29/13

1. Dr. Borak, you are both a medical doctor and a toxicologist and you are in an excellent position to judge both the potential public health benefits of the CSIA and the chemical risk management provisions of the bill. So I appreciate your comments in support of this bill. I also appreciate the letter sent to Sens. Vitter, Udall, Crapo and Boxer, from 20 past presidents of the Society of Toxicology, in which they state, "We have reviewed the proposed Chemical Safety Improvement Act (CSIA) and agree it would create a systematic and transparent framework under which EPA would assess the safety of chemicals in commerce."

   Dr. Borak, can you comment on a statement in the SOT letter. The statement reads: "In improving the Toxic Substances Control Act (TSCA), it is also critical that the law further enhances protection of public health by advancing use of the best available toxicological knowledge and practice for delineating the context of toxicity dose response data relative to actual environmental exposures." Do you agree with this statement? Please explain.

The SOT letter, with which I agree, addresses a fundamental principle that underlies the science of toxicology, i.e., "the dose makes the poison". That tenet, often referred to as the First Law of Toxicology, emphasizes that it is not the simple fact that an exposure has occurred, but the quantitative dose resulting from the exposure that determines whether adverse effects will result. In the real world, predicting the levels of exposure to environmental chemicals likely to result in an absorbed dose sufficient to cause adverse effects is a complex scientific challenge. Likewise scientifically complex is predicting the adverse effects likely to occur from a given level of exposure. What is not scientifically complex is the fact that exposure *per se* is not sufficient to make such predictions.

The science of toxicology focuses on those scientifically complex challenges; the result of both basic and clinical research has been the accumulation of knowledge and practices that have significantly advanced our ability to make such important predictions.

I understand the SOT letter to say that the chemical risk management provisions of CSIA should explicitly incorporate and rely upon best available toxicological knowledge and practice. To ensure adequate and appropriate protection of our population, it is essential that only the best, rigorous scientific methods be used to characterize the conditions of environmental exposures, quantify the absorbed doses expected to result, and relate those doses to anticipated adverse effects. Only by following such a scientific approach will it be possible to meaningfully predict levels of exposure and promulgate exposure limits appropriate and necessary to protect public health.

2. **Some witnesses at the hearing testified that studies detecting chemicals in infants is cause for enormous concern. Since you are both a physician and a toxicologist, can you comment on the relevance of biomonitoring information to potential harm to human health?**

In recent years, analytical toxicologists and chemists have made remarkable advances that lowered the levels at which various compounds can be readily measured in body fluids and tissues. Previously, few such analytical results were reported at levels below parts per million; today it is common to see results denominated in parts per billion or even parts per trillion. Not surprisingly, the ability to detect compounds at such low concentrations has led to recognition that the finding of very low levels of environmental chemicals in our fluids and tissues is relatively common. Adoption of biomonitoring programs, such as those of the CDC, has led to increasingly comprehensive knowledge about the numbers and types of environmental chemicals that can be routinely measured in our bodies.

At the same time, the biological relevance of such low levels is often unknown. The results of biomonitoring programs only rarely provide information sufficient to conclude whether the reported levels are a cause of adverse effects. That point is explicit in CDC's *Fourth National Report on Human Exposure to Environmental Chemicals*:

> "The data and information in the *Fourth Report* do not establish health effects, nor do they create guidelines ... For most chemicals in this *Report*, such guidelines are not available."

Thus it is usually not possible to know whether specific biomonitoring results represent a reasonable basis for "enormous concern" or no concern at all.

Ultimately, the relevance of biomonitoring data to human health can not be determined in the absence of the sorts of dose response data referred to in the SOT letter discussed above.

3. **You are a clinical professor of epidemiology. We often read about studies that report "associations" between certain foods we eat and their impact on our health; or studies that report associations between chemicals in our environment or in our products or in our bodies and their potential harm to our health. Can you please tell us what the difference is between "associations" and "cause and effect"? What do association studies tell us? What don't they tell us? How much weight should association studies have in EPA's assessment of chemicals under TSCA?**

The definitions of and distinction between the terms "association" and "causation" are succinctly presented in National Research Council's *Reference Manual on Scientific Evidence (3rd edition)*:

> "The term [association] is used to describe the relationship between two events (e.g., exposure to a chemical agent and development of disease) that occur more frequently together than one would expect by chance. Association does not necessarily imply a causal effect. Causation is used to describe the association between two events when one event is a necessary link in a chain of events that results in the effect." (p.552)

Observing an association between two events suggests the possibility that the two may have a causal link, but their association may be due to some mutual association with a third factor that is causal (i.e., confounding), or it may be due to chance. It is also possible that an apparent association reflects not causation but effect modification, i.e., the chemical of concern is not causal, but enhances the effects of some other chemical, which is itself causal.

Even if a link is causal, the direction of causation is not always clear. For example, suppose that a given chemical is found at higher concentrations in obese than lean individuals: it would not be obvious whether accumulation of the chemical caused obesity, or obesity caused the chemical to accumulate.

The finding of an association between exposure and disease may suggest useful hypotheses by which the association can be scientifically tested. In that way, the actual relationship between the two events, whether causal or not, may be determined. In turn, prioritization of such research is enhanced when there is apparently greater support for the possibility that the relationship is causal. However, observation of an association between two events is not itself sufficient to conclude that one event caused the other.

In performing chemical assessments under TSCA, it would be appropriate for EPA to identify those chemical-effect associations that deserve further scientific scrutiny. It would also be appropriate for EPA to set its research priorities on the basis of the observation of such associations. However, the observation of an association would not itself provide sufficient weight of evidence that a link indicates causation.

4. Dr. Borak, can you comment on the role of dose response and exposure in chemical safety assessments? Are these elements critical to safety assessments under the CSIA? Will the use of the best available toxicological knowledge and a practice for putting information on dose response environmental exposures enhance public health protection?

As I commented above, it is not possible to conclude that a given exposure poses risks of harm without knowing the absorbed dose that results from the exposure and without understanding the relationship between that dose and the putative response. Accordingly, chemical safety assessments under CSIA can not be meaningfully performed without information on dose and dose-response. The only way that necessary information can be obtained and used to establish useful and appropriate exposure standards that are public health protective is by the use of best available toxicological knowledge and practice.

5. Dr. Borak, I often hear from some of my colleagues that they endorse STEM research and education (Science, Technology, Engineering and Mathematics) as important for our children, students and the future of this country. They then turn around and attack mining, refining, manufacturing and all the industries that would provide the jobs for our children and young adults with such education. I'd like to note that windmills aren't made out of wind, and solar panels aren't made out of sunlight. They're made out of chemicals derived from mining, refining and manufacturing, and are made possible by chemistry and STEM research.

   Along similar lines, STEM research and chemistry are critically important in the medical profession. All of our advanced capabilities including advanced surgical equipment, MRI technology, as well as advances in mammograms, sonograms, and prosthetics are made possible

   and improving because of industrial chemistry and STEM research. It seems to me that there is a critical balance we have to manage in terms of innovation that will make further advances in industrial chemicals, and all the advanced medical equipment those chemicals will make possible, as well as ensuring protection and adequate federal regulation for our citizens and our environment. What are your thoughts on this nexus and your thoughts on STEM research and chemistry's role in the medical profession?

It is apparent that many of the most important and relevant advances in medical practice stem from new technologies. Consider, for examples, the development of novel materials used in repair of damaged tissues, novel pharmaceuticals and biologicals that allow increasingly targeted treatments that sometimes rely on knowledge of the specific genetic characteristics of individual patients, and so forth. In turn, these advances rely on the accumulation of scientific knowledge from a wide array of academic and corporate STEM researchers. One element that is central to many of these advances has been the development of novel chemicals and novel forms of chemicals (e.g., nanomaterials) that have permitted those advances to move from theoretical laboratories to patients' bedsides.

Senator BOXER. Thank you.

Now we turn to Mr. Cecil Corbin-Mark, Deputy Director, We Act for Environmental Justice. Welcome, sir.

STATEMENT OF CECIL D. CORBIN-MARK, DEPUTY DIRECTOR/ DIRECTOR OF POLICY INITIATIVES, WE ACT FOR ENVIRONMENTAL JUSTICE

Mr. CORBIN-MARK. Good afternoon, Chairwoman Boxer. Thank you for the opportunity to present.

I am definitely thankful for the opportunity to present testimony here today and for your leadership in protecting vulnerable communities across this Country. Likewise, my thanks go out to Senator Vitter, the Ranking Minority Member on the Committee for his efforts of having worked to bring a bipartisan bill to this body.

And to my very own Senator from the great State of New York, Senator Gillibrand, who serves on this Committee. I want to thank you all for your attention and time.

We Act for Environmental Justice, the organization that I lead, is a 25-year-old people of color organization based in northern Manhattan working to build healthy communities by assuring that people of color and/or low-income folks participate meaningfully in the creation of sound and fair environmental health and protection policies and practices.

I am also a member of the Steering Committee of the Safer Chemicals Healthy Families campaign, a national effort to protect families from toxic chemicals. And I co-chair the Just Green Partnership and Alliance, more than 50 organizations working to build a healthy economy that provides good jobs, producing clean products and services in which our workplaces, schools, homes, communities and bodies are free of toxic chemicals in New York State.

Last, I serve on the board of directors of three really incredible organizations that are all working around these issues: the Center for Environmental Health, Clean and Healthy New York and Friends of the Earth USA.

So as a guy from Harlem here to talk to you about the Toxic Substances Control Act, to me the answer is simple: chemicals impacted not only me and my family, but many of my neighbors and many of the people that I work with in the environmental justice movements around this Country. One of the earliest impacts for me really came from my son. He attended LaSalle Academy in New York City. One year while I was actually at a conference in San Francisco, his mother phoned me to say that he had suffered an asthma attack. He was not a traditional asthma sufferer and in talking to him we began to unravel some of what might be at the source of this problem. He remembered actually the smell, the very strong smell of sort of pesticides in the boy's locker room, and that had started him sneezing.

Obviously I can't say with certainty that the lingering pesticide residue and the chemicals that are in there were the things that caused his attack. But no one can also say beyond a shadow of a doubt that that wasn't the culprit either.

I live in Harlem, in New York, and my family has lived in the same neighborhood for nine decades. It is a community that is about seven and a quarter square miles, about more than 650,000

people, mostly mid- to low-income folks, predominantly African American and Latino. It is known for its richly diverse population and cultural history. While downtown may be known for Broadway, the Empire State Building, Statue of Liberty, soon the iconic Freedom Tower, uptown our neighborhoods have auto body shops and dry cleaners co-located with residential apartments, diesel bus depots across the street from parks and bedroom windows. Nail salons and dollar stores abound with products that contain ingredients capable of disrupting people's reproductive systems and their neurological systems.

So while I am describing my place, my hometown, I could be talking about many places across this Country. Unfortunately, far too often in the environmental justice movement, we have called to attention the fact that there are too many toxic chemicals in our neighborhoods, and vulnerable populations need to be the ones that are at the center of how we look forward to reshaping the Toxic Substances Control Act.

By this standard and many others, the Chemical Safety Improvement Act, S. 1009, falls far short of what vulnerable populations need. As currently written, S. 1009 requires the USEPA to access exposures of sub-populations to chemicals during the course of a safety assessment, but it doesn't explicitly require that that safety determination protect those vulnerable populations from those exposures.

Another unacceptable omission for many of us in the vulnerable population ranks is the lack of definition for vulnerable populations. I have learned the hard way that sometimes if it isn't in the definition in the legislation, it doesn't exist. Clearly, the drafters of this legislation did not intend for pregnant women, developing children, African Americans with respiratory illnesses, Latinos over the age of 65, indigenous peoples with compromised immune systems, Asian Americans with chemical sensitivity and other vulnerable populations such as workers to not exist.

The Chemical Safety Improvement Act must define those vulnerable populations and explicitly require that they be protected from the multiple and aggregate exposures that they are subject to.

[The prepared statement of Mr. Corbin-Mark follows:]

STATEMENT OF

CECIL D. CORBIN-MARK
DEPUTY DIRECTOR/DIRECTOR OF PLICY INITIATIVES
WE ACT FOR ENVIRONMENTAL JUSTICE

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STRENGTHENING PUBLIC HEALTH PROTECTIONS BY ADDRESSING TOXIC CHEMICAL THREATS HEARING

JULY 31, 2013

Good morning I want to thank Chair Barbara Boxer of California for the opportunity to present testimony and her leadership in protecting vulnerable communities across this country. Likewise, my thanks to the other distinguished members of the committee such as ranking minority member Senator Vitter of Louisiana and my very own Senator Gillibrand of the great state of New York for their time and attention.

My name is Cecil Corbin-Mark and I am the deputy director and director of policy initiatives at WE ACT for Environmental Justice. WE ACT for Environmental Justice is a 25-year old Northern Manhattan community-based organization building healthy communities by assuring that people of color and/or low-income participate meaningfully in the creation of sound and fair environmental health and protection policies and practices. We have offices in Harlem and here in Washington, D.C. I am also a member of the steering committee of the Safer Chemicals Healthy Families Campaign, a national effort to protect families from toxic chemicals, and I co-chair the Just Green Partnership, an alliance of more than 50 organizations working to build a healthy economy that provides good jobs producing clean products and services, in which our workplaces, schools, homes, communities and bodies are free of toxic chemicals. Lastly, I serve on the board of directors of three organizations that are committed to protecting the public's health and the environment from toxic chemicals: the Center for Environmental Health, Clean and Healthy New York and Friends of the Earth USA.

I am here today to testify about how chemicals have impacted me personally, to talk some about the health disparities in the community that I live and work in and why that makes my community and many like it across the country particularly vulnerable to the harmful effects of toxic chemicals. In addition, I want to share with you what several EJ communities and advocates across the country are currently doing to address the broken chemical policy system that is unable to protect our families from harm. I will close by highlighting that transitioning to safer alternatives to the toxic stew of chemicals currently in commerce is a path way to creating new green jobs, and I will offer a few recommendations for a better chemical policy framework.

So why is a guy from Harlem, New York before you today to talk about the Toxic Substances Control Act? The answer is simple. Chemicals have impacted my health, the health of my family members and some of my neighbors.

I want to share with two personal stories of how chemicals have directly impacted my life.

My first story is about the shower curtain smell. I am one of the many Americans who experienced headaches triggered as a result of the smell of my shower curtain, which I later learned were the chemicals off gassing. I remember one year when I was still a kid my mom purchased a clear plastic curtain with superheroes imprinted on it and a liner. I was so excited to take a shower with the super heroes. I believed that I would emerge from that shower sharing their powers and joining their ranks. Instead the smell triggered one of the worst headaches I ever had. To this day I can still remember the tears, the dizziness, the pain and that smell. As I grew older, I

recognized that the smell was a problem, but prior to being engaged in this line of work I did not know that there were alternatives to the toxic threat in my very own bathroom. I suffered with debilitating headaches for a long-time thinking that there was something wrong with me instead of the curtain.

My second story is about my son, Nigel. He attended La Salle Academy in New York City. One year while I was attending a conference in San Francisco, Nigel suffered an asthma attack at a school basketball game. His mom called to let me know that the school officials had rushed him to the hospital. Thank God everything turned out for the best. While Nigel's asthma is not really that bad, that day was a very scary one for him, his mother and me. When I asked my son about what brought on the attack he was baffled. He said the day had been a good day and that he was not in anyway really exerting himself. I asked him to replay the moments leading up to the attack in his mind only then did he remember a strong smell of pesticide in the boys locker room that triggered him to sneeze when he first got there. Obviously I cannot say with absolute certainty that the lingering pesticide residue was what caused his attack, but I also know that no one can say beyond the shadow of a doubt that it was not the culprit.

I live and work in Harlem, New York and my family has lived in the same neighborhood for about nine decades. The communities that I work in West, Central and East Harlem and Washington Heights covers an area of 7.4 square miles and is home to 650,000 mostly low to mid-income African-Americans and Latinos. Known for its richly diverse population and cultural history, the area also bears disproportionate rates of disease, air pollution and toxic exposures. Northern Manhattan leads the nation in asthma hospitalizations, low birth weight and lead poisoning to name a few. Diabetes and obesity are also raging-epidemics in our communities.

There are high rates of public assistance in our neighborhoods and many of the residents that we organize do not have health insurance. Studies conducted by the New York City Planning Department document that many of our neighborhoods have limited or no access to fresh fruits and vegetables. And the availability of regular quality medical care is also a significant challenge.

Downtown Manhattan may be known for Broadway, the Empire State Building, the Statute of Liberty and several other iconic landmarks, but uptown our neighborhoods have auto body shops and dry cleaners co-located with residential apartments, diesel bus depots across the street from parks and bedroom windows. Likewise, nail salons and dollar stores with many products that contain ingredients capable of disrupting a woman or man's reproductive system abound in Northern Manhattan.

While I am describing my hometown, I could in many ways be talking about places in Michigan, Illinois, Ohio, Georgia, Maryland, Texas, Tennessee, Pennsylvania, Florida or Louisiana. The combination of poor health outcomes and negative socio-economic factors make Harlem and Washington Heights, and the many places like it across this great nation, ill equipped to handle the toxic chemical exposures they face because our chemical regulatory system is broken.

You might conclude that just because the dry-cleaning store, nail salons and auto body shops abound and are co-located with residential buildings in my community doesn't mean that we are exposed to toxic chemicals. You would be wrong. I draw your attention to the following studies and reports.

Despite the fact that New York State is a major agricultural state, a study released by the New York Public Interest Research Group (NYPIRG) several years ago documented that the highest use of pesticides in the state occurred in New York City. The report noted that schools and other public buildings had a greater number of pounds of pesticides applied than the fields and farms upstate.

New York State Department of Health conducted a study in East Harlem and it found high levels of PERC in the apartments where dry cleaners were co-located. PERC is a volatile organic compound that can move through walls and easily enter the blood stream. In many studies PERC has been found in mother's breast milk.

The Columbia University Mailman School of Public Health Children's Environmental Health Center and my organization, WE ACT for Environmental Justice, collaborate on two community-based research projects looking at mothers and children in Northern Manhattan. In one research project following a cohort of 700 mother child pairs and examining dust samples in the homes of the mothers prenatal exposure to two household pesticides, chlorpyrifos and diazinon, which transfer readily to the fetus, were found to reduce birth weight by an average of 6.6 ounces (Whyatt, et al, *EHP* 2004). Furthermore, high prenatal exposure to pesticide chlorpyrifos was found to be associated with psychomotor and cognitive delay and attentional disorders at age 3 (Rauh et al, *Pediatrics* 2009).

Early findings from another research project with the same cohort is indicating that Dibutyl Phthalate, a phthalate commonly found in perfumes is staying in the mothers body longer than first thought and researchers are concerned that the Dibutyl Phthalate may be passed on to the fetus. I want to emphasize that these findings are very early.

Toxic chemicals don't belong in people. Yet all the studies that I have just rehearsed all indicate that these chemicals are present in the bodies of some 700 mothers and children in Northern Manhattan. Chemicals are entering our bodies in our homes and in the places where we work.

While researchers have not yet come up with all the answers to what harm can result from every exposure, advocates in the environmental justice communities have begun to mobilize and are calling on government to fix our broken chemical policy system.

What are the flaws in our chemical policy regulatory system? Chemicals in the modern world are mixed and combined to create new substances and materials yet our regulatory system regulates

them one by one. For communities, especially vulnerable ones, long beleaguered by multiple exposures to toxic chemicals this system fails to protect our families on a daily basis and that is both unacceptable and "un-American".

Vulnerable populations need to be a core focus for the laws that reform the Toxic Substances Control Act of 1976. By this standard and many others the Chemical Safety Improvement Act (S. 1009) falls far short of what vulnerable populations need. As currently written S. 1009, requires the U.S. Environmental Protection Agency (EPA) to assess exposures of sub-populations to chemicals during the course of a safety assessment, but it doesn't explicitly require that safety determinations protect vulnerable populations from those exposures. This reminded me of a body of laws that we had in this country as late as the 1950's they perpetuated a doctrine known as separate but equal. I know that this was not the intent of the drafters but I am here to flag that not focusing on the vulnerable populations could very well create a system that leaves the vulnerable populations without the protection they need. This is a critical omission and cannot be allowed to stand.

Many organizations and community leaders in the environmental justice movement have time and again called attention to the fact that some populations and communities are more vulnerable because of disproportionate exposures. The National Academy of Sciences and multiple other studies have documented the vulnerable populations such as developing children pregnant women and other groups are biologically more susceptible to harm from exposure to toxic chemicals.

Another unacceptable omission in S. 1009 is the lack of a definition for vulnerable populations. I have learned, sometimes the hard way, that if it isn't defined in the legislation it doesn't exist. Clearly, the drafters of this legislation did not intend for pregnant women, developing children, African-Americans with respiratory illnesses, Latinos over the age of 65, Indigenous peoples with compromised immune systems, Asian-Americans with chemical sensitivity and other vulnerable populations to not exist.

The Chemical Safety Improvement Act (S. 1009) must define "vulnerable populations" and explicitly require that they be protected from the multiple and aggregate exposure they are subject to.

Another challenge for vulnerable communities is that S. 1009 as currently drafted would not allow states to fully protect their citizens once a chemical was named as either a "high priority" or "low priority" chemical under the law. The challenge that these designations present to vulnerable communities is that the designations themselves need not be accompanied by any regulations to protect the public, while at the same time denying these citizens the protections that state action might afford them. While we welcome federal action to reform our chemical policy laws to better protect vulnerable populations, we recognize the effectiveness of state and local authorities to inform and protect all their citizens, especially the most vulnerable. The Chemical Safety

Improvement Act (S.1009) must clearly preserve the authority of state and local governments to inform and protect the vulnerable.

I want to say a word specifically to Senator Vitter here. I love the state of Louisiana. It is a special place in our nation with a vast reserve of treasure in its people, marine life and its culture. I love New Orleans almost as much as I love New York City. However, for as much as Louisiana has to offer there are some deep challenges in some communities in the sportsman's paradise with legacy chemicals. Sadly, S. 1009 doesn't require that legacy exposures to toxic chemicals be considered because the definition of "intended conditions of use" does not include them. For vulnerable communities to be protected we need this provision to be fixed. Places like Sunrise, Reveilletown, Morrisonville, Bel Air or Diamond Louisiana today no longer exist because of toxic contamination. Senator we cannot allow what happened there to happen in other communities across this great nation.

And as for the other members of this committee I may have named specific places in Louisiana, but I suspect that it wouldn't be impossible to find other places in other states that suffered a similar fate or are today dealing with legacy exposures. Legacy exposures or "hot spots" need to be defined and S. 1009 must require that they be included in the assessment and determination where appropriate.

Likewise, S. 1009 needs to direct EPA to develop lists of these places and clear action plans for reducing the exposure of these vulnerable populations to these toxic chemicals. S. 1009 should also direct the EPA to provide Congress with an annual progress report detailing the agency's efforts to eliminate disparate legacy exposures or "hot spots".

We see the current regulatory system as flawed and badly in need of reform. Specifically, we are calling for comprehensive and inclusive approach to chemicals policy. All chemicals need to be subject to the same regulatory system.

What would a comprehensive chemical regulatory system look like? It would:

- Require chemical manufacturers to provide data on the chemicals they make and their potential public health impacts before they can get to the market
- Eliminate the most highly hazardous chemicals from the market
- It would work with manufacturers to find safer substitutes for the most hazardous substances
- It would require labeling that communicates effective information to the consumer in a culturally appropriate manner and in multiple languages
- Provide the regulatory agency with the power to protect the health of the public and the environment
- It would employ a hazard rather than exposure-based risk system
- It would work in cooperation with international chemical treaties

We are at a crossroads in the history of our nation. Each of you has before you the opportunity to redesign our chemical policy based on new understanding about the impacts of chemicals in the lives of every American. You have the chance to make sure that there are no more stories of communities like Sunrise, Reveilletown, Morrisonville, Bel Air or Diamond Louisiana, which today no longer exist because of chemical toxic pollution and exposures. You have the opportunity to protect future generations of Americans like my son from lives riddled by contamination. And you have the opportunity to set us on an economic path that will lead to prosperity and health for those working in the chemical industry by propelling us to be the leaders in the development of safer substitutes.

We want to work with all of you to take us to that better America. As a start we need to reform our chemical policy laws in a way that protects the vulnerable among us. Protecting the least among us is a moral charge that is echoed in the Bible, the Talmud and the Koran. I know that we have leaders in the Senate ready to take up that charge. You are those leaders don't fail Harlem, Brownsville, Mosseville, Convent, Barrio Logan in San Diego, Oakland, Baltimore, the Wind River Reservation, Birmingham, and other communities.

Thank you.

Senator BOXER. Thank you very much.

We have a vote, so we are going to get through the panel first. We are now going to turn to Ms. Dorothy Felix, President, Mossville Environmental Action Now. Welcome.

STATEMENT OF DOROTHY FELIX, PRESIDENT, MOSSVILLE ENVIRONMENTAL ACTION NOW

Ms. FELIX. Thank you, Chairperson Boxer, Ranking Member Vitter, who represents my State of Louisiana and members of the Environment and Public Works Committee, for holding this important hearing.

My name is Dorothy Felix, and I am the President of Mossville Environmental Action Now. My organization works to achieve environmental justice in the historic African American community of Mossville, Louisiana.

I appreciate this opportunity to share with you the urgent need for legislation that protects the health of people who are living in polluted communities. I speak to you today out of concern for the future of my community of Mossville and communities across this Country where indigenous people and people of color are disproportionately harmed by toxic pollution.

Mossville has been home to my family and neighbors for several generations. I treasure my childhood memories of growing up in this small, rural community. I remember a time when the air was healthy to breathe, the waterways were clean and full of fish, and the soil produced vegetable gardens and fruit trees. I regret that my grandchildren and great-grandchildren will never see and touch the natural beauty that was once Mossville.

Today, Mossville is a different place as a result of weak environmental laws. These laws authorize no less than 14 industrial facilities to release toxic pollution around our homes, churches and playgrounds. Inside the historic boundaries of Mossville are three chemical manufacturers, one oil refinery and one oil production facility. Within one-fourth of a mile from Mossville are seven chemical manufacturers. There is one coal-fired power plant and one industrial gas supplier.

These 14 industrial facilities release toxic pollution in Mossville that is scientifically known to harm human health. By harm to human health, I mean that Mossville residents suffer from exposure to dioxins, a group of dangerous chemicals, causing hormone disruptions.

A toxic exposure investigation by the agency for Toxic Substances and Disease Registry revealed that Mossville residents have levels of dioxins in their blood that are three times higher than the national average. These dioxins are also different from those comprising the national background exposure, but identical to the dioxins emitted by several Mossville area facilities.

In Mossville, we breathe toxic chemicals that the EPA has detected in the air at concentrations 100 times above the Louisiana health-based ambient air standard. Toxic fumes and odors force us to stay indoors. Our local waters have no fishing and no swimming warnings because of toxic chemical pollution.

An entire section of Mossville has been moved out by companies responsible for leaking ethylene dichloride underground where an

aquifer supplied residents with well water. We need help that eliminates disproportionate toxic exposures.

Unfortunately, the Chemical Safety Improvement Act, S. 1009, is not helping. It weakens and eliminates the protection that the Safe Chemicals Act of 2013 can provide to polluted communities. A key protection is Section 34 of the Safe Chemicals Act, known as Toxic Hot Spots. This section protects our right to a healthy environment.

Under this bill section, a community's exposure to one or more chemicals that is significantly greater than average exposure in the United States compels the EPA to reduce the disproportionate pollution. After more than 40 years of Federal environmental lawmaking, the Safe Chemical Act is an important step to remedying the pain and injustice that have resulted from permitting toxic pollution.

I urge this Committee to pass legislation that closes the gap between environmental law and environmental justice. No one in this Country should be denied the right to live in a healthy environment. Thank you.

[The prepared statement of Ms. Felix follows:]

OPENING STATEMENT OF DOROTHY FELIX

PRESIDENT

MOSSVILLE ENVIRONMENTAL ACTION NOW

BEFORE THE ENVIRONMENTAL AND PUBLIC WORKS COMMITTEE

U.S. SENATE

July 31, 2013

Thank you, Chairperson Boxer, Ranking Member Vitter, who represents my state of Louisiana, and Members of the Environment and Public Works Committee for holding this important hearing. My name is Dorothy Felix and I am the President of Mossville Environmental Action Now. My organization works to achieve environmental justice in the historic African American community of Mossville, Louisiana.

I appreciate the opportunity to share with you the urgent need for legislation that protects the health of people who are living in polluted communities. I speak to you today out of concern for the future of my community of Mossville and communities across this country, where Indigenous people and people of color are disproportionately harmed by toxic pollution.

Mossville has been home to my family and neighbors for several generations. I treasure my childhood memories of growing up in this small, rural community at a time when the air was healthy to breathe, the waterways were clean and full of fish, and the soil produced vegetable gardens and fruit trees. I regret that my grandchildren and great-grand children will never see and touch the natural beauty that was once Mossville.

Today, Mossville is a different place as a result of weak environmental laws that permit no less than 14 industrial facilities to release toxic pollution around our homes, churches, and playgrounds. Inside the historic boundaries of Mossville are three chemical manufacturers (Georgia Gulf, PPG Industries, and Sasol), one oil refinery (Phillips 66), and one oil production facility (Excel Paralubes). Within one-fourth of a mile from

Mossville are seven chemical manufacturers (Arch Chemical, Bio-Lab, Certainteed, Lyondell Chemical Worldwide, PHH Monomers, Tessenderlo Chemical, and Tetra Chemical), one coal-fired power plant (Entergy Roy S. Nelson Plant), and one industrial gas supplier (Air Liquide).

You cannot enter or exit Mossville without crossing train tracks used to transport toxic chemicals, and often have to wait for the freight trains to pass. Toxic chemicals are also moved through pipes that are cased in large racks over our main street and located underneath the ground in our community. The industrial companies have built around, over, and under Mossville as if our community, settled more than 200 years ago, does not exist.

We lost the eastern section of Mossville to toxic chemical contamination from underground pipeline leaks of ethylene dichloride. In light of mounting evidence, industrial companies in Mossville were forced to admit their fault for causing the leak that contaminated nearby drinking water wells. In 1995, Mossville residents brought a lawsuit against the companies and agreed to a settlement that involved the companies agreeing to purchase all of the properties in the eastern section. The companies managed to insert into all settlement agreements signed by Mossville residents a provision that prevents residents from bringing any claim in the future for health problems related to the contamination. There was no health monitoring or health services provided to residents, who for years unknowingly drank and used water from wells where the contamination was present.

Harsh fumes and odors are always present in Mossville, forcing you to stay indoors. In response to my organization's call for help, the US Environmental Protection Agency ("EPA") brought to Mossville a state-of-the-art mobile air monitor that detected toxic chemicals released from nearby industrial facilities at concentrations 100 times above the State of Louisiana's health-based air quality standards.[1] Federal and state environmental agencies warn us to not eat the fish or swim in local waters because of toxic chemical contamination.[2] A federal health agency also detected toxic chemicals in the fruits and vegetables grown in our community.[3]

My family and neighbors, children and the elderly, suffer from severe health problems that medical experts and scientists have associated with toxic chemical exposures. My organization petitioned federal agencies to investigate Mossville residents' exposure to dioxins, which are extremely dangerous chemicals. In response, the US Agency for Toxic Substances and Disease Registry ("ATSDR") conducted blood tests that revealed Mossville residents have elevated levels of dioxins in their blood that are on average

[1] US Environmental Protection Agency, Results of Trace Atmospheric Gas Analyzer in Mossville, Calcasieu Parish, Louisiana, 1999.

[2] National Oceanic & Atmospheric Agency, Contamination Extent Report and Preliminary Injury Evaluation for the Calcasieu Estuary, 1997; Louisiana Department of Environmental Quality & Louisiana Department of Health and Hospitals, Fishing & Swimming Advisories; and US Agency for Toxic Substances and Disease Registry, Health Consultation: Follow-up Dioxin Exposure Investigation, Calcasieu Estuary (a/k/a Mossville), March 2006.

[3] US Agency for Toxic Substances and Disease Registry, Health Consultation: Follow-up Dioxin Exposure Investigation, Calcasieu Estuary (a/k/a Mossville), March 2006

three times higher than the national comparison group.[4] Dioxins cause cancer, impair the reproductive system, and disrupt the human hormone system, creating long-term health problems that can begin in the womb and last for a lifetime. These and other severe health effects have been documented in several health studies of Mossville residents.[5] In addition, the testing showed that the group of dioxins detected in the bodies of Mossville residents was unique and different from the national comparison group, which led ATSDR's health consultants to conclude that local sources in the Mossville area may be responsible.[6]

Although finding the sources of the dioxin exposures was part of the ATSDR's investigation in Mossville, it was never undertaken by the agency. For this reason, my organization, in collaboration with Advocates for Environmental Human Rights, a public interest law firm, and Wilma Subra, an environmental scientist, did the work that ATSDR

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[4] ATSDR, Health Consultation: Exposure Investigation Report, Calcasieu Estuary (a/k/a Mossville), November 1999; and ATSDR, Health Consultation: Follow-Up Exposure Investigation, Calcasieu Estuary (a/k/a Mossville), March 2006.

[5] Mossville Environmental Action Now, *et al*, Industrial Sources of Dioxin Poisoning in Mossville, Louisiana: A Report Based on the Government's Own Data, July 2007, available at: http://www.ehumanrights.org/docs/REVISED%20MOSSVILLE%20REPORT%20%28WEB,%20FULL%29.pdf.

Wilma Subra, Health Report on Mossville, Calcasieu Parish, Louisiana, 2009, available at: http://www.ehumanrights.org/docs/Mossville-Chemicals-and-Health-Report.pdf.

Peter Orris and Katherine Kirkland, Cook County Hospital, Division of Occupational and Environmental Medicine, Report on Consulting Activities Related to Mossville, LA, November 4, 1999.

Pat Costner, Greenpeace, Dioxin & PCB Contamination in Mossville, Louisiana: A Review of the Exposure Investigation by ATSDR, February 23, 2000.

Dr. Marvin Legator, University of Texas at Galveston Medical Branch, Mossville Health Symptom Survey, 1998.

[6] Peter Orris and Katherine Kirkland, Cook County Hospital, Division of Occupational and Environmental Medicine, Report on Consulting Activities Related to Mossville, LA, November 4, 1999.

neglected to do. We collected the raw data from ATSDR's dioxin testing and compared them to the EPA's Toxic Release Inventory reports of dioxin emissions by Mossville-area facilities. What we found and published in the report, *Industrial Sources of Dioxin Poisoning in Mossville, Louisiana: A Report Based on the Government's Own Data*, showed a correlation between the dioxins detected in our blood and the dioxins emitted by six Mossville-area industrial facilities (Entergy Roy S. Nelson coal-fired power plant, Georgia Gulf vinyl manufacturing facility, Lyondell chemical manufacturing facility, Phillips 66 oil refinery, and PPG Industries vinyl manufacturing facility).[7]

However, it is not enough that the EPA and other environmental and health agencies document the toxic chemical exposures taking place in Mossville. They must be required by law to take action that protects communities from these toxic chemical exposures which are disproportionate in relation to the rest of the nation. Current environmental laws do not require the prevention of disproportionate toxic exposures. In fact, these laws make it legal for the 14 industrial facilities to pollute Mossville. They provide no remedy for the severe health problems and environmental damage we suffer.

People living in polluted communities are left on their own to educate themselves about toxic chemical exposures. We learn which chemicals cause cancer, reproductive damage, asthma, and other health problems. But we learn this after the painstaking process of connecting the dots between the health problems suffered by our family and neighbors

[7] Mossville Environmental Action Now, *et al*, Industrial Sources of Dioxin Poisoning in Mossville, Louisiana: A Report Based on the Government's Own Data, July 2007, available at: http://www.ehumanrights.org/docs/REVISED%20MOSSVILLE%20REPORT%20%28WEB,%20FULL%29.pdf.

and the pollution in our neighborhoods. Then we go to the environmental agencies for help. Instead of help agency we are told by agency officials that environmental permits give polluting companies the right to release toxic chemicals that we breathe and come into contact with the chemicals on a daily basis. We then find out that the laws authorizing these permits are not based on safeguards that actually protect human health. We are left without laws to prevent or remedy the toxic exposures that damage our health and force many families to flee their communities.

Less than two weeks ago, the Sasol Corporation, which operates a chemical facility in Mossville, announced that it will offer to buy the properties of Mossville residents.[8] Why? The company is planning to build what would be the first facility in the United States that converts natural gas from fracking into diesel fuel. Where does the company want to locate this facility? In the heart of what remains of Mossville. Relocation away from Mossville is not a solution to our problem. It is an option of last resort.

I cannot emphasize enough that the best solution for communities harmed by toxic pollution is legislation that protects our right to prevent and remedy this harm. Unfortunately, the Chemical Safety Improvement Act, Senate Bill 1009, denies this right by excluding key provisions found in the Safe Chemicals Act of 2013. Section 34 of the Safe Chemicals Act essentially requires the EPA to develop and implement an action plan that reduces disproportionate exposures to one or more chemicals in a community. My organization, in collaboration with a diverse coalition that included environmental

[8] SASOL, News Release: SASOL Announces Voluntary Property Purchase Program for Residents in Designated Areas Affected by the Company's Growth, July 18, 2013, available at: http://www.sasollouisianaprojects.com/news.php?type=P.

justice groups, medical professionals, children advocacy organizations, health advocates, and some national environmental organizations, worked hard to support the Safe Chemicals Act, which was introduced earlier this year by the late Senator Lautenberg. The Safe Chemicals Act stands as the only piece of legislation introduced in this session mandating the reduction of toxic exposures in communities like Mossville, where we suffer from

- greater than average exposures to dioxins that are at elevated levels in our bodies,
- greater than average exposures to toxic chemicals in the air we breathe that are 100 times above health-based standards, and
- greater than average exposures to toxic discharges that poison fish and make local waters which were once clean and used for baptisms unsafe for swimming.

I urge you to consider the community improvements that can be achieved with legislation requiring the EPA to move beyond repeatedly documenting the horrendous toxic exposures suffered disproportionately in communities across this nation, and take action to eliminate these exposures.

I encourage those of you who may not have done so to spend time in the communities in your states, where people have been denied a healthy environment. Talk to the residents and gain their perspectives on the need for stronger legislation. You all have an open invitation to visit Mossville anytime.

I am happy to answer any questions you may have. Thank you.

Senator BOXER. Thank you so much, Ms. Felix. And we turn now to Mr. Andrew Hackman, Vice President of Government Affairs, Toy Industry Association.

STATEMENT OF ANDREW R. HACKMAN, VICE PRESIDENT OF GOVERNMENT AFFAIRS, TOY INDUSTRY ASSOCIATION

Mr. HACKMAN. Good afternoon, Chairman Boxer, Ranking Member Vitter and members of the Committee. The Toy Industry Association appreciates this opportunity to provide our perspective on the critical issue of reforming the Toxic Substances Control Act.

The Toy Industry Association represents over 600 manufacturers, distributors, retailers and inventors of toys. Our mission is to bring safe and fun play to kids every day. Our association represents over 85 percent of the 3 billion toys that are sold in the United States each year. We support over 320,000 jobs here in the U.S., and we account for nearly $12 billion in wages for American workers.

Now, as an industry that is focused on children, and as parents ourselves, we take our commitment to safety as our top priority. We have a strong track record of protecting children's safety, and we created the first ASTM toy safety standard over 35 years ago.

We share parents' interests and concerns about the chemicals and their safety that go into everyday products. That is why we are here today in support of S. 1009. We support the Committee moving forward with a bipartisan effort to reform the Toxic Substances Control Act. And we support specifically the Federal Government taking action quickly to address some of the uniformity issues that we have seen between a patchwork of State-based chemical requirements. They are impacting our ability to sell uniformly safe toys in the United States.

We also believe that if reform is considered, it must be done in a risk-based way that considers sound science and the weight of the evidence. Now, let me be clear: our industry is doing everything we can to protect kids. There is a stringent Federal network of safety requirements in place. Our companies also perform rigorous internal safety assessments of the materials and the chemicals that go into our products. We require third-party testing that considers the safety of those chemicals. In addition to internal safety requirements, we also have to meet a strong network of Federal safety laws and regulations, including the Consumer Product Safety Improvement Act that was signed into law in 2008. And it made our ASTM toy safety standard mandatory Federal law.

Now, it is under this ASTM process that we work with medical experts, government agencies and consumer groups to ensure that we have the most protective standard possible or children. We consider new risks to children, including the risks from chemicals. It is under this Federal network of safety regulations that it is illegal for us to sell a toy to a child that exposes them to a chemical that is known to cause harm.

Now, our industry supports strong Federal regulation for safety. We have been uniquely impacted by State requirements impacting chemicals and products that come into contact with children. We understand this interest in kids. As parents ourselves, we want to protect our kids whenever possible.

However, as you look at varying differences between State-based regulations, differences in definitions and scope result in extreme and high testing costs for our companies. They are duplicative and they are not improving safety.

One of our members, for example, who makes products in Michigan, specifically told us that they have to spend over $175,000 on testing costs to comply and to document the fact that they don't have a chemical of concern in their products that they knew was not in there in the first place. They have to do this for a paperwork requirement.

As you look at the State of Washington, they have a chemical safety improvement act for children, and it requires data reporting. That testing requirement has cost our industry over $27 million, and we don't want to duplicate that from State to State. So we appreciate that this Committee is considering this activity. We believe that as you consider TSCA reform, limited preemption, not to take States' rights away, but to ensure that there is coordination and consistency between activity that is taking place at the State level and at the Environmental Protection Agency. We believe that a uniform approach to regulating chemical safety will help provide a more predictable regulatory environment for our companies. It will allow us to invest additional resources in protecting safety and it will help States continue to focus on truly protecting public health.

This is consistent with how the Consumer Product Safety Improvement Act had limited preemption for States, where there is a specific risk addressed at the Federal level.

And the final point I want to make on reform to the Toxic Substances Control Act is that we support a risk-based approach, one that uses sound science and the weight of evidence. Again, this is how the Consumer Product Safety Commission approaches regulating our industry, and we believe it is the most effective and efficient way to address this issue.

As a father myself of a 4-year-old little girl named Natalie, she asked me to say that today, we are proud of the fact that our industry is committed to safety. I go to bed at night confident in the fact that our companies are working diligently to improve our safety standard and make toys safer. We support the Committee moving forward in a bipartisan manner that includes risk and limited preemption. We believe that will give States greater faith in the fact that the Government is on the job addressing safety in chemicals. We also believe that it will help us make better, sound decisions about safety within the supply chain. The safety determinations and assessments will help us understand greater the risks to chemicals in consumer products and help us make stronger, better decisions.

We look forward to working with the Committee on this effort, and we appreciate the time today.

[The prepared statement of Mr. Hackman follows:]

TESTIMONY OF ANDREW R. HACKMAN

VICE PRESIDENT OF GOVERNMENT AFFAIRS

TOY INDUSTRY ASSOCIATION (TIA)

SUBMITTED TO

U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

HEARING ON

"STRENGTHENING PUBLIC HEALTH PROTECTIONS BY ADDRESSING TOXIC CHEMICAL THREATS"

JULY 31, 2013

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Overview

Chairman Boxer, Ranking Member Vitter, and Members of the Senate Committee on Environment and Public Works, the Toy Industry Association (TIA) appreciates the opportunity to provide testimony during this hearing on the issue of reforms to the Toxic Substances Control Act (TSCA) and to also voice our support for S.1009, the Chemical Safety Improvement Act (CSIA).

TIA is the not-for-profit trade association for inventors, producers, importers, and retailers of toys and youth entertainment products sold in North America. Our Association represents more than 600 members – from large to small toy companies – that account for more than 85% of the nearly 3 billion toys sold in the United States each year … these toys generate nearly $22 billion in domestic toy sales. The U.S. toy industry directly supports more than 320,000 jobs and more than $12 billion in wages annually; nearly one-third of these jobs are provided by small businesses.[1]

TIA recognizes that parents are concerned about chemicals used in everyday products and we fully support efforts to enhance public confidence in the safety and management of chemicals through the modernization of TSCA. Federal action is also urgently needed to address the emergence of new individual state regulations that are resulting in an unworkable patchwork of varying requirements across the nation and that are already significantly impacting innovation and the distribution of toys.

We commend the bipartisan sponsors of S.1009 for their interest in assuring that chemicals and products are safe. TIA and its members share this interest. Toy safety – and assuring that children are safe while at play – is the toy industry's top priority. This is why we support the *single* strong, protective national toy safety framework now administered by the U.S. Consumer Product Safety Commission (CPSC). Providing a similar framework for TSCA is necessary to create an equally strong safety program for chemicals used in products across the nation.

For this reason, and for the safety of all consumers and children, we urge the Committee to rely on a risk-based approach in reforming the Toxic Substances Control Act that provides uniformity across state boundaries.

Toys are Designed and Regulated for Safety

Every time a member of our industry places a new or existing product on the shelf, we renew our commitment to toy safety.

TIA and its members have a long history as leaders in toy safety requirements. We created the first national toy safety standard, now known as ASTM F963, nearly 40 years ago. In fact, next month will mark the fifth anniversary of Congress mandating that toy safety standard as federal law.

[1] From the *Toy Industry Association Economic Impact Study 2012*, John Dunham and Associates. Developed using standard econometric models maintained by the Minnesota IMPLAN Group using data from industry sources, U.S. Department of Commerce – Bureau of Economic Analysis, and Dun and Bradstreet, Inc.

Following the implementation of the Consumer Product Safety Improvement Act (CPSIA) in 2008, Senator Richard Durbin (D-IL) stated, "The industry realizes that maintaining consumer confidence is critical... They held themselves to a higher standard. I am really pleased." More recently, CPSC Chairman Inez Tenenbaum stated, "I am pleased to report that the state of toy safety is strong—it is strong thanks in large part to the actions of many of you in industry." She also added, "Strong toy standards support the production of safer toys in the marketplace."

Toymakers are constantly ensuring that the materials used in toys are safe and provide the desired function for a toy or toy component. TIA's members perform rigorous safety assessments and required third-party testing prior to the marketing and sale of their products. These tests consider the chemicals found in the toy, possible exposure to substances within the product, and potential impacts on a child. Hundreds of health and safety requirements are reviewed and tested each time a product is developed.

In addition to meeting stringent internal company safety requirements, all toys sold in the U.S. must also comply with numerous federal safety and environmental regulations under a variety of laws, mandatory standards and regulations, including:

- The Consumer Product Safety Improvement Act (CPSIA) of 2008 and its update in 2011
  - The U.S. national toy safety standard, ASTM F963, *Standard Consumer Safety Specification for Toy Safety* (made mandatory under Section 106 of the CPSIA)[2]
- The Consumer Product Safety Act (CPSA)
- The Child Safety Protection Act (CSPA)
- The Federal Hazardous Substances Act (FHSA), and
- The Toxic Substances Control Act.

Under this network of requirements, it is illegal to sell toys or children's products containing substances considered to be harmful and to which children might be exposed.

But the toy industry will not rest in its ongoing efforts to develop and implement strict, risk-based safety requirements for its products. Via the ASTM standardization process, toy industry representatives work alongside medical experts, consumer representatives, government agencies and other stakeholders to continually review new and emerging risks to children and update the standard to keep pace with product innovation. Together, these experts develop science-based requirements that will become the new mandatory standards[3] for the entire toy industry. Recent examples include the new, more stringent limits that were set for heavy metals (such as cadmium) in toys.

The ASTM Subcommittee on Toy Safety has become known for its ability to identify emerging hazards and quickly develop risk-based standards to address them. The toy safety standards produced through this public- and private-sector partnership have served as a model for other jurisdictions around the globe.

[2] Consumer Product Safety Improvement Act, Sec. 106, Public Law 110-314 – August 14, 2008 [15 USC 2056b].
[3] *ibid*

The Impact of State-Based Chemical Regulation Programs

Since the toy industry's products come in contact with children each day, we have been uniquely impacted by the handful of states that have implemented chemical regulation programs. Even small differences in definitions and interpretations can dramatically inflate testing costs and compliance procedures, but these differences lead to **no improvement** in toy safety.

Ensuring compliance with differing state-based chemical restriction and reporting requirements has resulted in the creation of extensive data collection and submission systems by companies, additional product testing, and extensive staff planning. For product manufacturers – especially small and medium sized companies – the resource burdens of these programs escalate over time. Reviewing and certifying products to different requirements in each state has jeopardized the viability of many small businesses and hindered their ability to expand and create jobs.

For example, in Washington State, the Children's Safe Products Act reporting program has been documented to cost the toy and children's product industry up to $27.6 million the first year, followed by $2.8 million annually in subsequent years[4] just for testing data needed to comply with the program. Non-risk-based chemical reporting does not improve a parent's understanding of the safety of a product but it does result in unnecessary compliance costs for the toy company.

State-based efforts to regulate "chemicals of concern" in consumer products also place a burden on state government agencies. In California, where "Green Chemistry" legislation became law in 2008, it was estimated during passage of that law that implementing the program would cost the state $7.3 million over the first five years.[5] In Maine, estimates show that the hidden fiscal burden associated with the implementation of their chemical regulation program would range from $900,000 to $1.6 million in initial start-up costs and then an additional $900,000 to $2.2 million annually. Again, these costs are only those incurred by state agencies … not the cost to product manufacturers.

TIA and its members support efforts that improve toy safety and are committed to those efforts regardless of the cost. However, children's safety is better served through a federal approach to evaluating risks from chemicals than from a patchwork of state requirements.

Benefits of a Unified National Chemicals Management Program

Revising TSCA as drafted in S.1009 ensures that products and chemicals are uniformly safe for intended uses across all 50 states. A nationwide approach under S.1009 would:

- Address safety and risk issues from chemical uses nationwide;
- Eliminate impediments to interstate commerce that would otherwise increase the cost of products;
- Allow manufacturers to redirect resources to focus on truly ensuring safety – not data compliance;

[4] Washington Council of Ecology, *Final Cost-Benefit and Least Burdensome Alternative Analysis*, Page 11. 11-07-022.
[5] California State House Appropriations Committee Fiscal Summary, AB 283. Available at: http://info.sen.ca.gov/pub/07-08/bill/asm/ab_1851-1900/ab_1879_cfa_20080807_131956_sen_comm.html

- Create a more predictable regulatory environment via one national policy;
- Establish a clear risk-based U.S. scheme of chemical regulation that can be a model for global chemical regulation; and
- Allow state and local governments to focus on higher priority issues to improve public health.

TIA believes that chemical and product safety can be best approached at the federal level due not only to the availability of additional federal resources and expertise, but also from use of existing scientific data and risk-based approaches by the Environmental Protection Agency (EPA).

Importance of Uniform National Requirements for Interstate Commerce and Global Competition

Limited preemption is important under TSCA because this law could establish strong, uniform national standards for chemical substances. Without preemption, a modernized TSCA could create more uncertainty than it resolves. On complex issues that impact a broad array of consumer goods produced and sold in interstate commerce, a national scheme of uniform standards is the most effective way to assure that manufacturers, distributors and retailers in each state adhere to the same requirements. Disparate and inconsistent state and local requirements on nationally distributed substances (and products incorporating those substances) unduly burden interstate commerce, confuse consumers and reduce consumer choice.

Global commerce has expanded significantly since TSCA was enacted in 1976. State laws and regulations that might have made sense when markets were primarily local now result in conflicting requirements in an age where markets are regional, national, and global. Modern economic realities require Congressional action to establish a uniform federal U.S. chemical regulatory system. Strengthening TSCA's preemption provisions is consistent with this need. Limited preemption, as proposed in S.1009, is consistent with regulation of the toy industry under the CPSA, CPSIA and FHSA.

Product safety is not a local issue – it is a national obligation. Children in all 50 states should be protected by the same effective product safety standards. In a globally competitive marketplace, the federal government should assert its right to regulate interstate commerce via the establishment of uniform national requirements. Only with such action can a fair playing field be established that does not impose undue burdens upon product producers from different states and localities.

Support for a Risk-Based Approach to Chemicals Management

TIA supports strong risk-based regulations for toys that are enforced consistently across the nation.

Therefore, TIA supports S.1009, the proposal to reform TSCA that was introduced by the late Senator Lautenberg and received with broad bipartisan support, because it has a risk-based approach to decision-making that is based upon sound science.

Additionally, S.1009 directs EPA to rely on a "weight of evidence" approach that uses credible and authoritative scientific data to demonstrate harm in its assessments, determinations, and regulatory actions. This risk-based approach is also consistent with how toys are regulated by the CPSC.

TIA also supports TSCA reform as proposed by S.1009 because it will provide additional information about chemicals in the materials used to make toys. This will improve our industry's ability to make toys even safer.

S.1009 offers the best path forward to achieving a reasonable national program that looks at risks from chemicals and their uses in products.

Conclusion

The Toy Industry Association and its more than 600 members share the Committee's interest in the safety of toys and protecting the health of children. As an industry of parents and care-givers, we would like to reiterate that the safety and well-being of children will always be our top priority.

TIA asks that the Committee support a uniform and risk-based approach to TSCA reform that includes uniformity and limited preemption.

TIA supports S.1009 because it offers a path that will:

(1) Improve the toy industry's ability to make toys even safer by creating a single, uniform system that will address the current inconsistent patchwork of state-by-state regulations,

(2) Make chemicals management decisions through the use of a weight-of-evidence approach and under a risk-based threshold, and

(3) Result in greater information about the risks from chemicals in products and the environment.

Chairwoman Boxer, Ranking Member Vitter, and Members of the Committee, we again appreciate this opportunity to provide our perspective on this critical issue. The toy industry is committed to working with you to develop practical, scientifically-sound reforms to TSCA that strengthen protections for children and the environment and foster innovation by the toy industry in the global marketplace.

We would be happy to address any questions that Members of the Committee might have with regard to our interest in this topic and proposed TSCA reform legislation.

Toy Industry Association, Inc.

www.toyassociation.org

September 4, 2013

The Honorable Chairman Barbara Boxer
The Honorable Ranking Member David Vitter
United States Senate
Committee on Environment and Public Works
Washington, DC 20510-6175

Re: Response to Questions - July 31, 2013 Hearing Committee on Environment & Public Works

Dear Chairman Boxer and Ranking Member Vitter:

The Toy Industry Association (TIA) appreciates the opportunity to provide responses to questions following our July 31, 2013 testimony at the Committee on Environment and Public Works hearing, entitled "Strengthening Public Health Protections by Addressing Toxic Chemical Threats." These responses also reflect TIA's position on reforms to the Toxic Substances Control Act (TSCA) and S.1009, the Chemical Safety Improvement Act (CSIA).

TIA is the not-for-profit trade association for inventors, producers, importers, and retailers of toys and youth entertainment products sold in North America. Our Association represents more than 600 members – from large to small toy companies – that account for more than 85% of the nearly 3 billion toys sold in the United States each year ... these toys generate nearly $22 billion in domestic toy sales. The U.S. toy industry directly supports more than 320,000 jobs and more than $12 billion in wages annually; nearly one-third of these jobs are provided by small businesses.[1]

The Toy Industry Association provides the following responses to questions from the Honorable Senator David Vitter:

1. **You noted that the patchwork of state laws and regulations is particularly burdensome on small and medium-sized businesses, which in turn has an adverse impact on the ability of those companies to grow and innovate. Can you expand on that from the perspective of the toy industry and how that adverse impact on innovation can affect the ability of businesses to bring new and often safer products to consumers?**

[1] From the *Toy Industry Association Economic Impact Study 2012*, John Dunham and Associates. Developed using standard econometric models maintained by the Minnesota IMPLAN Group using data from industry sources, U.S. Department of Commerce – Bureau of Economic Analysis, and Dun and Bradstreet, Inc.

The toy industry, like most industries today, operates in an environment which is global, and it is simply not economically feasible to produce different variants of a product for each market, let alone each state. Manufacturers typically must sell a single product in all markets in which they operate. This being the case, the primary driver of costs over and above the basic cost of designing, manufacturing, and distributing the product is testing to demonstrate compliance; as differing requirements proliferate, so do the costs. Since the same product is being sold everywhere, these additional costs do not change the intrinsic safety of the toy, they just add cost to demonstrate compliance. Small and medium-sized enterprises are hit especially hard by these sunk costs, because their volumes are smaller, and therefore per-piece costs are greater. Allowing states to implement requirements for products distributed nationally (and internationally) is a vestige of an earlier era when distribution and products were local, and it inhibits the growth of American companies, competing globally.

Ensuring compliance with differing state-based chemical restriction and reporting requirements results in the creation of extensive data collection and submission systems by companies, additional product testing, and extensive staff planning. For product manufacturers – especially small and medium sized companies – the resource burdens of these programs escalate over time. For example, one of TIA's small member companies has documented that it costs their company over $175,000 each year to test for the 6-phthalates that are restricted by the Consumer Product Safety Improvement Act (CPSIA) – when they know from the materials used in their products that these chemicals would not be present. This is just an example of testing for one class of chemicals for one program, and by one company.

State programs like the Washington State, the Children's Safe Products Act reporting program has been documented (by the State Department of Ecology) to cost the toy and children's product industry up to $27.6 million the first year[2]. Multiplying these costs across several states, many product lines, and hundreds of companies and the costs are in the hundreds of millions of dollars to ensure and document legal compliance with these state programs.

The toy industry supports programs that improve safety; however, these programs are reporting based upon just the mere presence of a chemical, not risk from exposure to that chemical. Therefore resources diverted to testing costs and compliance are not able to support the development of new products and new jobs. Since toy companies are always looking to make products that create fun and safe play for children, these diverted resources for testing programs (that do not improve safety) can detract from the ability to bring these new products to market.

2. **You stated in your testimony that one of the reasons the toy industry supports the CSIA is because it relies on a weight of evidence, risk-based approach to make safety determinations, which is consistent with the approach taken by the CPSC. How does that approach compare with the programs that several States have enacted.**

There are currently three major broad-reaching chemical regulatory programs in place, impacting children's products, in the states of California, Maine and Washington. The Washington State, the Children's Safe Products Act, only requires reporting of the presence of Chemicals of High Concern to Children (CHCCs) in certain products; however, this is not related to an actual weight of evidence of

[2] Washington Council of Ecology, *Final Cost-Benefit and Least Burdensome Alternative Analysis*, Page 11. 11-07-022.

harm or a risk of harm from those products. In fact, the Washington State Department of Ecology's website even states the following[3]:

- The presence of a chemical in a children's product does not necessarily mean that the product is harmful to human health or that there is any violation of existing safety standards or laws.
- The reporting triggers are not health-based values.
- The data should not be used determine the safety of an individual product.

In Maine, the Toxic Chemicals in Children's Products Law mandates that the Department of Environmental Protection (DEP) identify "Chemicals of Concern" based upon "credible scientific evidence as being:

A. A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor
B. Persistent, bioaccumulative and toxic; or
C. Very persistent and very bioaccumulative." [4]

Subsequently Maine's law then can designate a chemical as a "Priority Chemical" if it is found to be present in human biomonitoring testing, present in household environments, or present in consumer products found in the home. Priority Chemicals are then subject to reporting and restrictions. These criteria though, are based purely on *presence* of a chemical and hazard characteristics of a chemical – *not a weight of evidence of harm or an actual risk from a chemical in a product.*

In California, two broad-reaching laws regulating chemicals exist, Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, and the Safer Consumer Products (Green Chemistry) law.

Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, is intended to protect California citizens and the State's drinking water sources from chemicals known to cause cancer, birth defects or other reproductive harm – by prohibiting California businesses from knowingly discharging significant amounts of listed chemicals into sources of drinking water and requiring labeling of products and locations where listed chemicals can be found. While this law does have elements of risk-based thresholds for warning labels, there are approximately 1000 chemicals on the list resulting in labeling that has become so commonplace to consumers in California that it lacks meaning to make true risk-based safety determinations. For example, virtually all buildings in California – hotels, parking garages, government buildings, shoe stores and coffee shops – are required have such warnings at their entry, warnings that go unheeded and unnoticed by Californians.

The Safer Consumer Products Law will attempt to set a process for prioritizing chemicals of concern and fostering the design of safer products sold in California; however, this law is just now in the process of being implemented, after a 5-year regulatory development process. The text of the final regulation, slated to take effect on October 1, 2013, uses an iterative process to prioritize chemicals and products, which includes some elements of risked-based prioritization, but has yet to be proven in practice as relying on a truly weight-of-evidence, risk-based approach.

[3] Washington Council of Ecology, http://www.ecy.wa.gov/programs/swfa/cspa/search.html
[4] Maine Revised Statutes, Title 38, Chapter 16-D Section 1693

In contrast to these state programs, CSIA relies on a clear "weight of evidence" and "unreasonable risk" approach to evaluating chemicals and making decisions. The "weight of evidence" approach uses the best and credible and authoritative scientific data to evaluate harm for assessments, determinations, and regulatory actions. The "unreasonable risk" approach provides a clear and consistent decision-making threshold upon which the Environmental Protection Agency can take action on chemicals determined to pose actual risks to human health or the environment, and with which EPA already has experience under implementation of current programs under TSCA. This risk-based approach is also consistent with how toys are regulated by the CPSC.

3. **Some state programs designate chemicals as priorities based on hazard properties then move directly to an expensive alternatives analysis, without a proper risk assessment to determine if there is any actual or potential risk posed. Can you comment on the approach the states have taken and how the CSIA compares.**

As it relates to broad state chemical regulatory programs, currently only Maine and California are/will be able to mandate alternatives analysis. The Washington State Children's Safe Products Act only requires reporting of the presence of Chemicals of High Concern to Children (CHCCs) in certain products; and the law has not been expanded to allow the State Department of Ecology to require alternatives analysis.

The California Safer Consumer Products Law does allow the Department of Toxic Substances Control to mandate alternatives analysis, under regulations that take effect on October 1, 2014. Under these regulations alternatives analysis would be required for identified priority products containing chemicals of concern, which meet the following characteristics[5]:

(1) There must be potential public and/or aquatic, avian, or terrestrial animal or plant organism exposure to the Candidate Chemical(s) in the product; and
(2) There must be the potential for one or more exposures to contribute to or cause significant or widespread adverse impacts.

In Maine's Toxic Chemicals in Children's Products Law the State Department of Environmental Protection can require "The manufacturer or distributor of a children's product for sale in the State that contains a priority chemical in an amount greater than the de minimis level" [6] to perform elements of an alternatives analysis based purely upon the presence of a priority chemical in the product.

In contrast to the CSIA, neither Maine, nor California's laws, have a risk assessment as a prerequisite for alternatives analysis. Maine only requires presence of a chemical and California only requires potential for "adverse impacts" from a chemical in a product. The concern with this approach is that companies would be forced to spend several hundreds of thousands of dollars to perform an alternatives analysis when there might not actually be a risk from that product and there would not likely be an increase in product safety. In many cases, no feasible alternative to the selected chemical exists, and indeed, the chemical under evaluation may be safe for the intended use and is necessary. The CSIA however, requires

[5]California Department of Toxic Substances Control, Safer Consumer Products Regulations, Department Reference Number: R-2011-02. http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/Text-of-Final-Safer-Consumer-Products-Regulations-2.pdf.
[6] Maine Department of Environmental Protection, Chapter 880, Section 5. http://www.maine.gov/dep/safechem/rules.html

that a chemical be determined to be an "unreasonable risk" - in a particular use - prior to the Administrator moving forward to compel an alternatives analysis. The toy industry supports efforts and information that will improve product safety, regardless of the cost; and supports an approach that bases alternatives analysis requirements on a clear understanding of risks and the beneficial outcome of preventing "unreasonable risks."

4. **You made some interesting points in your testimony about global commerce, that modern economic realities have changed, and a strong federal system makes more sense to meet the needs of global commerce. Can you expand on that comment?**

Since TSCA was signed into law in 1976, global trade has expanded rapidly and supply-chains and manufacturing have changed dramatically for consumer products and beyond. In fact, 1975 was the last year that the U.S. posted a trade surplus, since then U.S. imports of goods have exceeded exports of U.S. made goods. For the makers of consumer products, including toys, selling one uniformly safe product around the world is the most efficient way to compete and innovate to create new products and opportunities.

Differing state chemical requirements complicate that ability for companies. Companies must create whole new networks and regimes to ensure compliance on a state-by-state basis and adapt to differing requirements, sometimes for even the same chemical.

There is ample precedent for a strong federal system in other similar circumstances. A good example is the National Traffic and Motor Vehicle Safety Act of 1966. In a 2000 Supreme Court decision, the Court states that the statute "reflects a desire to subject the industry to a single, uniform set of federal safety standards. Its preemption of all state standards, even those that might stand in harmony with federal law, suggests intent to avoid conflict, uncertainty, cost, and occasional risk to safety itself that too many different safety–standard cooks might otherwise create." Besides the obvious interstate commerce and cost burden implications, the Court (as well as the Congressional intent of the Act) also recognized how too many "cooks" (i.e., regulatory authorities) could create unintended consequences. Other examples include the federal bankruptcy code and patent law; both are fundamental pillars of interstate commerce.

The CSIA, by providing a more uniform system of chemical safety, while still allowing states to take part in chemical prioritization and safety assessments and determinations, helps reduce the potential for state-by-state conflicts. This will help ensure that companies can continue to innovate to one national standard and compete effectively in the global marketplace.

5. **You mention that the first year of testing to comply with the Washington State Children's Safe Products Act reporting program cost the toy and children's product industry up to $27.6 million and that program does not improve a parent's understanding of the safety of products. Do you think the CSIA would improve a parent's understanding of product safety and why?**

TIA believes that the CSIA and the benefits of having a stronger chemical regulatory system in place, federally, will help parents understand the safety of products. Knowing the chemicals that make up

everyday products have been reviewed and prioritized by the U.S. Environmental Protection Agency will provide a greater level of confidence in the safety of consumer products. Additionally, knowing that EPA has strong powers to make definitive safety determinations and potentially restrict the use of a chemical in certain applications will provide parents greater understanding and faith that a chemical cannot be used in a way that is known to cause risks to children. Finally, providing additional information, via EPA data requirements and assessments, about the risks from chemicals, will help all product makers in the supply-chain to make well informed decisions about the materials used in everyday products; this in turn, should help parents have a greater appreciation that sound scientific evidence factors into product development decisions.

Conclusion

Once again, TIA commends the bipartisan sponsors of S.1009 and the Committee for their interest in assuring that chemicals and products are safe. TIA and its members share this interest. Toy safety – and assuring that children are safe while at play – is the toy industry's top priority. This is why we have supported the *single* strong, protective national toy safety framework now administered by the U.S. Consumer Product Safety Commission (CPSC). Providing a similar framework for TSCA is necessary to create an equally strong safety program for chemicals used in products across the nation. TIA asks that the Committee support a uniform and risk-based approach to TSCA reform that includes consistency and limited preemption.

We again appreciate this additional opportunity to provide our perspective on this critical issue. The toy industry is committed to working with you to develop practical, scientifically sound reforms to TSCA that strengthen protections for children and the environment and foster innovation by the toy industry in the global marketplace. Please feel to reach out to me at ahackman@toyassociation.org or 202-459-0356 if you have any additional questions or need clarification on these issues.

Respectfully Submitted,

Andrew R Hackman

Andrew Hackman
Vice President of Government Affairs
Toy Industry Association

Senator BOXER. Thank you to the Toy Industry.

And our last witness is Ansje Miller, Eastern States Director, Center for Environmental Health.

STATEMENT OF ANSJE MILLER, EASTERN STATES DIRECTOR, CENTER FOR ENVIRONMENTAL HEALTH

Ms. MILLER. Thank you, Chairman Boxer and Ranking Member Vitter, for the opportunity to speak before you today. I also want to give a shout-out to my Senator, Senator Gillibrand.

I am Ansje Miller, I am the Eastern States Director for the Center for Environmental Health.

Our organization is committed to empowering parents to act as guardians for their children. Children aren't just little adults. Their bodies are still developing, so they are particularly vulnerable to chemical exposures, especially at critical windows of development. And anyone here with a toddler can attest to the fact that anything within reach will end up in that kid's mouth.

So they have exposures that are very different from adults. Most Americans believe that if a product is on the store shelf, it has been tested for safety. But as many previous witnesses before me testified, this is simply not true. For 37 years, TSCA has been a stunning public health failure, exposing American families to toxic chemicals. During that time, States have stepped into the regulatory void with laws to protect children and families. One such law has been talked about a lot today, which is California's Prop 65.

Since 1996, the Center for Environmental Health has protected children and families from toxic chemicals using Prop 65. Under this law, we secure companies legally binding commitments to nationwide changes in their production practices, ending health threats from children's and other products. Our work has eliminated toxic chemicals and counties everyday products like this Curious George doll, which has high levels of lead in its face, and this lunch box, that is the safe version. That is the after.

Senator BOXER. Oh, good. Oh, this is the bad one. And this is after 65?

Ms. MILLER. Exactly. That is after.

Senator BOXER. No preemption, sir.

[Laughter.]

Ms. MILLER. Do I get my time back for this?

[Laughter.]

Senator BOXER. Yes, yes.

Ms. MILLER. So this lunch box, this is before, and this is the after. And combined with other State laws on public health, the results of our work have paved the way for Federal laws, like the Consumer Product Safety Improvement Act and numerous State and Federal regulations. Dozens of State laws like Prop 65 and those listed in the AG's letter effectively protect people's health and serve as laboratories where critical reforms take shape for national consideration.

I would like to share a story about why State laws are important. Marilyn Furer was a 66-year-old retired postal service worker from Illinois. In 2007, she noticed that her grandson Jensen's plastic baby bib, made out of the same material as the lunch box which

she read about in a news story, might have lead in it. It looked very much like this. She contacted her government officials and unfortunately, they couldn't help her. So she contacted us. We took the baby bib, along with a bunch of others, and tested it with an independent lab, and found that it did indeed have very high levels of lead. So we did a report, used California's Prop 65, and with an agreement with Wal-Mart—go, them—within a week they agreed to take the leady baby bibs out of their shelves nationwide. And this is something that the Senator referenced earlier today. So now when parents like Marilyn go to the store to buy a baby bib, they find something like this, which looks very much like the leady one, you could never tell the difference, and it costs the same price. So Marilyn was a hero.

Despite this important success, the States cannot address all of TSCA's deficiencies. American families are counting on Congress to address those deficiencies with an all of the above approach that protects people nationwide from toxic chemicals, while preserving the States' rights to address Federal gaps that leave our children vulnerable to toxic chemicals.

TSCA clearly failed Marilyn and her grandson. As founding members of Safer Chemicals Healthy Families, CEH has been working to fix TSCA. But the current version of the Chemical Safety Improvement Act would also fail Marilyn. As previous witnesses have mentioned, CSIA contains a number of fatal flaws. To spotlight a few, it lacks deadlines for regulatory action. It is based on a safety determination standard that fails to ensure safety. It provides no specific protections for vulnerable populations like children, workers and people living in contaminated communities. And it allows companies to conceal data about the health hazards of chemicals.

In short, CSIA would not provide EPA the legal tools and the financial resources necessary to protect families like Marilyn's from toxic chemicals. And instead, CSIA would tie the hands of the States, concentrating regulatory power in the exclusive hands of the EPA without the resources to adequately do the job.

If the CSIA were in place as drafted when Marilyn contacted us, children across the Country would still be at risk of lead poisoning from their bibs at every meal. Given the success of State laws, it is imperative that CSIA preserve States' Tenth Amendment rights to enforce their own laws, protecting their citizens from the toxic chemicals that will inevitably slip through CSIA's cracks.

If the current version of CSIA, with its many deficiencies and preemption provisions, is adopted, Congress will be putting millions of American children and families at risk.

I would like to thank the members of the Committee for the efforts to address this important issue and pledge my organization's commitment to working to improve this Act.

[The prepared statement of Ms. Miller follows:]

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STATEMENT OF
ANSJE MILLER
EASTERN STATES DIRECTOR
CENTER FOR ENVIRONMENTAL HEALTH

BEFORE
THE U.S. SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

HEARING ON
STRENGTHENING PUBLIC HEALTH PROTECTIONS BY ADDRESSING TOXIC CHEMICAL THREATS

JULY 31, 2013

Thank you, Chairman Boxer and Ranking Member Vitter for the opportunity to appear before this subcommittee today. I am Ansje Miller, Eastern States Director of the Center for Environmental Health.

The Center for Environmental Health's Commitment to Addressing Toxic Chemical Threats

For more than seventeen years, the Center for Environmental Health has worked to protect children and families from harmful chemical exposures. We work collaboratively with major corporations, helping them identify ways they can reduce their use of toxic chemicals, often resulting in economic savings while protecting public health. In some cases, we use litigation to reduce the use of and exposure to toxic chemicals. The Center for Environmental Health has protected millions of Americans across the country from toxic chemicals by testing consumer products and contaminated facilities and reaching agreements with companies to remove the toxic health threat.

Background

Most Americans believe that if a product is on the store shelf, it has been tested for safety. But unfortunately, that is simply not true. The Toxic Substances Control Act of 1976 (TSCA), the law that is supposed to provide that assurance to Americans, is a stunning public health failure that

harms American children, families, workers, and communities every day, leaving us all vulnerable to thousands of chemicals associated with cancer, obesity, developmental delays, and other devastating health problems.

During its thirty-seven years of ineffectiveness, states have stepped into the void to protect its residents. One such law is California's Safe Drinking Water and Toxic Enforcement Act of 1986, known as Proposition 65, which is a strong state consumer protection law. The Center for Environmental Health has been a public interest enforcer of Proposition 65 since 1996.

Using this law, we achieve national and even international changes in production practices that set limits on lead and/or other chemicals in children's products. We have reached industry-wide legal agreements that have eliminated threats to children's health from arsenic-based preservatives used in the wood play structure industry and from lead in home water filters, diaper creams, children's medicines, children's jewelry, imported candies, children's vinyl lunchboxes and vinyl baby bibs.

Many of these agreements and other state laws have lead to federal laws and regulations not only by the Environmental Protection Agency, but also by the Food and Drug Administration, and the Consumer Product Safety Commission. These are all examples of the success of the United States' federal system codified by the 10th Amendment of the Constitution. The states are the laboratories where critical reforms are taking shape and then over time are adopted nationally.

While the states continue their role as laboratories, it is also important that we fix TSCA's problems so that the EPA can effectively do its job as well. As founding members of Safer Chemicals Healthy Families, the Center for Environmental Health has worked in a concerted way to reform the Toxics Substances Control Act to give the Environmental Protection Agency the tools it needs to effectively protect the public health and the environment from toxic chemicals.

Recommendations

As members of Safer Chemicals Healthy Families, the Center for Environmental Health endorses its platform for reforming TSCA as follows. That platform states:

A reformed Toxic Substances Control Act (TSCA) would serve as the backbone of a sound and comprehensive chemicals policy that protects public health and the environment, while restoring the luster of safety to U.S. goods in the world market. Any effective reform of TSCA should:

- **Immediately Initiate Action on the Worst Chemicals**: Persistent, bioaccumulative toxicants (PBTs) are uniquely hazardous. Any such chemical to which people could be exposed should be phased out of commerce. Exposure to other toxic chemicals, such

as formaldehyde, that have already been extensively studied, should be reduced to the maximum extent feasible.

• **Require Basic Information for All Chemicals**: Manufacturers should be required to provide basic information on the health hazards associated with their chemicals, how they are used, and the ways that the public or workers could be exposed.

• **Protect the Most Vulnerable**: Chemicals should be assessed against a health standard that explicitly requires protection of the most vulnerable subpopulations. That population is likely to usually be children, but it could also be workers, pregnant women, or another vulnerable population.

• **Use the Best Science and Methods**: The National Academy of Sciences' recommendations for reforming risk assessment at the Environmental Protection Agency (EPA) should be adopted. Regulators should expand development and use of information gleaned from "biomonitoring," the science of detecting human chemical contamination, to inform and impel efforts to reduce these exposures.

• **Hold Industry Responsible for Demonstrating Chemical Safety**: Unlike pharmaceuticals, chemicals are currently presumed safe until proven harmful. The burden of proving harm falls entirely on EPA. Instead, chemical manufacturers should be responsible for demonstrating the safety of their products.

• **Ensure Environmental Justice**: Effective reform should contribute substantially to reducing the disproportionate burden of toxic chemical exposure placed on people of color, lowincome people and indigenous communities.

• **Enhance Government Coordination**: The EPA should work effectively with other agencies, such as FDA, that have jurisdiction over some chemical exposures. The ability of the states to enact tougher chemical policies should be maintained and state/federal cooperation on chemical safety encouraged.

• **Promote Safer Alternatives**: There should be national support for basic and applied research into green chemistry and engineering, and policy should favor chemicals and products that are shown to be benign over those with potential health hazards.

• **Ensure the Right to Know**: The public, workers, and the marketplace should have full access to information about the health and environmental hazards of chemicals and the way in which government safety decisions are made.

The Center for Environmental Health endorsed the Safe Chemicals Act of 2013 because it embodies these important principles.

Center for Environmental Health's Position on the Chemical Safety Improvement Act
Unfortunately, the current effort to reform TSCA – the Chemical Safety Improvement Act (Lautenberg/Vitter S.1009) (CSIA) – would perpetuate and in some cases worsen many of TSCA's unacceptable failures.

One of the CSIA's many prominent weaknesses is its failure to forcefully preserve the right of states to protect their residents from toxic chemicals. Since TSCA's passing some 38 years ago, American families' major victories against toxic chemicals have been won by state and local governments that have stepped into the regulatory void left by TSCA. With these state-level victories in mind, we note that the current version of the CSIA does little to improve the federal government's ability to protect American families from toxic chemicals. And worse, the CSIA would cripple state efforts to fill the regulatory void it creates. The CSIA represents a long, backward step for the health of American families.

The Center for Environmental Health opposes the bill unless it is amended to address the following concerns.

<u>The CSIA Must Explicitly Preserve the Legal Authority of States to Protect their Residents from Toxic Chemicals</u>

If passed, industries will argue that the CSIA preempts state regulation of toxic chemicals in at least four significant ways:

1. Under the CSIA, once EPA has made a "safety determination" regarding a toxic chemical, all state laws restricting the use or distribution of that chemical in commerce could be preempted. If, for example, EPA in its review of the strong neurotoxin lead decides to ban lead in ammunition, but defers action on other uses of lead, industry will argue that California's Proposition 65 can no longer allow the state to regulate lead in toys, candy, jewelry, or any product. Further, all existing Proposition 65 consent judgments mandating that consumer products comply with Proposition 65's lead limits could be rendered unenforceable. The CSIA could similarly preempt other laws that states have adopted to protect their residents from toxic chemicals. Once EPA acts on BPA, state laws that protect children from bisphenol A (BPA), a hormone disrupting chemical still often found in baby products such as pacifiers and formula containers would be vulnerable. Under the CSIA, if EPA issues a safety determination requiring that BPA be phased out over time, industry will argue that this action preempts all state laws banning BPA in baby products, including New York's groundbreaking BPA ban. The same fate would likely befall laws prohibiting the use of BPA in cash register receipts, such as Suffolk County's innovative ban on these receipts. These are just a few of countless examples of how the CSIA could hobble state and local efforts to protect families from toxic chemicals.

2. Once EPA puts a chemical on a "low-priority" or "high-priority" list, all new state restrictions on the use or distribution of that chemical in commerce could be preempted in their entirety. This means that state laws such as California's Proposition 65 could no longer be used to regulate any new chemical introduced by industry into the market once EPA puts that chemical on a list, whether low- or high-priority. Since there are no clear deadlines or timetables for action, the EPA can put the chemicals on the list, fail to take action for 20 years, and effectively tie the hands of state and local governments from protecting their residents from the chemical in the meantime.

3. Once EPA requires information or testing regarding a chemical, all state laws that are "reasonably likely to produce the same data or information" could be preempted by CSIA. For example, the CSIA's preemption provisions may prevent California's Department of Toxic Substances Control from fulfilling its responsibilities under the state's Safer Consumer Products regulations – a pioneering effort to protect people's health and strengthen the state's economy. These include the responsibility to provide information to consumers, to restrict certain chemical-consumer product combinations, to create requirements relating to the end-of-life of products that contain toxics, and more broadly to promote safer chemistry and engineering. The CSIA could similarly prevent state agencies in Washington from fulfilling their obligation under the state's Children's Safe Products Act to obtain data about chemicals in children's products to inform parents which products contain toxic chemicals.

4. People could be prevented from recovering monetary relief and/or equitable remedies under state tort law when they are injured by exposure to a chemical about which EPA has made a "safety determination." In addition, a person injured by a toxic exposure after a "safety determination" may be prevented from obtaining a remedy under tort law if EPA determines the chemical meets applicable safety standards for certain uses. For instance, a person injured by a chronic, years-long exposure to a toxic chemical deemed safe by EPA would be unable to seek recourse under state tort law.

Legislation to reform TSCA must clearly and explicitly protect states' rights to continue to take action and protect American families from toxic chemicals.

The CSIA Must Make Particular Efforts to Protect those Most Affected by Toxic Chemicals

A central moral failure of the CSIA is that it does not require particular protections for communities and populations that bear the worst brunt of toxic pollution or are more vulnerable to toxic chemicals. These are developing children, pregnant women, and other people who are more vulnerable to harm from toxic chemicals, as well as workers and low-income communities populated predominantly by people of color who have suffered the worst harm from inadequate regulations, often for generations.

The CSIA's sponsors must define "vulnerable populations" and "toxic hot spots" to reflect the unjust reality of chemical exposure today. We urge the sponsors to amend the CSIA such that it requires EPA to regulate emissions and other industrial activities and reduce persistent, bioaccumulative toxic chemicals in these hot spots immediately. American families in our nation's most disenfranchised communities deserve the same clean air, clean water, and other fundamental health opportunities as our nation's most privileged communities.

The CSIA Must Require that EPA Review Sufficient Data before Deeming Chemicals to be "Of Low Concern"

The CSIA would allow EPA to deem chemicals to be of low concern without sufficient data to make such a determination. In one of its more troubling provisions, the CSIA would also allow chemical companies to control which data that government bodies at the federal and state levels are allowed to review as they consider regulations on toxic chemicals.

Before EPA deems a chemical to be low priority, the agency should have adequate data to demonstrate that the chemical truly has a "reasonable certainty of no harm." The CSIA must require chemical companies to submit minimum information sets in a timely manner, equipping EPA to evaluate new chemicals and new uses of chemicals and to evaluate chemicals for prioritization. It must also allow government bodies at all levels to make important regulatory decisions based on all available and credible data.

The CSIA Must Call for Immediate Action on the Most Dangerous Chemicals

Scientists and regulatory bodies worldwide have classified certain chemicals as persistent, bioaccumulative, and toxic (PBTs). One of the key failures of TSCA is that it does not equip EPA to protect our nation's families from PBTs or from other similarly harmful chemicals. EPA's inability to regulate asbestos is a tragic example of this failure. Fixing TSCA will require that we give EPA the tools to protect our nation's children from the worst chemicals by expediting action on PBTs and other chemicals of equivalent concern.

Instead, the CSIA requires that EPA undergo a prohibitively cumbersome and bureaucratic process in order to phase out dangerous chemicals. This would undermine, long-overdue action to protect families from toxic chemicals. The CSIA must reduce red tape and assign top priority to the swift regulation of the most dangerous chemicals.

The CSIA also adopts a vague safety standard that will not guarantee that chemicals entering the marketplace and used in manufacturing are actually safe. To protect American families, EPA should follow the National Academy of Sciences' assessment methods and rely on a more conservative standard of "reasonable certainty of no harm."

The Health and Safety Information About Chemicals Must Not be Kept Secret from American Families

The CSIA would grandfather confidential business information (CBI) claims on products and chemicals made prior to the enactment of the bill. Further, the bill does not require EPA to disclose the number and duration of CBI claims it grants to chemicals, making it difficult for families to know what chemical hazards they might be exposed to. The CSIA also fails to require that EPA release the secret data at the end of the CBI protection period. Given these flaws, it is troubling that the CSIA would simultaneously limit health care professionals' access to information about the identity of secret chemicals, even in medical emergencies.

CSIA must protect people's right to know which chemicals they are exposed to.

Next Steps

While the Center for Environmental Health is concerned about the deep flaws in CSIA, we are pleased to see that Washington is taking seriously the issue of TSCA reform, and we look forward to working with leaders in the Senate and Congress to fix and pass a CSIA that truly protects the health of American families.

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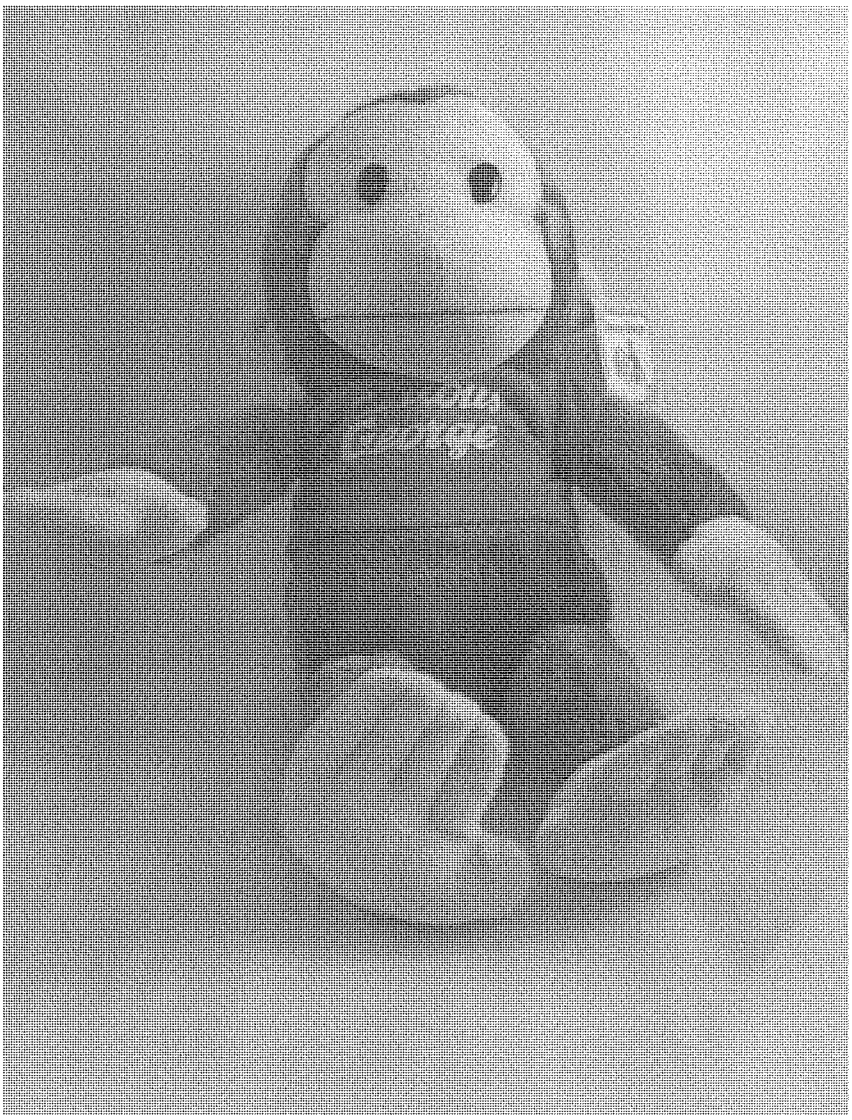

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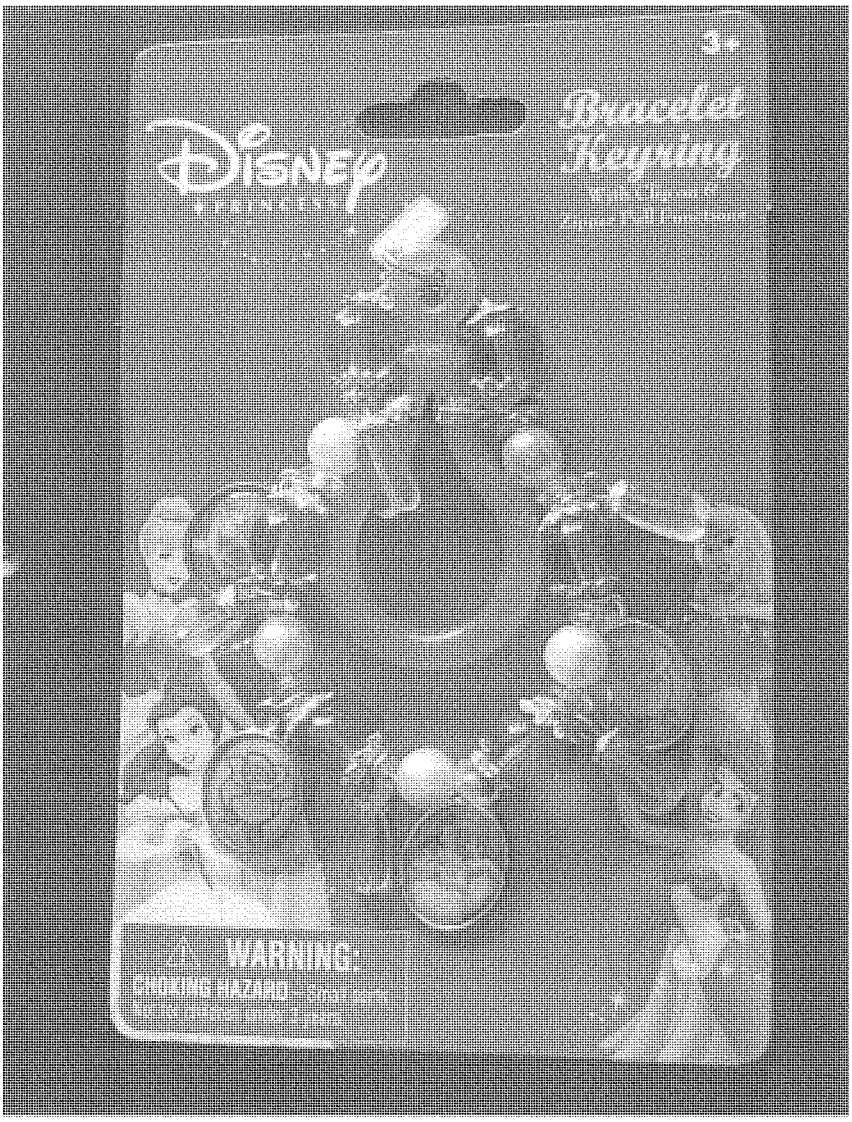
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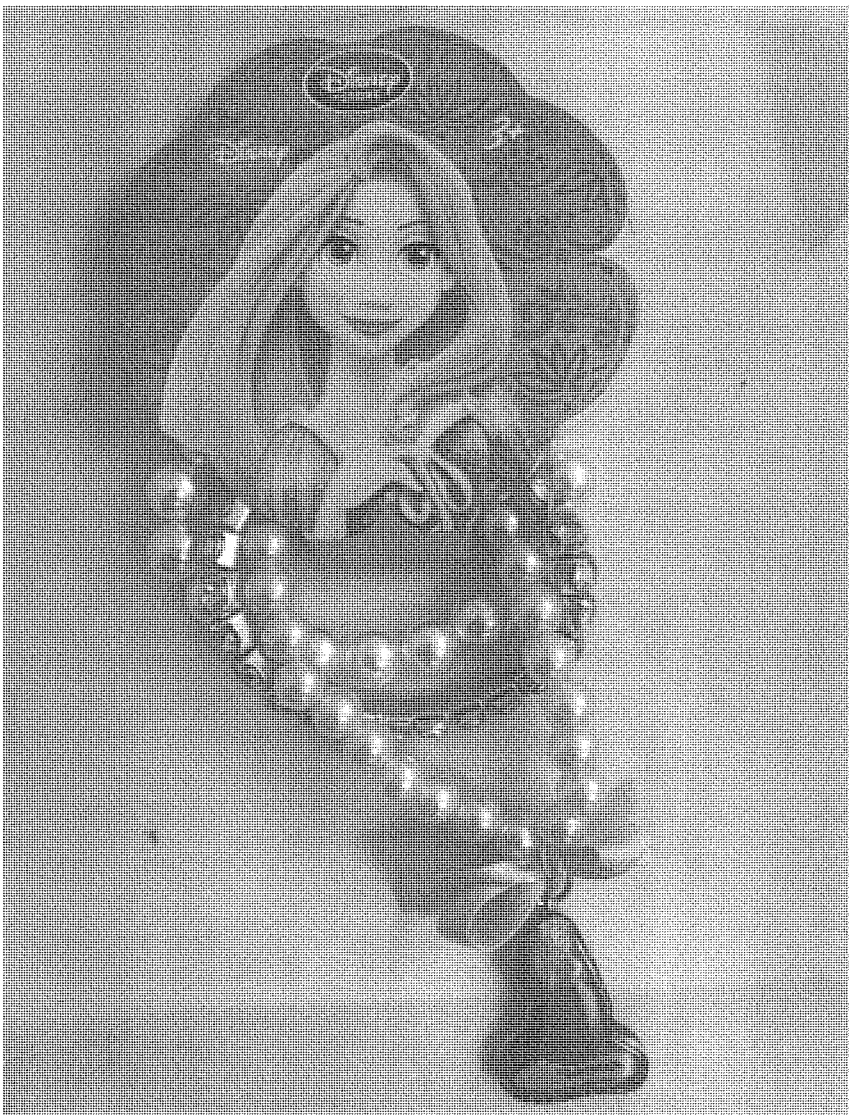

Senator BOXER. Thank you. We will be back after we vote. It could be 15 minutes, it could be a half-hour, depending on how many votes. So we stand adjourned, subject to the call of the Chair. Don't move, though, especially you, Ms. Gorsen, I have some great questions for you.

[Laughter.]

[Recess.]

Senator BOXER. We are going to finish this panel.

Ms. Gorsen, I promised you I would ask you some questions. Do you still live in my State?

Ms. GORSEN. Yes.

Senator BOXER. Your testimony disagrees vehemently on every point with the Attorney General, Kamala Harris, and eight other attorneys general, plus a couple of others that privately contacted us.

And you called S. 1009 marvelous. And if you read what Kamala Harris and these other AGs said, they found it anything but marvelous. She said it would cripple California, California's ability to protect its citizens. So I am going to send you this letter from Kamala Harris as well as the letter from the other AGs, as well as a letter from State legislatures from across the Country.

Would you be willing to, because you are very good at argumentation, I say that as a compliment, would you, next to every point they make, refute it, not with rhetoric, but with fact?

For example, when you said waivers, what is wrong with waivers, we have one in the Clean Air Act, this has nothing to do with the Clean Air Act, and you should know that, you are an attorney. And the waiver in the Clean Air Act is completely different.

Now, you may be able to find some other waivers in some other acts that would work. So would you be willing to give us a little more of your time and go through that, as we seek to move forward on this legislation?

Ms. GORSEN. Yes, I would be happy to.

Senator BOXER. I greatly appreciate it.

Ms. Miller, you know, speaking of heroes, the work you do qualifies you do as one of my heroes. You are sitting next to the Toy Industry. What a perfect combo. The Toy Industry, and believe me, I can't tell you how I have enriched the toy industry, having two kids and four grandkids, and how much pleasure toys have given to my children. But also, understanding that at one time a rubber ducky, which was the most lovely little thing, they didn't ban what goes in there, phthalates, under this law, TSCA, we banned it under other law. And you know the danger of that situation, because as Ms. Miller pointed out, and of course, Mr. Hackman, you know, we all know, anybody who has been around kids, it all goes in the mouth. The dangers of that.

Toy companies didn't help us. Toy companies fought us. So I guess what I want to ask Ms. Miller, if she could look at Mr. Hackman as a friend right now, as a fellow parent, and convince Mr. Hackman why it is important to preserve Prop 65 in its entirety. Make the case in 1 minute.

[Laughter.]

Ms. MILLER. That is the most on the spot I have been in a long time.

Senator BOXER. You did it in your testimony.

Ms. MILLER. I would make the argument that we need to protect Prop 65 for all the reasons that are on the table right here, and if we go back to my office, I could fill this whole room with stuff that, unfortunately, Federal law hasn't been protecting us from. We have a lot of examples of toys that are on the shelves that are toxic. Prop 65 is a fantastic tool that has enabled us to work with manufacturers to get them to take toxic chemicals out of the products throughout the Country.

Senator BOXER. And I would argue that the more confidence people have in what is on the shelf, the better off you are. The worst thing that happens is a gigantic crisis, and people say, gee, can I really trust the companies. So I think if we do this TSCA reform in the right way, if we add children to the risk section, I think that is a big step forward. So we need to add children to the risk section, we need to protect States' rights, we need to protect victims' rights, we need to set some deadlines.

I think what has happened to me, just listening to everyone, including the chemical company representatives, the certainty of doing this the right way, making sure it works, and making sure that we do protect the most vulnerable, and that includes, Ms. Felix, those communities that frankly have been ignored. Because I have that in my State, too. Entire neighborhoods where the industrial polluters exist. And they are the ones that are suffering.

So with that, I will turn to Senator Vitter for his questions.

Senator VITTER. Thank you, Madam Chair.

Ms. Gorsen, thank you again for your testimony. Remind us again how long were you involved in California environmental regulations in this particular area?

Ms. GORSEN. For 3 years as director of the Department of Toxic Substance Control and 2 years as General Counsel of Cal/EPA.

Senator VITTER. Right. So let me ask you some bottom line questions. Do you think California's environmental health and safety protections would be made stronger or weaker by the Lautenberg-Vitter bill?

Ms. GORSEN. Overall, I think they would be made stronger, because the Feds will be able to start looking at chemicals they have never been able to look at, get testing, safety information, and that will feed into California's efforts. Because even California, with the staff they have, don't have enough resources to tackle 10,000 chemicals.

Senator VITTER. OK. Specifically, do you think Lautenberg-Vitter preempts California's Green Chemistry regulations that you were involved in, or State laws to collect information or implement reporting or protect the State's water and air?

Ms. GORSEN. There are explicit exemptions for air and water quality, waste, disposal, there are explicit exemptions for reporting and information gathering. With respect to the Safer Consumer Product regulations, the implementation that Cal/EPA has planned would not be preempted until such time as EPA makes a safety determination. And when they make that safety determination it will depend on the scope of that determination as to what aspects of the Safer Consumer Product law in California is preempted.

Senator VITTER. So following up on that specifically with regard to that California Safer Consumer Products law, do you think Lautenberg-Vitter would "cripple" it, which is the charge a lot of folks are bringing, in light of what you outlined?

Ms. GORSEN. No, I don't think it will cripple it at all. Because States do have special prioritization under the law to help EPA prioritize. And all the existing laws will be in effect until such time as EPA makes a decision.

Senator VITTER. OK. Let me also ask you, following up on Ms. Miller's testimony, I think she said the following, which I don't understand, that to take that Maryland lead bib example, that somehow under Lautenberg-Vitter we wouldn't have been protected from that. Now, as I understand Lautenberg-Vitter, obviously having helped draft it in part, no action by Maryland would be preempted until and unless the EPA actually took action with regard to that chemical for that product. And I think it is a very safe presumption in that case that they wouldn't examine that issue, and fail to take action with a clear and legitimate health and safety concern. Am I missing something, or how would you analyze that situation under Lautenberg-Vitter?

Ms. GORSEN. That is correct. All existing State laws would continue to be in full force and effect, and no entire State law would be preempted by this bill. If after EPA prioritizes lead and makes a safety determination and they have a warning requirement as part of that safety determination, they can decide in the scope of that determination to preempt a Prop 65 warning. But it wouldn't be preempted until such time as they made a decision, and that would be very similar to, say, the FDA warnings on tobacco and nicotine products that supersede what the State warning requirement is.

But it has to be an explicit decision by EPA to do that.

Senator VITTER. Fine. OK, Dr. Borak, can you comment on a particular statement in the Society of Toxicology letter? The statement reads, "In improving the Toxic Substances Control Act, it is also critical that the law further enhances protection of public health by advancing the use of the best available toxicological knowledge and practice for delineating the context of toxicity dose response data relative to actual environmental exposures." Can you translate that for us into everyday language and relate it to Lautenberg-Vitter?

Dr. BORAK. I think I can try. I have read it once or twice. I don't have it in front of me. But I think that the gist of it is that the Society of Toxicology, which is a society of both academic and applied and practicing toxicologists, is urging the use of best science for the purpose of characterizing the context and level of exposure along with the activity and potency of compounds for the purposes of trying to best characterize the risk associated with a particular agent.

Senator VITTER. Great. OK, I think I am out of time. Thank you, Madam Chair.

Senator BOXER. Thanks. So my plan is to do one more round. And then we will be done, or do you want more than one more? OK.

Ms. Gorsen, what is Citizens for Fire Safety? Who are they and who backs them?

Ms. GORSEN. I believe they are an advocacy group.

Senator BOXER. Who funds them?

Ms. GORSEN. I don't know.

Senator BOXER. Are you familiar with a story in the Chicago Tribune that said it is a front group for industry? Are you familiar with that?

Ms. GORSEN. No. I am not familiar with that story.

Senator BOXER. OK, well, I will send it to you. Didn't you testify, or your company testify in behalf of that front group that, quoting this Chicago paper, "against the law to reduce toxic flame retardants in children's products in California"?

Ms. GORSEN. Four years ago I was asked to testify as an expert witness on the purposes of the California Safer Consumer Products Act. And I did testify on what the role of that act was, vis-a-vis other legislative actions.

Senator BOXER. So your firm, and it is in the record, we will put it in the record, in behalf of this group, which no one knew back then, and it came out in a big major story in the Chicago Tribune, it was an industry group. The point is, and I know Senator Vitter doesn't think it has much relevance, and to him it doesn't, and I respect where he is coming from.

But to me, it matters. When people testify at a safety hearing, safety for kids, it seems to me, if it is an industry-backed group, you ought to say so. And I think that is very important to me. And all of you here have been totally honest, Ms. Gorsen you yourself said, when you opened, I now work for industry. How much I appreciate that.

[The referenced article follows:]

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Fear fans flames for chemical makers

Manufacturers of five retardants rely on questionable testimony, front groups to push standards that boost demand for their toxic -- and ineffective, products

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"I'm a well-meaning guy. I'm not in the pocket of industry."

— Dr. David Heimbach, a burn expert, [illegible] legislation in 2011 that, as a California state Senate bill now [illegible] the use of flame retardant chemicals in products. Testimony by Dr. Heimbach was cited by supporters of the bill, but he says he was misled about its intent. (Robert Durell / For the Tribune / April 26, 2011)

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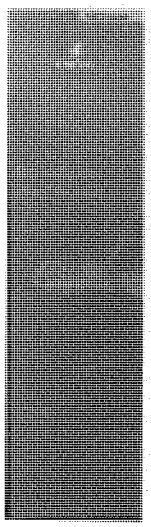


FREE BUYER'S GUIDE

By Patricia Callahan and Sam Roe, Chicago Tribune reporters

Dr. David Heimbach knows how to tell a story.

Before California lawmakers last year, the noted burn surgeon drew gasps from the crowd as he described a 7-week-old baby girl who was burned in a fire started by a candle while she lay on a pillow that lacked flame retardant chemicals.

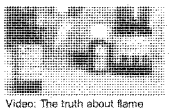
"Now this is a tiny little person, no bigger than my Italian greyhound at home," said Heimbach, gesturing to approximate the baby's size. "Half of her body was severely burned. She ultimately died after about three weeks of pain and misery in the hospital."

Heimbach's passionate testimony about the baby's death made the long-term health concerns about flame retardants voiced by doctors, environmentalists and even firefighters sound abstract and petty.

But there was a problem with his testimony: It wasn't true.

Records show there was no dangerous pillow or candle fire. The baby he described didn't exist.

Neither did the 9-week-old patient who Heimbach told California legislators died in a candle fire in 2009. Nor did the 6-week-old patient who he told Alaska lawmakers was fatally burned in her crib in 2010.



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Heimbach is not just a prominent burn doctor. He is a star witness for the manufacturers of flame retardants.

His testimony, the Tribune found, is part of a decades-long campaign of deception that has loaded the furniture and electronics in American homes with pounds of toxic chemicals linked to cancer, neurological deficits, developmental problems and impaired fertility.

The tactics started with Big Tobacco, which wanted to shift focus away from cigarettes as the cause of fire deaths, and continued as chemical companies worked to preserve a lucrative market for their products, according to a Tribune review of thousands of government, scientific and internal industry documents.

These powerful industries distorted science in ways that overstated the benefits of the chemicals, created a phony consumer watchdog group that stoked the public's fear of fire and helped organize and steer an association of top fire officials that spent more than a decade campaigning for their cause.

Today, scientists know that some flame retardants escape from household products and settle in dust. That's why toddlers, who play on the floor and put things in their mouths, generally have far higher levels of these chemicals in their bodies than their parents.

Blood levels of certain widely used flame retardants doubled in adults every two to five years

between 1970 and 2004. More recent studies show levels haven't declined in the U.S. even though some of the chemicals have been pulled from the market. A typical American baby is born with the highest recorded concentrations of flame retardants among infants in the world.

People might be willing to accept the health risks if the flame retardants packed into sofas and easy chairs worked as promised. But they don't.

The chemical industry often points to a government study from the 1980s as proof that flame retardants save lives. But the study's lead author, Vytenis Babrauskas, said in an interview that the industry has grossly distorted his findings and that the amount of retardants used in household furniture doesn't work.

"The fire just laughs at it," he said.

Other government scientists subsequently found that the flame retardants in household furniture don't protect consumers from fire in any meaningful way.

The U.S. Environmental Protection Agency, meanwhile, has allowed generation after generation of flame retardants onto the market and into American homes without thoroughly assessing the health risks. The EPA even promoted one chemical mixture as a safe, eco-friendly flame retardant despite grave concerns from its own scientists about potential hazards to humans and wildlife.

Since the 1970s manufacturers have repeatedly withdrawn flame retardants amid health concerns. Some have been banned by a United Nations treaty that seeks to eliminate the worst chemicals in the world.

Chemtura Corp. and Albemarle Corp., the two biggest U.S. manufacturers of flame retardants, say their products are safe and effective, arguing that they have been extensively evaluated by government agencies here and in Europe.

"Flame retardants provide an essential tool to enable manufacturers of products to meet the fire safety codes and standards necessary to protect life and property in a modern world," John Gustavsen, a Chemtura spokesman, said in a written statement.

His company, Gustavsen said, strongly disagrees with the main findings of the Tribune's investigation.

Heimbach, the burn doctor, has regularly supported the industry's position that flame retardants save lives. But he now acknowledges the stories he told lawmakers about victims were not always factual.

He told the Tribune his testimony in California was "an anecdotal story rather than anything which I would say was absolutely true under oath, because I wasn't under oath."

Heimbach, a retired Seattle doctor and former president of the American Burn Association, also said his anecdotes were not about different children but about the same infant. But records and interviews show that the baby Heimbach said he had in mind when testifying didn't die as he described and that flame retardants were not a factor.

After the Tribune confronted chemical executives with Heimbach's questionable testimony, he offered, through his lawyer, another explanation for why his stories didn't add up: He intentionally changed the facts to protect patient privacy.

Yet the most crucial parts of his testimony — the cause of the fire and the lack of flame retardants — had nothing to do with privacy. Instead, they served to bolster the industry's argument that chemical retardants save lives.

In the last quarter-century, worldwide demand for flame retardants has skyrocketed to 3.4 billion pounds in 2009 from 526 million pounds in 1983, according to market research from The Freedonia Group, which projects demand will reach 4.4 billion pounds by 2014.

As evidence of the health risks associated with these chemicals piled up, the industry mounted a misleading campaign to fuel demand.

There is no better example of these deceptive tactics than the Citizens for Fire Safety Institute, the industry front group that sponsored Heimbach and his vivid testimony about burned babies.

FEAR AND DECEPTION

In the website photo, five grinning children stand in front of a red brick fire station that could be on any corner in America. They hold a hand-drawn banner that says "fire safety" with a heart dotting the letter "i."

Citizens for Fire Safety describes itself as a group of people with altruistic intentions: "a coalition of fire professionals, educators, community activists, burn centers, doctors, fire departments and industry leaders, united to ensure that our country is protected by the highest standards of fire safety."

Heimbach summoned that image when he told lawmakers that the organization was "made up of many people like me who have no particular interest in the chemical companies: numerous fire departments, numerous firefighters and many, many burn docs."

But public records demonstrate that Citizens for Fire Safety actually is a trade association for chemical companies. Its executive director, Grant Gillham, honed his political skills advising tobacco executives. And the group's efforts to influence fire-safety policies are guided by a mission to "promote common business interests of members involved with the chemical manufacturing industry," tax records show.

Its only sources of funding — about $17 million between 2008 and 2010 — are "membership dues and assessments" and the interest that money earns.

The group has only three members: Albemarle, ICL Industrial Products and Chemtura, according to records the organization filed with California lobbying regulators. Those three companies are the largest manufacturers of flame retardants and together control 40 percent of the world market for these chemicals, according to The Freedonia Group, a Cleveland-based research firm.

Citizens for Fire Safety has spent its money primarily on lobbying and political expenses, tax records show. Since federal law makes it nearly impossible for the EPA to ban toxic chemicals and Congress rarely steps in, state legislatures from Alaska to Vermont have become the sites of intense battles over flame retardants.

Many of the witnesses supporting flame retardants at these hearings were either paid directly by Citizens for Fire Safety or were members of groups that benefited financially from Citizens for Fire Safety's donations, according to tax documents and other records.

At the same time, Citizens for Fire Safety has portrayed its opposition as misguided, wealthy environmentalists. But its opponents include a diverse group of public health advocates as well as firefighters who are alarmed by studies showing some flame retardants can make smoke from fires even more toxic.

Matt Vinci, president of the Professional Fire Fighters of Vermont, faced what he called "dirty tactics" when he successfully lobbied for his state to ban one flame retardant chemical in

2009.

Particularly offensive to Vinci were letters Citizens for Fire Safety sent to Vermont fire chiefs saying the ban would "present an additional hazard for those of us in the fire safety profession." But the letter's author wasn't a firefighter; he was a California public relations consultant.

"Citizens for Fire Safety did everything they could to portray themselves as firefighters, as Vermont citizens for fire safety, when it really wasn't Vermont citizens for fire safety at all," Vinci said.

The group also has misrepresented itself in other ways. On its website, Citizens for Fire Safety said it had joined with the international firefighters' association, the American Burn Association and a key federal agency "to conduct ongoing studies to ensure safe and effective fire prevention."

Both of those organizations and the federal agency, however, said that simply is not true.

"They are lying," said Jeff Zack, a spokesman for the International Association of Fire Fighters. "They aren't working with us on anything."

After inquiries from the Tribnne, Citizens for Fire Safety deleted that passage from its website.

Gillham, the executive director, declined to comment. Albemarle, Chemtura and ICL Industrial Products also declined to answer specific questions about the group.

Albemarle Chief Sustainability Officer David Clary did say that his company has been transparent about its funding of Citizens for Fire Safety.

"We believe that this support for advocacy groups is critical to raise awareness of the importance of fire safety and give a voice to those who want to speak out on this important public issue," Clary said in a written statement.

Citizens for Fire Safety is the latest in a string of industry groups that have sprung up on different continents in the last 15 years — casting doubt on health concerns, shooting down restrictions and working to expand the market for flame retardants in furniture and electronics.

For example, the Bromine Science and Environmental Forum, based in Brussels, may sound like a neutral scientific body. But it was founded and funded by four chemical manufacturers, including Albemarle, to influence the debate about flame retardants made with bromine.

Albemarle's global director of product advocacy, Raymond Dawson, said in blunt testimony before Washington state lawmakers in 2007 that the forum is "a group dedicated to generating science in support of brominated flame retardants."

An official from Burson-Marsteller, the global public relations firm that helps run the organization, said the bromine group is not misleading anyone because regulators, scientists and other stakeholders are well-aware it represents industry.

The PR firm also helps run the Alliance for Consumer Fire Safety in Europe, which is funded by a trade association of flame retardant manufacturers. The alliance's director, Bob Graham, said the group's aim is to improve fire-safety standards for upholstered furniture sold in Europe.

The group's website taps into the public's fear of fire, touting an "interactive burn test tool" that allows visitors to choose a European country and watch a sofa from that nation being torched.

Next to a photo of an easy chair fully engulfed in flames, four words stand out in large capital letters: "ARE YOU SITTING COMFORTABLY?"

'IMAGINE A CHILD CRYING'

The amount of flame retardants in a typical American home isn't measured in parts per billion or parts per million. It's measured in ounces and pounds.

A large couch can have up to 2 pounds in its foam cushions. The chemicals also are inside some highchairs, diaper-changing pads and breast-feeding pillows. Recyclers turn chemically treated foam into the padding underneath carpets.

"When we're eating organic, we're avoiding very small amounts of pesticides," said Arlene Blum, a California chemist who has fought to limit flame retardants in household products. "Then we sit on our couch that can contain a pound of chemicals that's from the same family as banned pesticides like DDT."

These chemicals are ubiquitous not because federal rules demand it. In fact, scientists at the U.S. Consumer Product Safety Commission have determined that the flame retardants in household furniture aren't effective, and some pose unnecessary health risks.

The chemicals are widely used because of an obscure rule adopted by California regulators in 1975. Back then, a state chemist devised an easy-to-replicate burn test that didn't require manufacturers to set furniture on fire, an expensive proposition.

The test calls for exposing raw foam to a candle-like flame for 12 seconds. The cheapest way to pass the test is to add flame retardants to the foam inside cushions.

But couches aren't made of foam alone. In a real fire, the upholstery fabric, typically not treated with flame retardants, burns first, and the flames grow big enough that they overwhelm even fire-retardant foam, scientists at two federal agencies have found.

Nevertheless, in the decades since that rule went into effect, lawyers have regularly argued that their burn-victim clients would have been spared if only their sofas had been made with California foam. Faced with the specter of these lawsuits -- and the logistical challenge of producing separate products just for California -- many manufacturers began using flame retardant foam across their product lines.

As a result, California has become the most critical battleground in recent years for advocates trying to reduce the prevalence of these chemicals in American homes.

Citizens for Fire Safety has successfully fought back with a powerful, and surprising, tactic: making flame retardants a racial issue.

The group and witnesses with ties to it have argued that impoverished, minority children would burn to death if flame retardants were removed from household products.

In 2009, for instance, members of the California State Assembly were considering a bill that would have made it unnecessary to add flame retardants to many baby products by excluding them from the state's flammability regulation.

Up to the microphone stepped Zyra McCloud, an African-American community activist from Inglewood, Calif.

McCloud was president of a community group that listed Citizens for Fire Safety as a sponsor on its website and included photos of McCloud with Gillham, the executive director. She did not disclose this connection to the assembly, nor was she asked.

In a news release, Citizens for Fire Safety already had quoted McCloud saying that minority children, who constitute a disproportionate share of fire deaths, would bear the brunt of the "ill-conceived and unsafe legislation."

At the hearing, the committee chairwoman told both sides they were out of time for testimony, but McCloud pleaded with her to allow two elementary school students from her district to address lawmakers.

"We have spent all weekend long with the kids that have had family members and friends who have died in fires, and we are praying and appealing to you that you would at least allow the two boys to speak," she said.

One of the boys, a 10-year-old, read from a statement.

"I just want you to imagine a child crying for help in a burning building, dying, when there was a person who only had to vote to save their life," he said.

Citizens for Fire Safety prevailed. The bill later went down to defeat.

McCloud told the Tribune, "I've always been a person that's fought against things that would hurt children." She then asked for questions in writing but never answered them.

Nearly two years after that bill failed, one of the nation's top burn surgeons would also invoke the image of a dead child before California lawmakers on behalf of Citizens for Fire Safety.

'THIS IS HORRIBLE'

When Dr. David Heimbach walked into the California Senate committee hearing last year, the stakes had never been higher for flame retardant manufacturers.

Once again, senators were considering an overhaul of the state's flammability regulation — one that advocates believed would dramatically reduce the amount of flame retardants in American homes.

The bill would allow manufacturers to choose the existing candle-like flame test or a new one based on a smoldering cigarette, a far more common source of fires than candles. Manufacturers could pass the new test by using resistant fabrics rather than adding toxic chemicals to the foam inside.

To maintain the status quo — and avoid a hit to the bottom line — chemical makers needed to stress that fires started by candles were a serious threat.

Heimbach, Citizens for Fire Safety's star witness, did just that.

With Citizens for Fire Safety's Gillham watching from the audience, Heimbach not only passionately described the fatal burns a 7-week-old Alaska patient received lying on a pillow that lacked flame retardants, he also blamed the 2010 blaze on a candle.

In fact, he specifically said the baby's mother had placed a candle in the girl's crib.

Heimbach had told similar stories before, the Tribune found. In 2009, he told a California State Assembly committee that he had treated a 9-week-old girl who died that spring after a candle beside her crib turned over. "We had to split open her fingers because they were so charred," he testified.

In 2010, he told Alaska lawmakers about a 6-week-old girl from Washington state who died that year after a dog knocked a candle onto her crib, which did not have a flame retardant

mattress.

Heimbach's hospital in Seattle, Harborview Medical Center, declined to help the Tribune confirm his accounts. But records from the King County medical examiner's office show that no child matching Heimbach's descriptions has died in his hospital in the last 16 years.

The only infant who came close in terms of age and date of death was Nancy Garcia-Diaz, a 6-week-old who died in 2009 after a house fire in rural Washington.

In an interview, Heimbach said his anecdotes were all about the same baby — one who died at his hospital, though he didn't know the child's name. Contrary to his testimony, he said he had not taken care of the patient.

Told about Nancy, Heimbach said she was probably the baby he had in mind and emailed a Tribune reporter two photographs of a severely burned child, images that he said he had used in a presentation at a medical conference. Medical records and Nancy's mother confirmed those pictures were indeed of Nancy.

But Nancy didn't die in a fire caused by a candle, as Heimbach has repeatedly testified. Fire records obtained by the Tribune show the blaze was caused by an overloaded, overheated extension cord.

"There were no candles, no pets — just the misuse of extension cords," said Mike Makela, an investigator for the Snohomish County fire marshal's office.

In his testimony last year, Heimbach stated the baby was in a crib on a fire-retardant mattress and on a non-retardant pillow. The upper half of her body was burned, he said.

But public records show there was no crib — she was resting on a bed — and no pillow. And, Makela said, flame retardants played no role in the pattern of her burns.

Fire authorities, Heimbach said, "may know more about it than I do, but that was the information that I had."

Heimbach said he couldn't recall who gave him that information but that Citizens for Fire Safety did not help craft his statements. He said the group has paid for his travel to testify and for some of his time, though he would not give a dollar amount.

The details of his statements, he said, weren't as important as the principle. "The principle is that fire retardants will retard fires and will prevent burns," he said.

Later, Heimbach said through his attorney that federal rules prohibit him from disclosing information that would identify a patient. He said that when describing particular burn cases, he follows standard protocol under the rules by "de-identifying" patients — that is, changing or omitting identifying information to protect their privacy.

But in testimony at state hearings, Heimbach not only changed facts, he added new ones, such as candles starting deadly blazes and the lack of flame retardants — details that aided the chemical industry's position.

Nancy's mother, who asked that her name not be used, said she never granted Heimbach permission to use her daughter's photograph.

"Nancy's memory is sacred to us," she said. "My daughter deserves respect. She lived such a short time and she suffered a lot. This is horrible."

Heimbach was head of Harborview's burn center for 25 years; he also was a professor of surgery at the University of Washington until his retirement last year. He estimated he might

have saved "hundreds if not thousands" of lives. In 2009, the Dalai Lama presented Heimbach an award for his pioneering care of burn victims around the world.

"I'm a well-meaning guy," Heimbach said. "I'm not in the pocket of industry."

When Heimbach testified last spring in California on the bill that could have significantly reduced the use of flame retardants, he didn't tell lawmakers he was altering facts about the burn victim. Only when asked by a senator did he reveal that Citizens for Fire Safety paid for his trip there.

When it came time to vote, the senators overwhelmingly sided with Heimbach and Citizens for Fire Safety, sticking with the furniture standard based on a candle-like flame.

Public health advocates had one last hope: Senators had seven days in which they could change their votes. As the advocates tried to persuade senators to reconsider, Citizens for Fire Safety put out a news alert that linked to a video called "Killer Couches!"

To the sounds of sinister music and crackling flames, a sofa made without flame retardants became an inferno. Then these words appeared: "Are You Sitting Comfortably?"

No senators changed their votes, and the bill was dead. The chemical companies had won again.

Tribune reporter Michael Hawthorne contributed to this report.

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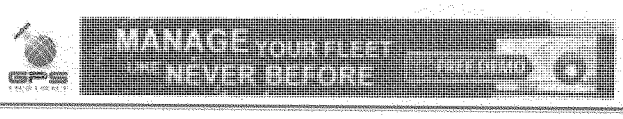

Senator BOXER. Now, Ms. Miller, you talked about the importance of the Maryland law, and going after the bibs. Is that correct? Was it Maryland or Prop 65?

Ms. MILLER. Prop 65.

Senator BOXER. Prop 65. I want you to know that many attorneys general agree with your point. So maybe Ms. Gorsen sort of hedged, she didn't exactly give the answer I think Senator Vitter was looking for, but she said pretty much, it doesn't hurt anybody's laws. That was kind of the way I took her answer. It wasn't that definitive, but pretty much the laws stand.

But I would rather trust, in this particular case, attorneys general from across the Country, including States, as my own, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Oregon, Vermont, Washington, we have separate letters from New Mexico and from New York. And your testimony here, because you showed us the results of working under the law as it exists.

So let me just say to all of you, and Sister, again, I so appreciate what you said, because you said it in the calmest tone I have ever heard, but what advocacy you have brought to bear, and how much it means to me, and to all of us, that you are here.

Ms. Buermeyer, I have a question. You represent the Breast Cancer Fund. Does the Breast Cancer Fund think S. 1009 is better than current law or not?

Ms. BUERMEYER. Thank you, Chairwoman. We think all told that this bill actually takes us a step back from where we are in current law.

Senator BOXER. That is important. I am sitting here as the Chairman of the Environment and Public Works Committee. And the Breast Cancer Association that represents the victims here tells us that S. 1009 is a step backward. I can't ignore that. I want a bill, and Senator Vitter, I hope we will get there. We have had tough issue before, would we ever get a WRDA bill, would we ever get a formaldehyde bill. We did. We got a highway bill. These things are not easy.

But I just want to say in closing my remarks to this panel, do you all stand ready to work with us? Because the next step that I hope to take, if Senator Vitter is willing, is to start meeting directly with Senator Vitter, Senator Udall, with my team and his team, and mark up the bill. That is what I really want to do. So we will see what principles, I am hopeful today we have all agreed we want certainty, we want to protect the most vulnerable, we want to make sure that children, I want to make sure children are specifically mentioned. We want to base this on science, on deadlines, on protecting the States that want to protect their citizens more, on protecting victims. These are the principles that I have, and they are very similar to the principles Ms. Miller laid out when she said these are the four or five things.

I believe, if we can agree on those principles, then the devil is in the details for us to sit down in good faith. Will you all stand ready to help both of us if we ask for your help? Can I see the nodding of the heads?

[Witnesses respond in the affirmative.]

Senator BOXER. Absolutely. OK. Well, it means a lot. I think, Senator Vitter, we have just a terrific array of experts on all sides

of this issue moving forward. And I would turn to you for your closing questions and comments.

Senator VITTER. I will just make some brief closing comments. I found this hearing very, very useful, and it continues a lot of conversations with all interested stakeholders that have been welcome that we have been having for weeks. And to answer your question, Madam Chairman, I not only stand ready to do what you are describing, I have been doing it for well over a month with many other members, with many other interested stakeholders. And everybody, including yourself, has been invited to that table.

So we are not only ready to start, we started over a month ago and are eager to continue. I think this hearing and this discussion is a very productive step forward in that, and will continue and resolve all the issues and clarifications that we can possibly resolve.

I think doing that, using Lautenberg-Vitter as a base, resolving those issues, clarifying everything we can, it won't get rid of all of our differences. I think it will, if it is done in good faith, as we have been doing, resolve 80 plus percent of them, and we will have a solid bipartisan bill that cannot only be talked about at a hearing, but that can actually be passed into law in a divided Congress.

So I would just close with that thought. Again, my prediction is, we will work through this in good faith as we have been, we will clarify 80 percent of what we are talking about. We probably will have legitimate, good faith differences about some things. And at that point, I hope we don't, none of us, cling to a bill that may be perfect in any of our individual minds that will not pass. I hope we coalesce around a strong, bipartisan, good faith product that will pass into law.

That is my game plan and my goal. I appreciate this hearing as a part of that process and step forward.

Senator BOXER. With that very positive close, I share it, I have been working on this since 2005 with Senator Lautenberg. So it does take a lot of work. We couldn't get it done because there were irreconcilable differences. And I think we can definitely write a bill where there are some differences, but you cannot get a bill if the basic principles are at odds. I am very hopeful from what I have heard today from you, Senator, that the basic principles will not be at odds, if we can come together on protecting kids, on protecting States' rights, on protecting victims' rights, on making sure we base everything on science, we give certainty to the industry.

If we agree on those principles, I am absolutely certain we will have a great bill. And to all of you who came and stayed since early this morning, you are doing a duty for your Country and we do appreciate it.

We stand adjourned. Thank you very much.

[Whereupon, at 3:05 p.m., the Committee was adjourned.]

[An additional statement submitted for the record follows:]

STATEMENT OF HON. JEFF SESSIONS,
U.S. SENATOR FROM THE STATE OF ALABAMA

Thank you, Chairman Boxer, for holding today's hearing about efforts to modernize our nation's chemical safety laws. The Toxic Substances Control Act ("TSCA") was signed into law by President Ford in 1976. Today, there is general agreement on several key principles for reform:

1. Chemicals regulation is changing globally and TSCA needs to be updated and modernized;
2. The United States of America should be a global leader in chemicals research, production, and safe use;
3. States have an important role to play in protecting the health and well-being of their citizens, but a patchwork of State regulations governing chemicals manufacturing and use can adversely impact the interstate and international market for chemicals;
4. The U.S. needs a regulatory program that is manageable, protects public health, and ensures that the U.S. has a globally competitive chemical industry that creates jobs for Americans and helps make technological advancements that can improve the quality of life for all people;
5. More chemical safety data should be made publicly available to enhance public confidence in the safe use of chemicals; and
6. Policymakers should legislate carefully in this arena as chemical manufacturing plays an essential role in the nation's economy. In Alabama, chemical manufacturing contributes more than $1.82 billion to the state's GDP (2009 figures) and chemicals are the state's second largest export (2009). Currently, Alabama has over 20 chemical companies with 100 or more employees.

Notwithstanding a general recognition of the need to modernize TSCA in line with these principles, bipartisan reform legislation has remained elusive for many years. We all know how passionately our revered colleague, Senator Lautenberg, worked on this issue, and how difficult it was to reach agreement on a bill that could actually become law.

In fact, when Senators Lautenberg and Vitter introduced the Chemical Safety Improvement Act in May of this year, I was as surprised as anyone. Many of us wondered: would it be a bill that could garner substantial, bipartisan support, protect public health, and actually help make the U.S. chemical manufacturing sector safer and more competitive?

Today, the Lautenberg-Vitter bill has more than 25 co-sponsors in the Senate (including 12 Democrats). The bill has the strong endorsement of the New York Times and the Washington Post, the Environmental Defense Fund, as well as conservative and liberal members of the Senate. The bill also has the strong support of the U.S. chemical sector including the American Chemistry Council, companies with a strong Alabama presence including BASF and MeadWestvaco, and a long list of more than 90 other associations or business groups. With prospects for this bill looking favorable, the bill has even been heralded by some as the most significant piece of environmental reform legislation since the 1990 Clean Air Act Amendments.

We have studied the Lautenberg-Vitter bill closely, and I believe their bill has many good components:

- Provides a reasonable framework for assessing chemicals using the best available science.
- Provides a reasonable and protective safety standard for chemicals.
- Provides a reasonable screening process to prioritize chemicals as "high priority" or "low priority."
- Allows States to seek expedited review for chemicals of concern.
- Provides a systematic and transparent approach for evaluating major toxic effects of chemicals.
- Improves the process for seeking approval for new chemicals or significant new uses of chemicals.
- Requires greater transparency while also seeking to protect legitimate confidential business information.

I look forward to learning more about this legislation today and hearing from our witnesses.

As we consider these issues, I would like to highlight a few potential issues that should be considered.

First, I believe we need to be careful to ensure that any effort to improve the chemical safety process—including both Federal and State involvement—does not get bogged down in litigation, as so often happens in the realm of Federal environmental law.

Second, I am concerned about provisions in the current TSCA that impose strict liability and criminalize non-criminal behavior. There is a pervasive problem in Federal law today involving the over-criminalization of non-criminal actions. Ours is a constitutionally limited government that should respect the rule of law, individual freedom, and common law principles of justice and equity, and for that reason, we need to be careful to ensure that Federal laws like TSCA do not impose an unwarranted degree of criminal or civil liability for behavior that may not warrant penalization of that magnitude.

Third, while I greatly respect the role of the states in protecting public health—particularly as a former Attorney General of my state, I believe that Congress needs to be careful to ensure that any process for giving states waivers from preemption in this subject matter is narrow and clearly defined. The waiver process needs to ensure that it does not undercut the national regulatory certainty that is needed to protect the chemical sector from a patchwork of state laws that could render the chemical sector non-competitive.

Finally, I believe we need to make sure that final legislation on this topic protects human health while also promoting the global competitiveness of the U.S. chemical manufacturing sector. For example, Section 23 of TSCA (40 U.S.C. 2629), which currently requires EPA to prepare an annual report on its TSCA activities, could be amended to require EPA to survey industry and other stakeholders and evaluate, on an annual basis, ways to enhance U.S. global economic competitiveness through changes to U.S. chemical safety laws or regulations. This is not yet included in the current bills before us, but I think it is worth considering.

Madam Chairman, thank you for holding today's hearing.

I especially want to thank our Ranking Member, Senator Vitter, for his tremendous work on this issue.

I look forward to hearing from the witnesses today.

[Additional material submitted for the record follows:]

Essential Principles for Reform of Chemicals Management Legislation

The U.S. Environmental Protection Agency (EPA) is committed to working with the Congress, members of the public, the environmental community, and the chemical industry to reauthorize the Toxic Substances Control Act (TSCA). The Administration believes it is important to work together to quickly modernize and strengthen the tools available in TSCA to increase confidence that chemicals used in commerce, which are vital to our Nation's economy, are safe and do not endanger the public health and welfare of consumers, workers, and especially sensitive sub-populations such as children, or the environment.

The following Essential Principles for Reform of Chemicals Management Legislation (Principles) are provided to help inform efforts underway in this Congress to reauthorize and significantly strengthen the effectiveness of TSCA. These Principles present Administration goals for updated legislation that will give EPA the mechanisms and authorities to expeditiously target chemicals of concern and promptly assess and regulate new and existing chemicals.

Principle No. 1: Chemicals Should Be Reviewed Against Safety Standards That Are Based on Sound Science and Reflect Risk-based Criteria Protective of Human Health and the Environment.

EPA should have clear authority to establish safety standards that are based on scientific risk assessments. Sound science should be the basis for the assessment of chemical risks, while recognizing the need to assess and manage risk in the face of uncertainty.

Principle No. 2: Manufacturers Should Provide EPA With the Necessary Information to Conclude That New and Existing Chemicals Are Safe and Do Not Endanger Public Health or the Environment.

Manufacturers should be required to provide sufficient hazard, exposure, and use data for a chemical to support a determination by the Agency that the chemical meets the safety standard. Exposure and hazard assessments from manufacturers should be required to include a thorough review of the chemical's risks to sensitive subpopulations

Where manufacturers do not submit sufficient information, EPA should have the necessary authority and tools, such as data call in, to quickly and efficiently require testing or obtain other information from manufacturers that is relevant to determining the safety of chemicals. EPA should also be provided the necessary authority to efficiently follow up on chemicals which have been previously assessed (e.g., requiring additional data or testing, or taking action to reduce risk) if there is a change which may affect safety, such as increased production volume, new uses or new information on potential hazards or exposures. EPA's authority to require submission of use and exposure information should extend to downstream processors and users of chemicals.

Principle No. 3: Risk Management Decisions Should Take into Account Sensitive Subpopulations, Cost, Availability of Substitutes and Other Relevant Considerations

EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns.

Principle No. 4: Manufacturers and EPA Should Assess and Act on Priority Chemicals, Both Existing and New, in a Timely Manner

EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the Agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations

Principle No. 5: Green Chemistry Should Be Encouraged and Provisions Assuring Transparency and Public Access to Information Should Be Strengthened

The design of safer and more sustainable chemicals, processes, and products should be encouraged and supported through research, education, recognition, and other means. The goal of these efforts should be to increase the design, manufacture, and use of lower risk, more energy efficient and sustainable chemical products and processes.

TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI). Manufacturers should be required to substantiate their claims of confidentiality. Data relevant to health and safety should not be claimed or otherwise treated as CBI. EPA should be able to negotiate with other governments (local, state, and foreign) on appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety.

Principle No. 6: EPA Should Be Given a Sustained Source of Funding for Implementation

Implementation of the law should be adequately and consistently funded, in order to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is meeting that goal. To that end, manufacturers of chemicals should support the costs of Agency implementation, including the review of information provided by manufacturers.

Testimony of Dr. Paul A. Locke

Associate Professor at John Hopkins Bloomberg School of Public Health,

Department of Environmental Health Studies, Center for Alternatives to Animal Testing

Submitted to The Senate Committee on Environment and Public Works, Full Committee hearing entitled, "Strengthening Public Health Protections by Addressing Toxic Chemical Threats." Wednesday, July 31, 2013 9:30 AM EDT

EPW Hearing Room - 406 Dirksen

Chairman Boxer, Ranking Member Vitter, Members of the Committee:

Thank you for the opportunity to submit testimony on the important issues of toxic chemical evaluation, advancing scientific research and efficiency and implementing public health protections.

As Congress seeks to find consensus on reforming our outdated TSCA law, it will be helpful to keep in mind important areas where agreement can and has been reached in recent years. One area of consensus is the goal of advancing alternative methods that do not use animals for chemical toxicity testing.

Stakeholders in the issue of chemical regulation have long agreed that advancing innovative testing methods, especially those that do not use animals, would be in the best interest for all involved. Industry has embraced the concept of non-animal testing, or in vitro testing, as a way to cut costs and learn about toxic cellular reactions. Animal testing can be very expensive and slow to produce usable data. Environmental and public health advocates have argued that advancing non-animal testing would provide an abundance of data in a timely fashion that regulators could use to help make decisions that protect public health and welfare. Animal welfare advocates have also pushed for less reliance on animal tests as a way to improve and advance humane science.

Recent scientific advances offer to fundamentally change the way chemicals are tested for human health risks. These advances, which include in vitro testing, make it possible to rely less heavily on animal studies and instead focus on evaluating chemicals' effects on biological processes in cells and organs. Through this approach, scientists can generate improved data to evaluate risks while expanding the number of chemical assessments, while taking less time and money and using fewer animal subjects. Several federal agencies — the Environmental Protection Agency, the Food and Drug Administration and the National Institutes of Health — embraced this approach and are working hard to further develop the science to make this vision a reality.

Existing chemical regulations place the burden of risk assessment on the EPA, and that is a heavy burden. More than 80,000 chemicals are registered for use in the United States and an estimated 2,000 new ones are introduced each year for use in everyday items such as foods, personal care products, prescription drugs, household cleaners, and lawn care products. Even if the burden of proving chemical safety shifts to industry, it is obvious that more efficient and accurate means of chemical testing must be employed. In March 2013, a Government Accountability Office report evaluated the EPA's efforts to strengthen its management of chemicals. The GAO found that the lack of data is one of the biggest impediments the EPA encounters in attempting to ensure chemical safety, even on substances prioritized for risk assessment.

It is worth noting that both of the major proposals for TSCA reform this year have included provisions that recognize the value of in vitro testing for regulatory decision-making. While these previous provisions could be stronger in their respective bills, the fact that they have been a common link shows that this is a fertile opportunity to build consensus. Strengthening the focus on in vitro, innovative science will increase the likelihood for consensus.

A strong system of in vitro testing will help provide the necessary data for a risk assessment regime that is more efficient, accurate and effective in evaluating chemicals for toxicity and safety. It is a common sense approach that will offer all Americans a more risk-free environment. And on that, I think we can all agree.

State Officials, Legal Experts, and Health, Environmental, and Consumer Groups That Have So Far Issued Statements Opposing Impacts of S. 1009

- Asbestos Disease Awareness Organization
- Breast Cancer Fund
- American Academy of Pediatrics
- American Association for Justice (formerly "Association of Trial Lawyers of America")
- Breast Cancer Action
- Alliance for Justice
- California Attorney General
- BlueGreen Allinace, including United Steelworkers, SEIU, UAW, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Communications Workers of America, Utility Workers Union of America, Sierra Club, and National Wildlife Federation
- California Department of Toxic Substances Control
- U.S. Public Interest Research Group (PIRG)
- Public Citizen
- Natural Resources Defense Counsel
- Learning Disabilities Association of NYS
- National Consumers League
- WE ACT for Environmental Justice
- California Communities Against Toxics
- Center for Environmental Health
- Environmental Working Group
- Alliance of Nurses for Healthy Environments

- Center for Health, Environment & Justice
- New York Lawyers for the Public Interest
- Beyond Pesticides
- Physicians for Social Responsibility Los Angeles
- Earthjustice
- Environmental Law Foundation
- Capital Region Action Against Breast Cancer (CRAAB!)
- Friends of the Earth U.S.
- Coalition for Clean Air
- Empire State Consumer Project
- Farmworker Association of Florida
- Ohio Citizen Action
- Mossville Environmental Action Now (MEAN)
- Black Women for Wellness
- Pesticide Action Network
- Center for Effective Government
- Clean and Healthy New York
- Clean Production Action
- Alaska Community Action on Toxics
- Commonweal
- Electronics TakeBack Coalition
- Environmental and Public Health Consulting
- Greenpeace

- Huntington Breast Cancer Action Coalition
- Center for Justice and Democracy
- Citizens' Environmental Coalition
- Indiana Toxics Action
- Global Community Monitor
- Glynn Environmental Coalition
- California Healthy Nail Salon Collaborative
- AllergyKids Foundation
- Healthy Child, Healthy World
- West County Toxics Coalition
- Women's Voices for the Earth
- Just Transition Alliance
- As You Sow
- Los Jardines Institute
- Story of Stuff Project
- Teens Turning Green
- Marine Environmental Research Institute
- Great Neck Breast Cancer Coalition
- Green America
- Health Care Without Harm
- Product Policy Institute
- Safeminds
- Science and Environmental Health Network

- Sciencecorps
- Texas Environmental Justice Advocacy Services (T.E.J.A.S.)
- Worksafe
- 34 law professors, legal scholars, and public interest lawyers:
    - John S. Applegate
      Walter W. Foskett Professor of Law
      Indiana University Maurer School of Law
    - Nicholas A. Ashford, Ph.D., J.D.
      Professor of Technology and Policy and Director
      MIT Technology & Law Program
      Massachusetts Institute of Technology
    - Hope Babcock
      Professor of Law and Co-Director, Institute for Public Representation
      Georgetown University Law Center
    - William W. Buzbee
      Professor of Law
      Emory Law School
      Visiting Professor of Law
      Georgetown University Law Center (Fall 2012)
    - Charles C. Caldart
      Lecturer in Environmental Law and Policy
      Massachusetts Institute of Technology
      Director of Litigation
      National Environmental Law Center
    - Alejandro E. Camacho
      Professor of Law and Director, Center for Land, Environment, & Natural Resources
      University of California, Irvine
    - Cinnamon P. Carlarne
      Associate Professor of Law
      Ohio State University Michael E. Moritz College of Law
    - David W. Case
      Associate Professor of Law
      University of Mississippi School of Law
    - Thomas Cluderay

General Counsel
Environmental Working Group
Adjunct Professor of Law
Georgetown University Law Center

- Carl F. Cranor
  Distinguished Professor of Philosophy and Faculty Member, Environmental Toxicology
  University of California

- David M. Driesen
  University Professor
  Syracuse University College of Law

- Stephen Dycus
  Professor of Law
  Vermont Law School

- Angelique Townsend EagleWoman (Wambdi A. WasteWin)
  Associate Professor of Law and James E. Rogers Fellow in American Indian Law
  University of Idaho College of Law

- Adam M. Finkel, Sc.D.
  Senior Fellow and Executive Director
  Penn Program on Regulation University of Pennsylvania Law School Professor of Environmental and Occupational Health University of Medicine and Dentistry of New Jersey
  School of Public Health

- Victor Flatt
  Tom and Elizabeth Taft Distinguished Professor of Law and Director, Center for Law, Environment, Adaptation, & Resources (CLEAR) University of North Carolina School of Law
  Distinguished Scholar of Carbon Markets Global Energy Management Institute
  University of Houston

- Steve C. Gold
  Associate Professor of Law
  Rutgers University School of Law - Newark Rutgers, The State University of New Jersey

- Carmen G. Gonzalez
  Professor of Law
  Seattle University School of Law

- Lisa Heinzerling
  Professor of Law
  Georgetown University Law Center

- Oliver Houck
  Professor of Law
  Tulane University School of Law

- Howard A. Latin
  Distinguished Professor of Law and Justice John J. Francis Scholar
  Rutgers University School of Law Rutgers, The State University of New Jersey

- Albert Lin
  Professor of Law
  UC Davis School of Law

- Mary L. Lyndon
  Professor of Law
  St. John's University School of Law

- Thomas O. McGarity
  Joe R. and Teresa Lozano Long Endowed Chair in Administrative Law
  University of Texas School of Law

- Joel A. Mintz
  Professor of Law
  Nova Southeastern University Law Center

- Joseph A. Page
  Professor of Law
  Georgetown University Law Center

- Rick Reibstein
  Adjunct Professor
  Boston University
  Faculty
  Harvard Extension School

- John Rumpler
  Senior Attorney
  Environment America

- Noah Sachs
  Professor of Law
  University of Richmond School of Law

- Sidney A. Shapiro
  University Chair in Law
  Wake Forest University

- Amy Sinden
  Professor of Law
  Temple University Beasley School of Law

- William Snape
  Fellow and Practitioner in Residence
  American University Washington College of Law

- Rena Steinzor
  Professor of Law
  University of Maryland School of Law

- Robert R.M. Verchick
  Gauthier-St. Martin Chair in Environmental Law
  Loyola University New Orleans

- Wendy Wagner
  Joe A. Worsham Centennial Professor
  University of Texas School of Law

ACS Chemistry for Life®

American Chemical Society

OFFICE OF THE PRESIDENT

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July 26, 2013

The Honorable David Vitter
United States Senate
516 Hart Senate Office Building
Washington, DC 20510-1805

Dear Senator Vitter:

On behalf of the American Chemical Society, I am writing to endorse S.1009, the Chemical Safety Improvement Act. ACS represents over 163,000 chemists and chemical engineers and was chartered by Congress in 1937 to provide guidance on science and policy matters.

ACS believes the time has arrived for all stakeholders to come together and work with Congress to update chemicals management and regulatory policy. S. 1009 represents a thoughtful and bipartisan approach to this complex issue, and ACS supports the approaches established in the legislation.

The need to earn the public's confidence in chemical product safety is essential to both the health and safety of our nation's citizens and maintaining a robust domestic chemical enterprise. Policy should be based on the concept that safety is a shared responsibility between government, industry, the value chain, and consumers. EPA should have the information and regulatory authority necessary to ensure chemical product safety, while working collaboratively with industry to drive innovation and sustainable chemistry.

Thank you for your hard work on this legislation, and ACS recognizes the lifelong commitment of your late colleague, Senator Frank Lautenberg, towards this important topic. We look forward to working with you going forward. Should you have any questions, please do not hesitate to contact Glenn Ruskin, Director, ACS Office of Public Affairs at 202-872-4475 or g_ruskin@acs.org.

Sincerely,

Marinda Li Wu

Marinda Wu, Ph.D.
President

cc: The Honorable Barbara Boxer

North American Flame Retardant Alliance

August 7, 2013

The Honorable Barbara Boxer
Chairman
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable David Vitter
Ranking Minority
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Re: Submission to the Record for the Full Committee Hearing Entitled Strengthening Public Health Protections by Addressing Toxic Chemical Threats, July 31, 2013

Dear Senators Boxer and Vitter:

The American Chemistry Council's North American Flame Retardant Alliance (NAFRA) appreciates the opportunity to submit this information for the record of the July 31 hearing on amendment to the Toxic Substances Control Act (TSCA). NAFRA represents North American manufacturers of flame retardants based on bromine, phosphorus, nitrogen, and inorganic compounds.

In his written testimony for the hearing, Environmental Working Group's (EWG) President, Kenneth Cook, provided some inaccurate information regarding the flame retardant chemical tetrabromobisphenol A (TBBPA) that we would like to clarify. TBBPA is not used in car seats, play pens and baby swings, as suggested in the EWG testimony. It is used primarily as a reactive flame retardant in the manufacture of epoxies for printed circuit boards. In this application, TBBPA forms part of the polymeric backbone of the epoxy resin and no longer exists as a free chemical. TBBPA also used to a lesser degree as an additive to ABS plastics used in appliances and housing for business machines and electronic equipment. As a result of its primary use in electronic applications, and the fact that in much of its use TBBPA is reacted with other materials, the potential for exposure to TBBPA is much lower than was suggested in Mr. Cook's written testimony.

The EWG testimony also included reference to preliminary results of toxicity testing recently completed by the National Toxicology Program (NTP). According to NTP's web site, the pathology report from the testing referenced by EWG currently is undergoing peer review and no final report of the study results is yet available.[1] It would be premature, therefore, to reach a conclusion about the potential significance of the study results. Until these data have been properly peer reviewed there is a significant amount of toxicity information that has been

[1] The status of NTP studies on TBBPA is available at http://ntp.niehs.nih.gov/index.cfm.

considered in assessing TBBPA's potential to cause adverse health effects. TBBPA was fully registered under the European REACH program in 2010. As recently as 2011, the European Food Safety Authority (EFSA) concluded that:

> The available *in vitro* data indicate that TBBPA is not genotoxic. There are no long-term toxicity/carcinogenicity studies for TBBPA. However, based on the weight of evidence (absence of genotoxicity *in vitro*, no indications for proliferative changes or cytotoxicity in studies with up to 90 days repeated administration, no immunosuppression, except possibly at high doses), the [EFSA Panel on Contaminants in the Food Chain] concluded that there are no indications that TBBPA might be carcinogenic.[2]

Based on the available information, the Environmental Protection Agency recently announced that it would not include TBBPA among the 20 flame retardants to be reviewed as part of the Agency's Chemical Work Plan program for 2013-2014.

NAFRA respectfully requests that this letter be included in the hearing record for July 31. Thank you.

Sincerely,

Steve Risotto

Stephen P. Risotto
Senior Director

---

[2] EFSA. Scientific Opinion on Tetrabromobisphenol A (TBBPA) and its derivatives in food. *EFSA Journal* (12):2477 (2011). The opinion is available at http://www.efsa.europa.eu/en/efsajournal/doc/2477.pdf.

AMERICAN COLLEGE OF
OCCUPATIONAL AND
ENVIRONMENTAL MEDICINE

July 25, 2013

The Honorable David Vitter
U.S. Senate
Washington, DC 20510

Dear Senator:

On behalf of the American College of Occupational and Environmental Medicine (ACOEM), I am writing to commend you and the bi-partisan group of Senators for introducing the legislation, S.1009, the Chemical Safety Improvement Act.

ACOEM, an organization of more than 4,000 occupational physicians and other health care professionals, provides leadership to promote optimal health and safety of workers, workplaces, and environments.

The Chemical Safety Improvement Act would for the first time require that EPA review the safety of all chemicals in commerce. This fixes a significant flaw in current TSCA, which allowed the great majority of chemicals on the market today to be grandfathered in without any evidence of their safety.

This legislation takes a common sense approach to enforcement by evaluating all chemicals in current commercial use and labeling them either "high" or "low" priority based on their potential environmental and health risks. This approach means that the EPA will be placing greater scrutiny on the chemicals that might actually be harmful, while streamlining the approval path for those that are safe. It would also implement a process for the review of new chemicals.

If a chemical is found to be unsafe, the CSIA gives new tools to the EPA to protect our health. It gives the EPA the authority to take safety measures that range from requiring labels to completely banning the use of a chemical. And the CSIA takes special measures to protect the most vulnerable among us. It would require the EPA to evaluate the risks posed to children and pregnant women when determining whether a chemical is safe. Current law does not require specific consideration of the effects of chemicals on vulnerable populations.

There are aspects of the bill that need to be strengthened, including ensuring that safety determinations indeed protect vulnerable populations from exposure; setting deadlines to direct EPA to initiate and complete actions; and increasing EPA's ability to

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address disproportionately high exposures to chemicals in some communities. We look forward to working with you and your Senate colleagues to address these issues. On balance, however, ACOEM is urging support for the Chemical Safety Improvement Act because it as needed to modernize the Toxic Substances Control Act (TSCA), which is seriously flawed and needs fundamental reform.

Please do not hesitate to contact me at 847-818-1800 or Pat O'Connor, ACOEM's Director of Government Affairs, at 202-223-6222, if you and your staff have any questions or need additional information.

Again, thank you for your leadership.

Sincerely,

Ronald R. Loeppke, MD, MPH, FACOEM
President

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Building and Construction Trades
www.BCTD.org

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12th Vice President

KENNETH E. RIGMAIDEN
13th Vice President

NORTH AMERICA'S
BUILDING TRADES UNIONS

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July 24, 2013

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of the nearly 3 million skilled craft professionals who comprise the 13 national and international unions of the Building and Construction Trades Department, AFL-CIO, I write in support of the Chemical Safety Improvement Act (CSIA) of 2013, S. 1009, introduced by the late Senator Frank Lautenberg and Senator David Vitter. The CSIA will amend Title I of the Toxic Substances Control Act (TSCA) which regulates the safety of chemicals in commerce.

The CSIA will provide significant improvements to strengthen TSCA and the federal regulation of chemicals in commerce. It is widely acknowledged that the TSCA is not working as Congress intended. The CSIA will authorize EPA to require that chemicals are screened before entering commerce. High priority chemicals will require additional safety evaluations and EPA will be able to take timely action against chemicals found to be harmful to human health. The importance of these improvements has generated support for CSIA from organizations including the Environmental Defense Fund, American Academy of Pediatrics, major media editorial boards including the New York Times and Washington Post, and a growing number of labor and industry partners.

Unlike previous efforts to amend TSCA, the CSIA has already generated balanced bipartisan support in the Senate. Leaders of both parties recognize the importance of modernizing the TSCA by delivering a bill with achievable, needed improvements that can be passed with a strong majority. The CSIA meets these requirements. The CSIA will improve EPA's ability to protect health and the environment, and provide needed regulatory certainty to the makers and users of chemical products. Modernizing the TSCA takes on additional importance as the U.S. chemical industry prepares to undertake large scale reinvestment in U.S. production facilities that will generate jobs and growth.

Some provisions of CSIA should be improved to maintain and build support. Modifications may be needed to address protection of vulnerable populations and the ability of states to regulate chemicals of specific local concern. We agree with proponents of the CSIA that on balance the proposed legislation deserves support and that these issues should be resolved in the legislative process. We look forward to working with you in support of S. 1009.

Thank you for your consideration.

Sincerely,

Sean McGarvey
President

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International Association of
BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

WALTER W. WISE
GENERAL PRESIDENT
202 383-4810

Affiliated with AFL-CIO

SUITE 400
1750 NEW YORK AVE., N.W.
WASHINGTON, D.C. 20006

May 21, 2013

The Honorable Kay Hagan
521 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Hagan:

Modernizing the Toxic Substances Control Act (TSCA) is a priority to support existing jobs and create new jobs throughout the US economy, including construction jobs associated with US chemical industry expansion. We join in support of the effort by Senator Vitter and a bipartisan group that is working on an achievable, bipartisan approach to modernize TSCA that will 1) protect worker and public health, 2) protect the environment, and 3) support the US chemical industry's ability to innovate, expand and provide good jobs.

- The US chemical industry is planning major investments in new domestic facilities, including multi-billion dollar investments. These investments will create tens of thousands of badly needed, well-paid new construction and maintenance jobs.
- New US chemical facilities will use the abundant supply of US natural gas, made possible by hydraulic fracturing of shale, to make products here in the US for our market and for export. This is a winner for US jobs in domestic construction.
- The chemical industry now provides 800,000 good US jobs, and supports millions more US jobs in energy and energy efficiency, construction, transportation, manufacturing, pharmaceuticals, high technology and other sectors.
- There are groups opposed to the chemical industry and its expansion that would like to use TSCA modernization to impose significant new restrictions on the US industry, limiting the opportunity provided by the planned expansion of the industry.

We ask that you and your colleagues join in working for a bipartisan solution, including consideration of cosponsoring Senator Vitter's new approach or other approaches that can gain bipartisan backing. A modernized TSCA will protect worker and public health, protect the environment, and promote job creation in US manufacturing and construction.

Respectfully,

Walter W Wise
GENERAL PRESIDENT

WWW:tmp

International Association of
BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

WALTER W. WISE
GENERAL PRESIDENT
202 383-4810

Affiliated with AFL-CIO

SUITE 400
1750 NEW YORK AVE., N.W.
WASHINGTON, D.C. 20006

May 21, 2013

The Honorable Joe Donnelly
B33 Russell Senate Office Building
Washington, DC 20510

Dear Senator Donnelly:

Modernizing the Toxic Substances Control Act (TSCA) is a priority to support existing jobs and create new jobs throughout the US economy, including construction jobs associated with US chemical industry expansion. We join in support of the effort by Senator Vitter and a bipartisan group that is working on an achievable, bipartisan approach to modernize TSCA that will 1) protect worker and public health, 2) protect the environment, and 3) support the US chemical industry's ability to innovate, expand and provide good jobs.

- The US chemical industry is planning major investments in new domestic facilities, including multi-billion dollar investments. These investments will create tens of thousands of badly needed, well-paid new construction and maintenance jobs.
- New US chemical facilities will use the abundant supply of US natural gas, made possible by hydraulic fracturing of shale, to make products here in the US for our market and for export. This is a winner for US jobs in domestic construction.
- The chemical industry now provides 800,000 good US jobs, and supports millions more US jobs in energy and energy efficiency, construction, transportation, manufacturing, pharmaceuticals, high technology and other sectors.
- There are groups opposed to the chemical industry and its expansion that would like to use TSCA modernization to impose significant new restrictions on the US industry, limiting the opportunity provided by the planned expansion of the industry.

We ask that you and your colleagues join in working for a bipartisan solution, including consideration of cosponsoring Senator Vitter's new approach or other approaches that can gain bipartisan backing. A modernized TSCA will protect worker and public health, protect the environment, and promote job creation in US manufacturing and construction.

Respectfully,

Walter W Wise

GENERAL PRESIDENT

WWW:tmp

International Association of
BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

WALTER W. WISE
GENERAL PRESIDENT
202 383-4810

Affiliated with AFL-CIO

SUITE 400
1750 NEW YORK AVE., N.W.
WASHINGTON, D.C. 20006

May 21, 2013

The Honorable Mark Pryor
255 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Pryor:

Modernizing the Toxic Substances Control Act (TSCA) is a priority to support existing jobs and create new jobs throughout the US economy, including construction jobs associated with US chemical industry expansion. We join in support of the effort by Senator Vitter and a bipartisan group that is working on an achievable, bipartisan approach to modernize TSCA that will 1) protect worker and public health, 2) protect the environment, and 3) support the US chemical industry's ability to innovate, expand and provide good jobs.

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Respectfully,

Walter W Wise

GENERAL PRESIDENT

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International Association of
BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

WALTER W. WISE
GENERAL PRESIDENT
202 383-4810

Affiliated with AFL-CIO

SUITE 400
1750 NEW YORK AVE., N.W.
WASHINGTON, D.C. 20006

May 21, 2013

The Honorable Heidi Heitkamp
G55 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Heitkamp:

Modernizing the Toxic Substances Control Act (TSCA) is a priority to support existing jobs and create new jobs throughout the US economy, including construction jobs associated with US chemical industry expansion. We join in support of the effort by Senator Vitter and a bipartisan group that is working on an achievable, bipartisan approach to modernize TSCA that will 1) protect worker and public health, 2) protect the environment, and 3) support the US chemical industry's ability to innovate, expand and provide good jobs.

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Respectfully,

Walter W Wise

GENERAL PRESIDENT

WWW:tmp

International Association of
BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

WALTER W. WISE
GENERAL PRESIDENT
202 383-4810

Affiliated with AFL-CIO

SUITE 400
1750 NEW YORK AVE., N.W.
WASHINGTON, D.C. 20006

May 21, 2013

The Honorable Joe Manchin
303 Hart Senate Office Building
Washington, DC 20510

Dear Senator Manchin:

Modernizing the Toxic Substances Control Act (TSCA) is a priority to support existing jobs and create new jobs throughout the US economy, including construction jobs associated with US chemical industry expansion. We join in support of the effort by Senator Vitter and a bipartisan group that is working on an achievable, bipartisan approach to modernize TSCA that will 1) protect worker and public health, 2) protect the environment, and 3) support the US chemical industry's ability to innovate, expand and provide good jobs.

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Respectfully,

Walter W Wise
GENERAL PRESIDENT

WWW:tmp

International Association of
BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

WALTER W. WISE
GENERAL PRESIDENT
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SUITE 400
1750 NEW YORK AVE., N.W.
WASHINGTON, D.C. 20006

May 21, 2013

The Honorable Mary Landrieu
703 Hart Senate Office Building
Washington, DC 20510

Dear Senator Landrieu:

Modernizing the Toxic Substances Control Act (TSCA) is a priority to support existing jobs and create new jobs throughout the US economy, including construction jobs associated with US chemical industry expansion. We join in support of the effort by Senator Vitter and a bipartisan group that is working on an achievable, bipartisan approach to modernize TSCA that will 1) protect worker and public health, 2) protect the environment, and 3) support the US chemical industry's ability to innovate, expand and provide good jobs.

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Respectfully,

Walter W Wise

GENERAL PRESIDENT

WWW:tmp

International Association of Machinists and Aerospace Workers

9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

Area Code 301
967-4500

OFFICE OF THE INTERNATIONAL PRESIDENT

July 18, 2013

RE: Support for the Chemical Safety Improvement Act, S. 1009

Dear Senator,

On behalf of the International Association of Machinists and Aerospace Workers, I respectfully ask that you consider co-sponsoring the Chemical Safety Improvement Act of 2013 ("CSIA") S. 1009, introduced by the late Senator Frank Lautenberg (D-NJ) and Senator David Vitter (R-LA). This bi-partisan bill will amend and most importantly strengthen Title I of the Toxic Substances Control Act ("TSCA") regulating safety of chemicals in commerce.

Previous efforts to modernize TSCA since it passed in 1976 have failed for lack of compromise and bi-partisan support. Now, the CSIA has broken this pattern and is generating balanced support. It is a workable compromise that is politically achievable, providing the Environmental Protection Agency ("EPA") with essential tools to effectively regulate chemicals in commerce.

The CSIA will give EPA the authority to require that chemicals be screened before entering commerce. In addition, high priority chemicals will require additional safety evaluations and EPA will be given clear authority to take timely action against chemicals found to be harmful to human health. A strengthened federal chemical regulatory system will protect health, the environment, and allow the U.S. chemical industry to maintain its global leadership, innovate and provide good jobs. We think S. 1009 meets these fundamental requirements.

As a representative of workers in both the Chemical and Freight Rail Industries, we believe the CSIA will improve federal chemical safety regulation to the benefit of the workers, public health and the environment. Again, I urge you to co-sponsor this very important legislation. To do so, please contact Jan Brunner in Senator Manchin's office at (202) 224-3954 or email jan_brunner@manchin.senate.gov or Dimitri Karakitsos in Senator Vitter's office at (202) 224-6176 or email dimitri_karakitsos@epw.senate.gov.

If you have any questions, please contact Legislative Director Hasan Solomon at (301) 967-4575.

Sincerely,

R. Thomas Buffenbarger

R. Thomas Buffenbarger
International President

M. B. FUTHEY JR.
President, Transportation Division

JOHN PREVISICH
Assistant President,
General Secretary and Treasurer
Transportation Division

JAMES A. STEM JR.
National Legislative Director,
Transportation Division

SMART
Sheet Metal, Air, Rail and Transportation

Transportation Division
Washington Legislative Office

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www.utu.org
EMAIL: jstem@smart-union.org

June 27, 2013

Dear Senator:

On behalf of the SMART-Transportation Division (formerly the United Transportation Union), I respectfully request that you consider and join in support of S. 1009, the new Chemical Safety Improvement Act (CSIA) of 2013, sponsored by the late Senator Lautenberg and Senator Vitter.

As the U.S. chemical industry prepares for a new wave of domestic investment that will build major new facilities and support construction, manufacturing and transportation jobs, your support for a significantly improved chemical safety law is critical. The chemical industry directly and indirectly supports good jobs for millions of Americans, and the substantial tonnage of chemical shipments on the Nation's freight railroads helps to support railroad jobs.

The CSIA will amend Title I of the Toxic Substances Control Act (TSCA) to improve the safety of consumers and workers, and improve the TSCA so that chemical substance risks are better understood and managed. Importantly, as the list of cosponsors shows, the CSIA is a true bipartisan compromise with a real opportunity to achieve passage. With your support, the CSIA will be the first update to TSCA since it was originally adopted in 1976. The CSIA already has 22 cosponsors from across the political spectrum and we believe this bill deserves your support.

S.1009 will accomplish key goals: protect health and the environment; rebuild public confidence in federal chemical regulations; recognize the States' role in this system; focus on the information needed to make chemical safety determinations; promote greater transparency of information while protecting confidential business information; and promote innovation in the U.S. chemical industry and its diverse value chain. In short, CSIA will strengthen our chemical regulations and support the U.S. chemical industry's ability to grow, innovate and create jobs.

We are prepared to work with you in support of the bipartisan, achievable modernization of chemical regulations as set forth in S. 1009.

Sincerely yours,

James A. Stem, Jr.
National Legislative Director

July 30, 2013

The Honorable David Vitter
Ranking Member, Senate Committee on
Environment and Public Works
516 Hart Senate Office Building
Washington, D.C., 20510

The Honorable Michael D. Crapo
Ranking Member, Subcommittee on
Superfund, Toxics and Environmental Health
239 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Tom Udall
Chair, Subcommittee on Superfund,
Toxics and Environmental Health
110 Hart Senate Office Building
Washington, D.C., 20510

The Honorable Barbara Boxer
Chair, Senate Committee on
Environment and Public Works
112 Hart Senate Office Building
Washington, D.C., 20510

Dear Honorable Senators,

As Past Presidents of the Society of Toxicology, we have a deep commitment to the scientific discipline of toxicology. Toxicological science is an integral and necessary component of programs focused on protecting and improving public health and the environment. We have reviewed the proposed Chemical Safety Improvement Act (CSIA) and agree it would create a systematic and transparent framework under which EPA would assess the safety of chemicals in commerce.

The CSIA promotes use of best available science, fosters tiered testing and assessment, encourages development and application of advanced toxicological methods to reduce or replace lab animal studies where appropriate, and requires integration of exposure information to improve understanding of the safety of chemicals under conditions of intended use. In improving the Toxic Substances Control Act (TSCA), it is also critical that the law further enhances protection of public health by advancing use of the best available toxicological knowledge and practice for delineating the context of toxicity dose response data relative to actual environmental exposures.

As core emphases of toxicology, these provisions of the CSIA form a solid foundation from which improvements to TSCA can be built. It is indeed time for the U.S. to modernize TSCA, and we enthusiastically support the toxicological principles underpinning the refinements to chemical safety assessment practice and policy described in the CSIA.

We welcome the opportunity to assist Congress in ensuring that TSCA improvements fully reflect the principles and best practices of toxicology.

Respectfully submitted,

Past-Presidents of the Society of Toxicology

James S. Bus, Ph.D, DABT, ATS
Exponent, Inc., Midland, MI

Steven D. Cohen, D.Sc., ATS
MCPHS University, Worcester, MA
& Manchester, NH

Jon C. Cook, Ph.D, DABT, ATS
Pfizer, Inc., Groton, CT

George B. Corcoran, Ph.D, ATS
Wayne State University, Detroit, MI

Jack H. Dean, Ph.D, Hon. Sc.D, DABT, ATS
Drug Development Advisors, LLC &
University of Arizona, Oro Valley, AZ

John Doull, MD, Ph.D, FAACT, ATS
University of Kansas, Kansas City, KS

David L. Eaton, Ph.D
University of Washington, Seattle, WA

James E. Gibson, Ph.D, ATS
East Carolina University, Greenville, NC

Jay I. Goodman, Ph.D
Michigan State University, E. Lansing, MI

William F. Greenlee, Ph.D
The Hamner Institutes, Research Triangle Park, NC

Michael F. Holsapple, Ph.D, ATS
Battelle, Columbus, OH

Jerry B. Hook, Ph.D
Chesapeake Consulting Team, Royal Oak, MD

Meryl H. Karol, Ph.D, ATS
University of Pittsburgh, Pittsburgh, PA

Curtis D. Klaassen, Ph.D, DABT, ATS
University of Kansas, Kansas City, KS

James A. Popp, DVM, Ph.D, ATS, DACVP
Stratoxon, LLC, Lancaster, PA

Kenneth S. Ramos, MD, Ph.D, ATS
University of Louisville, Louisville, KY

Robert A. Scala, Ph.D
Lancaster, PA

Glenn I. Sipes, Ph.D, ATS
University of Arizona, Tucson, AZ

Cheryl Lyn Walker, Ph.D
IBT, Houston, TX

Kendall B. Wallace, Ph.D, DABT, ATS
University of Minnesota, Duluth, MN

July 30, 2013

The Honorable Barbara Boxer
Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Crapo
Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Udall
Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable David Vitter
Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Boxer, Crapo, Udall, and Vitter:

Third Way believes it is vital that Washington strike the proper balance between regulations to protect our people and the environment and the regulatory certainty that American industry needs to succeed. We believe that the Chemical Safety Improvement Act (CSIA) achieves such a balance of priorities and would play an important role in modernizing chemical regulations. It should be passed without delay.

Times have changed in the 37 years since enactment of the Toxic Substance Control Act (TSCA) in 1976. Chemicals now constitute an ever-increasing part of the American economy. The industry supports 800,000 jobs, and its products are used in more than 96% of all manufactured goods. Both legislation and regulation must keep up with the rapid speed of innovation. The CSIA provides a modern approach to chemical regulation and greater transparency for business, consumers, and government.

1025 Connecticut Ave NW, Suite 501 • Washington, DC 20036 • 202.384.1700 • 202.775.0430 fax

The CSIA would create a streamlined national regulatory program to alleviate confusion that the current patchwork of regulations can generate among both businesses and consumers. The bill would create a prioritized framework for the Environmental Protection Agency (EPA) to evaluate chemicals using science-based assessments. This transparent, evidence-based approach to chemical oversight will provide the public with access to more health and safety information and the EPA with more tools to develop smarter regulations.

With the recent boom in domestic natural gas, chemicals will continue to be a major driver of economic growth and job creation well into the future. This bill will help drive this growth by providing predictable regulations, establishing an efficient approval process for new chemicals, and protecting the intellectual property of American innovators.

Third Way commends your reasoned approach to such an important issue for consumer safety, environmental protection, and economic growth.

Sincerely,

Matt Bennett
Senior Vice President for Public Affairs
Third Way

cc:
The Honorable Lamar Alexander
The Honorable Mark Begich
The Honorable John Boozman
The Honorable Richard Burr
The Honorable Saxby Chambliss
The Honorable Susan Collins
The Honorable Richard Durbin
The Honorable Kirsten Gillibrand
The Honorable Kay Hagan
The Honorable Tom Harkin
The Honorable John Hoeven
The Honorable James Inhofe
The Honorable Johnny Isakson
The Honorable Mary Landrieu

The Honorable Joe Manchin, III
The Honorable Robert Menendez
The Honorable Lisa Murkowski
The Honorable Patty Murray
The Honorable Mark Pryor
The Honorable Marco Rubio
The Honorable Charles Schumer
The Honorable Pat Toomey

www.chicagotribune.com/news/watchdog/flames/ct-met-flames-tobacco-20120508,0,3332088.story

chicagotribune.com

Big Tobacco wins fire marshals as allies in flame retardant push

Cigarette-makers had man on the inside of key fire-safety group

By Patricia Callahan and Sam Roe, Chicago Tribune reporters

May 8, 2012

advertisement

The problem facing cigarette manufacturers decades ago involved tragic deaths and bad publicity, but it had nothing to do with cancer. It had to do with house fires.

Smoldering cigarettes were sparking fires and killing people. And tobacco executives didn't care for one obvious solution: create a "fire-safe" cigarette, one less likely to start a blaze.

The industry insisted it couldn't make a fire-safe cigarette that would still appeal to smokers and instead promoted flame retardant furniture — shifting attention to the couches and chairs that were going up in flames.

But executives realized they lacked credibility, especially when burn victims and firefighters were pushing for changes to cigarettes.

So Big Tobacco launched an aggressive and cunning campaign to "neutralize" firefighting organizations and persuade these far more trusted groups to adopt tobacco's cause as their own. The industry poured millions of dollars into the effort, doling out grants to fire groups and hiring consultants to court them.

These strategic investments endeared cigarette executives to groups they called their "fire service friends."

"To give us clout, to give us power, to give us credibility, to give us leverage, to give us access where we don't ordinarily have access ourselves — those are the kinds of things that we're looking for," a Philip Morris executive told his peers in a 1984 training session on this strategy.

The tobacco industry's biggest prize? The National Association of State Fire Marshals, which represented the No. 1 fire officials in each state.

A former tobacco executive, Peter Sparber, helped organize the group, then steered its national agenda. He shaped its requests for federal rules requiring flame retardant furniture and fed the marshals tobacco's arguments for why altering furniture was a more effective way to prevent fires than altering cigarettes.

For years, the tobacco industry paid Sparber for what the marshals mistakenly thought was volunteer work.

The Tribune discovered details about Big Tobacco's secretive campaign buried among the 13 million documents cigarette executives made public after settling lawsuits that recouped the cost of treating sick smokers. These internal memos, speeches and strategic plans reveal the surprising and influential role of Big Tobacco in the buildup of toxic chemicals in American furniture.

This clever manipulation set the stage for a similar campaign of distortion and misdirection by the chemical industry that continues to this day.

Andrew McGuire, a burn survivor and MacArthur "genius grant" winner, said Sparber and the National Association of State Fire Marshals for years were his nemeses as he has pushed for fire-safe cigarettes, which would stop burning when not being smoked. McGuire came up against them again when he battled for reductions in the amount of flame retardant chemicals in Americans' homes.

"He played them like a Stradivarius," McGuire said of Sparber's relationship with the fire marshals.

A founding member of the fire marshals group disputes that they were unduly influenced, but he said he regrets that the organization accepted tobacco's money.

"There is no way you can explain to the public that taking money from the tobacco industry is a good thing," said Tom Brace, who served as a marshal in Minnesota and Washington state. "And had I to do that over again, I would not do that."

Brace and the fire marshals group often were at odds with colleagues in the firefighting community who worked to scale back the use of certain flame retardants after studies showed they can make smoke more toxic.

The fire marshals organization continued promoting flame retardant products even after it was clear that the chemicals inside were escaping, settling in dust and winding up in the bodies of babies and adults worldwide.

The marshals continued even after flame retardants were linked to cancer, neurological deficits, developmental problems and impaired fertility.

And they continued even after government scientists showed that flame retardants in household furniture were not protecting Americans from fire in any meaningful way.

Wooing the marshals

With the top executives of the largest U.S. cigarette companies gathered in a New York ballroom, Charles Powers rose to report that their trade group's multimillion-dollar investment in the firefighting community was paying off nicely.

It was October 1989, and the CEOs behind Marlboro, Camel and other major brands were in a closed-door meeting of the executive committee of the Tobacco Institute, the trade group that fought legislation that could hurt

their business.

Powers noted that many fire officials who once were hostile were endorsing industry positions in key federal and state legislative battles over fire-safe cigarettes. The strategy by the Tobacco Institute of winning over these officials, including some state fire marshals, with grants and schmoozing was working.

"Though our assistance is 'no strings attached' for everyone, it is no accident that the fire service officials most interested in our educational materials are also the fire service leaders whom we have approached for endorsements," said Powers, a top executive at the Tobacco Institute.

He boasted: "Many of our former adversaries in the fire service defend us, support us and carry forth our federal legislation as their own."

Much of that success can be attributed to the fact that Big Tobacco had planted an inside man within the firefighting community.

A former Tobacco Institute vice president, Peter Sparber had spent years at the trade group doling out money to firefighting groups. He left to open his own lobbying and public affairs firm in the late 1980s but retained the Tobacco Institute as a major client.

This arm's-length relationship — working for Big Tobacco but having a business card that said "Sparber and Associates Inc." — allowed him to infiltrate an organization of public officials that became what the Tobacco Institute later called "the most politically potent group" in the firefighting community: the nation's state fire marshals.

These taxpayer-funded employees, typically appointed by governors, had a low profile nationally until Sparber came along. In 1989, Sparber helped organize the National Association of State Fire Marshals and volunteered to be the group's legislative consultant. The fire marshals put him on their executive board.

Sparber became so crucial to the fire marshals that they listed him on their association letterhead and for more than a decade shared a Washington office with him.

One of the marshals' first official acts was to endorse a tobacco-backed federal bill that called for yet another study of fire-safe cigarettes rather than a competing bill that would have quickly required cigarettes to change.

Like his tobacco industry patrons, Sparber worked to prevent a mandate for fire-safe cigarettes by shifting the focus to furniture.

For years, Sparber promoted an obscure California state rule on furniture flammability, one that manufacturers met by adding flame retardant chemicals to the foam in sofas and easy chairs.

California regulators had enacted the rule in 1975 out of frustration that too many residents were dying in fires caused by cigarettes. State and federal lawmakers had tried unsuccessfully since the 1920s to enact fire-safe cigarette requirements, so California regulators instead sought to fireproof the world around the cigarette.

With Sparber's help, the fire marshals in 1992 sought federal rules for flame retardant furniture, and Sparber went on to represent the marshals in years of meetings with the U.S. Consumer Product Safety Commission. His expense reports show that for several years he was billing the Tobacco Institute $200 an hour for his work with the marshals, including time he spent on the marshals' petition for flame retardant furniture.

Sparber reported to the institute on the fire marshals' key activities and even passed along their internal documents. Tobacco Institute President Samuel Chilcote Jr., in turn, sent detailed memos to the CEOs of cigarette companies about the marshals' activities.

Chilcote declined to comment to the Tribune, saying he couldn't recall what happened so long ago.

Brace, a founder of the fire marshals group, said he knew Sparber was a former Tobacco Institute executive. But Brace said he didn't know in the association's early days that the institute was paying Sparber for his work with the marshals and didn't know that Sparber funneled so many of the marshals' internal documents to the cigarette industry.

Nevertheless, Brace said the marshals made their own decisions.

"The inference that the state fire marshals sitting around the table are easily led by this Svengali — there were arguments back and forth of what we should get involved in," Brace said in an interview. "We had some hot debates. But the characterization that Sparber led us out of the wilderness, I don't see it."

But records in tobacco executives' files show that Sparber helped set the fire marshals' agenda, suggesting who should speak at a key conference, which consultants they should retain and why they should oppose aggressive fire-safe cigarette requirements.

He also assisted the fire marshals with fundraising, nudging tobacco colleagues to contribute to the group.

Too close for comfort

Assisting Sparber was an old fan: Karen Deppa.

Deppa had solidified Sparber's reputation in the world of spin when, in a previous job as a journalist, she penned a glowing profile of Sparber for a magazine aimed at trade association executives. The story described him as a master of crisis management whom others could emulate, noting the deft way he had positioned smoking as a fundamental freedom and cast doubt on studies documenting the health hazards of smoking.

"I go home to my family every night, and not once have I felt uncomfortable about facing them over anything I've done at work," Sparber said in that article.

Within a year of the publication, the Tobacco Institute hired Deppa and made her the coordinator of its fire program. Records show she frequently signed off on Sparber's hourly billings for his work with the marshals.

Deppa ensured the Tobacco Institute pampered the marshals — faced with lean state budgets — with perks at the group's conferences, including bottles of wine, a hospitality suite and free mountain bike rentals, records

show. She pressed the institute to fund a media-training seminar for the marshals, suggesting this would make them more confident speakers as they publicly discussed fire-safe cigarettes and other issues.

The fire marshals wound up using tobacco's talking points in the industry's protracted delay game.

When leaders of the marshals association addressed federal regulators, they would say they supported the concept of a national fire-safe cigarette requirement. But in the next breath, the marshals would nitpick the test methods federal scientists created to determine which cigarettes were less likely to cause fires.

Tobacco executives loathed those tests. Publicly, they argued that the tests failed to replicate "real world" conditions. Privately, they feared the tests would pave the way for laws that would force them to alter cigarettes — products that made them billions of dollars each year — in ways that their customers wouldn't like, records show. Some prototypes had an unpleasant taste or were difficult to smoke.

An internal R.J. Reynolds Tobacco Co. report noted that the lack of a standard test method had served to delay the adoption of fire-safe cigarette bills in 12 states.

The marshals' criticisms of the details of the tests were straight from Big Tobacco's playbook. This wasn't a coincidence. Questioned by a government scientist at a meeting of the federal panel crafting the tests, one marshal acknowledged that Sparber had briefed him on the issues, records show.

"They learned very quickly from their puppet masters how to craft the arguments to seem reasonable but cause delay," recalled McGuire, the burn survivor, who was a member of the panel and was at that meeting.

David Sutton, a spokesman for Philip Morris USA, rejected the notion that his company and the fire marshals worked together to delay fire-safe cigarette rules. For more than a decade, he said, the company worked hard to develop marketable cigarettes that were more likely to extinguish on their own.

Philip Morris collaborated with the marshals on flame retardant furniture standards in the early 1990s, he said, because the company believed those might present "a potentially more effective alternative for improved fire safety."

By 1993, records show, the fire marshals were so vehemently opposed to fire-safe cigarette test proposals — and so financially and philosophically connected to the cigarette industry — that a top Philip Morris lobbyist told the Tobacco Institute she feared that the marshals had actually become a liability. Records show she told colleagues she thought the National Association of State Fire Marshals was "tainted."

The lobbyist worried that "the relationship of the industry — especially Philip Morris — to the National Association of State Fire Marshals (NASFM) may eventually be disclosed publicly." She suggested to the Tobacco Institute that the fire marshals stop discussing fire-safe cigarettes and focus solely on furniture flammability standards.

But the industry didn't sever ties, in part because other cigarette executives thought they needed the marshals to counter fire-service groups that were pushing for fire-safe cigarette laws, records show.

A key prong in R.J. Reynolds' 1996 strategic plan to fight these laws was the marshals' petition to the Consumer Product Safety Commission for flame retardant furniture rules. A handwritten note on the first page directs an R.J. Reynolds employee to file the plan under "Fire Safe Sparber."

The plan used italics to hammer home the urgency of focusing on the furniture fueling fires, not the cigarettes igniting them: "In 1996, fire officials must keep the pressure on the Commission to focus on the *fuels* rather than *ignition sources.*"

Playing 'hardball'

The fire marshals' actions helped Big Tobacco fend off fire-safe requirements for years. But the delays couldn't go on forever.

The Tobacco Institute shut down in 1999, a requirement of the multibillion-dollar court settlement between the industry and state attorneys general. Not long after that, states succeeded in passing rules requiring fire-safe cigarettes, so tobacco no longer had an incentive to promote flame retardant furniture.

But by then Sparber had found new clients with problems of their own: chemical manufacturers.

With each passing year, health concerns were growing as the most commonly used types of flame retardants were discovered in human breast milk and blood.

As Sparber worked to preserve and even expand the market for flame retardants, the fire marshals were again at his side. So was Deppa, whom he had hired from the Tobacco Institute.

So intertwined were Sparber, the chemical companies and the fire marshals that even Sparber couldn't always differentiate where the agendas diverged.

For instance, one of Sparber's clients as a lobbyist was the Bromine Science and Environmental Forum, an international trade group representing large manufacturers of flame retardants. Sparber revealed to federal regulators in 1999 that although the forum was paying his company's fees, the chemical group's goals for fire prevention were so aligned with those of the fire marshals association that he often lobbied for both groups on the same matters.

Chemtura Corp.,Albemarle Corp.and ICL Industrial Products — the three largest companies that fund the bromine forum — declined to answer questions about their relationships with Sparber or the fire marshals. Chemtura and Albemarle said their flame retardants are safe and effectively protect people and property from fires.

Brace, the former marshal, confirmed that his association became "heavily involved" with the flame retardant trade group and supported its agenda. He said he worked with the forum because of his desire to save lives, and he was leery of studies that linked the chemicals to health problems.

The bromine group, Brace said, paid for him to go to Japan, Korea and Taiwan, where he urged electronics manufacturers to add flame retardants to the plastic exteriors of computer monitors and televisions. The marshals

later pushed for worldwide standards requiring that the plastic casings of electronics resist a candle flame and posted Internet videos comparing name-brand computer monitors that went up in flames with those that didn't.

John Dean, the fire marshals' president from 2006 to 2008, said that during his time the marshals were not being swayed by chemical companies and did not focus solely on flame retardants. "The fire marshals were concerned about preventing fires, and we didn't really care how they did it," said Dean, a retired state fire marshal from Maine.

But the marshals did press for national furniture flammability rules that would have increased the use of flame retardant foam in the U.S., even though federal scientists had concluded that this type of chemically treated foam didn't provide any meaningful protection in fires.

To sway legislators and opponents, the marshals and Sparber characterized couches and easy chairs as dangers to society, sometimes referring to the foam inside cushions as "solid gasoline."

While Sparber was a registered lobbyist for Chemtura and its predecessor, Great Lakes Chemical Corp., the fire marshals asked federal regulators to require warning labels on furniture made with non-fire-retardant foam and sought a "hazardous material" designation for this type of foam.

In 2007, Sparber emailed executives at Chemtura and Albemarle about his efforts to get furniture stores declared "hazardous occupancies," a classification usually reserved for locations handling gasoline and other highly combustible materials.

Such a designation, Sparber wrote, "threatens to shut down any number of retailers," limit the number of sofas they could store or force them to install extensive sprinkler systems.

"Literally," he wrote, "a single sectional couch might exceed the limit."

The goal, Sparber wrote, was to make furniture manufacturers and retailers fear these "obviously draconian consequences" and thereby support strict flammability standards or face the wrath of code enforcement officials.

"This is hardball of the first order," Sparber wrote.

While these rules weren't adopted, the intimidating message hit a nerve with the industries Sparber threatened. Joseph Gerard, a retired furniture industry lobbyist, said he recalls Sparber sending him an inches-thick binder filled with copies of the same Associated Press story clipped from newspapers across the country. The story blamed the death of a South Carolina teenager on sofas that lacked flame retardants and quoted a fire marshal about the need for the chemicals.

Gerard said of Sparber: "His way of operating was so offensive, it just tore at me."

To the fire marshals, though, Sparber was a hero. The National Association of State Fire Marshals gave him its Hall of Fame award in 2008.

Sparber and Deppa declined to comment for this story.

Jim Narva, the fire marshals' current executive director, said Sparber has not represented the group for "a number of years" and that he took over Sparber's Washington office in 2008 or 2009.

"It's history," Narva said.

The marshals' policy statement on flame retardants, which hasn't been updated since 2008, says products that exist to fight fires should not be banned unless there is "significant evidence" that they cause harm or until other methods of fire protection are found to replace them.

Narva, who declined to answer detailed questions, said the fire marshals are not currently involved with flame retardant issues.

But the marshals' industry ties remain strong.

Deppa left Sparber and Associates in 2008 and, according to the marshals' website, became the group's "liaison to US government agencies and their staffs."

The marshals just last year helped defeat a crucial bill in California that would have reduced flame retardants in products nationwide. The association's president at the time wrote a letter opposing the legislation. A lobbyist for the Citizens for Fire Safety Institute, a front group for the largest makers of flame retardants, read excerpts of the letter at the hearing where the bill was voted down.

And who remains a financial sponsor of the fire marshals, with its logo on the group's home page?

Chemtura, one of the world's largest producers of flame retardants.

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