

**TESTIMONY OF
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BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

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Good morning Chairman Shimkus, Ranking Member Tonko, and other members of the Subcommittee. Thank you for the opportunity to discuss reform of chemicals management in the United States.

I think we all agree on the importance of assuring chemical safety, restoring public confidence in the safety of chemicals used in everyday products, and providing global leadership in chemicals management. The Administration therefore believes it is crucial to modernize and strengthen the Toxic Substances Control Act (TSCA) to provide the EPA with the tools necessary to achieve these goals. With each passing year, the need for TSCA reform grows.

We are encouraged by the interest in TSCA reform indicated by the introduction of several bills in recent years, that bipartisan discussions are occurring, and that hearings on TSCA related issues are being held. For example, today marks the fourth in a series of hearings on TSCA reform before this subcommittee. Many stakeholders share common principles on how best to improve our chemical management programs. The EPA is committed to working with the

Congress, members of the public, the environmental community, the chemical industry, and other stakeholders to improve and update TSCA.

Chemicals are found in most everything we use and consume, and can be essential for our health, our well being, and our prosperity. It should be equally essential that chemicals are safe.

Compared to 37 years ago when TSCA was passed, we have a better understanding of the environmental impacts, exposure pathways, and health effects some chemicals can have – especially on children. A strong reauthorization measure would enable us to significantly improve the effectiveness of TSCA.

TSCA gives the EPA jurisdiction over chemicals manufactured, processed, or distributed in the United States. Unlike the laws applicable to drugs and pesticides, TSCA does not have a mandatory program that gives the EPA the authority to conduct a review to determine the safety of existing chemicals. In addition, TSCA places challenging legal and procedural requirements on the EPA before the agency can require the generation and submission of data on the health and environmental effects of existing chemicals.

TSCA was an important step forward in 1976. But over the years, not only has TSCA fallen behind the industry it is intended to regulate, it has also proven an inadequate tool for providing the protection against chemical risks that the public rightfully expects.

When TSCA was enacted, it grandfathered in, without any evaluation, about 60,000 chemicals in commerce that existed in 1976. The statute includes challenging requirements that the EPA must fulfill in order to compel companies to provide toxicity data needed to address gaps in understanding chemical risks. As a result, in the nearly 37 years since TSCA was passed, the EPA has only been able to require testing on just a little more than 200 of the more than 84,000 chemicals listed on the TSCA Inventory.

It has also proven challenging in some cases to take action to limit or ban chemicals that the EPA has determined pose a significant health concern. For example, in 1989, after years of study and nearly unanimous scientific opinion, the EPA issued a rule phasing out most uses of asbestos in products. Yet, a federal court overturned most of this action because it found the rule had failed to comply with the requirements of TSCA. In the last 37 years, the EPA has regulated only five chemicals under Section 6 of TSCA.¹

While the EPA is committed to using the tools available under existing law, TSCA should be updated and strengthened, including providing the appropriate tools to protect the American people from exposure to harmful chemicals. It is crucial that any update to TSCA include certain components.

¹ Ban on manufacturing, processing, distribution in commerce and use of PCBs; ban on manufacture, processing, distribution in commerce of fully halogenated chlorofluoralkanes for aerosol propellents; ban on storage and disposal of dioxin contaminated waste at one facility in Arkansas; limit on certain uses of metalworking fluids; and ban on hexavalent chromium chemicals in comfort cooling towers.

In September 2009, the Administration announced the Essential Principles for Reform of Chemicals Management Legislation, attached below, to update and strengthen TSCA. These include that the agency should have the tools to quickly and efficiently obtain information from manufacturers that is relevant to determining the safety of chemicals. The EPA also should have clear authority to assess chemicals against a risk-based safety standard and to take risk management actions when chemicals do not meet the standard. The principles further state that both chemical manufacturers and the EPA should assess and act on priority chemicals, both existing and new, in a timely manner. This means that the 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 populations.

At the same time the principles to update and strengthen TSCA were announced, the agency affirmed that, while the legislative reform process is underway, we are committed to using the current authority under TSCA to the fullest extent to protect human health and the environment.

On April 15, Senators Lautenberg, Vitter, and others introduced S. 1009, the Chemical Safety Improvement Act. While the EPA has not yet developed a formal position on the bill, we offer the following observations in light of the attached principles. As stated in the principles, legislation should provide the EPA with authority to establish risk-based safety standards that are protective of human health and the environment. The 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.

The principles further indicate that clear, enforceable, and practicable deadlines should be set for the agency to review and make decisions on chemicals, in particular those that might impact sensitive populations, and provide a sustained source of funding for implementation.

Administrative requirements should add demonstrable value to the process beyond existing law and requirements.

To maximize the transparency of the information underlying these safety decisions, legislation should discourage unwarranted Confidential Business Information (CBI) claims. Manufacturers should be required to substantiate their claims of confidentiality. Legislation should provide the EPA with tools to ensure that protections put in place are carried out and provide a level playing for the companies that comply. We understand the concerns raised by many stakeholders regarding the appropriate role for states in addressing the risks of chemicals to which their citizens are exposed, and the EPA stands ready to provide technical assistance on this important issue.

Mr. Chairman, thank you again for your leadership on TSCA reform. I will be happy to answer any questions you or other members may have.

APPENDIX: 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.