



Dear Senators:

Our diverse coalition of public health, labor, environmental, and business organizations urges you to withhold your support for the pending legislation offered by Senators Vitter and Udall to reform the Toxic Substances Control Act.

In its current form, we must oppose this legislation because it continues to have serious flaws that undermine protection of public health. All of these flaws could readily be addressed by making a limited number of changes in the bill, and we continue to be ready to work with senators to get those changes. Senators Udall and Vitter have made improvements to their legislation over the past two years, and there is no good reason not to address the remaining concerns.

The most important problems include:

- Undue Restrictions on States' Ability to Protect Their Citizens

We generally concur with the analysis circulated by the California Attorney General stating that the bill still "eviscerates state authority." Our primary concern is the timing of preemption for chemicals named as "high priority" by EPA. Under the bill, states are blocked from taking action on a chemical at a point when EPA has merely identified the scope of a safety assessment. That is still years away from any action to protect the public. That gap in time creates a "regulatory void" where harm will go unaddressed, and it provides the potentially regulated company with every incentive to slow down or prolong the federal evaluation process. The appropriate time for preemption is at the effective date of EPA action.

Also, in a significant departure from other environmental and consumer protection laws, the bill bans states from enforcing restrictions that are *identical* to federal restrictions. State co-enforcement is often the primary mode of enforcement, and scholarly reviews of the subject show that it has not been abused, but is in fact, complementary to federal enforcement, and even vital. The ban appears to be nothing more than a naked attempt to limit enforcement under the new program.

We also agree with the Attorney General's analysis in regards to the waiver provision and inadequate protection for state air and water programs.

- The "Low Priority" Loophole

Under the bill chemicals must be separated into two tracks: High Priority or Low Priority. High Priority chemicals are reviewed against the safety standard, and if they flunk that

standard, the EPA is directed to impose appropriate risk management. Low Priority chemicals are not really reviewed at all. EPA makes a judgment as to whether the chemical is “likely to meet” the safety standard without conducting a new assessment. These chemicals are then treated as safe for any and all uses.

Needless to say, a low priority designation will be highly coveted by any chemical company, resulting in enormous pressure on the agency to stretch the murky concept of “likely to meet” as far as possible. Yet this is the one major decision in the bill that the public cannot challenge in court. The omission is conspicuous and an invitation to abuse.

- Practical Limitations on Addressing Chemicals in Products

Consumers have come to increasingly understand the threat of toxic chemicals in consumer products, changing the marketplace. Several retailers and major brands have enacted their own restrictions on chemicals in the products they make and/or sell. This has been a primary driver of TSCA reform.

It is perplexing therefore, that the current draft, in a new provision, makes it harder for EPA to restrict an unsafe chemical in a consumer product. After EPA determined the chemical is unsafe, the EPA would have to jump through additional regulatory hoops to regulate the chemical in a product. There may be dozens of products that use a single chemical and this provision would require EPA to make a legal finding on each, substantially slowing down the agency’s work in the area that most consumers would think is the primary point of reform. The new provision should be removed. Once EPA determines the chemical is unsafe, it should be able to address the presence of that chemical in whatever combination of products it deems necessary to protect public health.

Similarly, in the modern American economy most products are made overseas and imported. A system that purports to protect the public from toxic chemicals, especially in consumer products, must have a workable mechanism to address unsafe chemicals coming in from products manufactured overseas. The bill instead weakens EPA’s ability to ensure that an imported product does not contain a restricted chemical. The importance of this issue was highlighted just last week, when 60 Minutes featured an investigative report of Lumber Liquidators bringing in formaldehyde treated wood at levels that violated California’s standards but were certified as being compliant.

In general, the public health community has moved considerably on a large number of issues in this debate to find a point of accommodation with regulated industry. These remaining issues get at the core question of whether the program will do more harm than good.

Sincerely,

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