

February 7, 2023

Statement for the Hearing “Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains” before the Subcommittee on Energy, Climate & Grid Security and Subcommittee on Environment, Manufacturing & Critical Materials

Dear Chairwoman McMorris Rogers and Ranking Member Pallone,

On behalf of the Natural Resources Defense Council, Toxic Free Future, Earthjustice, Environmental Defense Fund, League of Conservation Voters, Environmental Working Group, Center for Environmental Health, Breast Cancer Prevention Partners, Defend Our Health and Clean Water Action, we are writing to express our strong opposition to the draft bill, currently unnumbered and unsponsored, “To amend the Toxic Substances Control Act for critical energy resources, and for other purposes” which is one of the bills covered by today’s legislative hearing. In just three short pages, the draft bill would reverse and eviscerate several of the core reforms to the Toxic Substances Control Act (TSCA) that passed the House and Senate with overwhelming bipartisan support just a few years ago.

The draft legislation would make it virtually impossible for EPA to meaningfully review the safety of new chemicals that are classified as “critical energy resources,” regardless of their health risks. The bill promotes cursory assessments, followed by default approvals, of any new chemical that is deemed necessary for a “critical energy resource,” no matter how toxic, how persistent, or how mobile in the environment.

The revisions would sacrifice the health and safety of the public – including children, workers, the elderly and fenceline communities – to expedite production of any potentially toxic chemical that the industry can persuade the Department of Energy, which is not charged with reviewing the health and safety of chemicals, to deem a ‘critical energy resource.’ We already know the limitless scope of what the chemical industry is likely to claim as “critical” based on their previous insistence that some of the most toxic chemicals in existence are “critical” for renewable energy or energy security, including PFAS,^[1] asbestos,^[2] and lead.^[3]

Congress acknowledged TSCA’s failure to address a host of dangerous chemicals including asbestos, TCE, methylene chloride and PFAS; and strengthened the law

^[1] ACC, *PFAS: Critical to Renewable Energy*, <https://www.americanchemistry.com/chemistry-in-america/chemistries/fluorotechnology-per-and-polyfluoroalkyl-substances-pfas/pfas-critical-to-renewable-energy>

^[2] ACC, *ACC Urges EPA to Reconsider its Flawed Chlor-alkali Proposal*, <https://www.americanchemistry.com/chemistry-in-america/news-trends/press-release/2022/acc-urges-epa-to-reconsider-its-flawed-chlor-alkali-proposal>

^[3] International Lead Association, *Using Lead Responsibly is Critical to Achieving a Sustainable and Low Carbon Future*, <https://ila-lead.org/sustainability/>

seven years ago with near unanimous support; this draft bill would roll back those protections.

The draft bill would:

- Mandate that EPA's risk evaluation of chemicals, rather than continuing to focus on their potential health risks, must also include the consideration of all cost and other "non-risk factors" when evaluating whether the chemical substance poses an unreasonable risk (as opposed to basing safety determinations solely on risks to health or the environment). The prioritization of economic considerations over public health protection was the major flaw that stymied progress under the old TSCA, and Congress' deliberate shift to risk-based evaluations and decision-making was the fundamental reform that brought the law back to life after being rendered ineffective and badly in need of reform.
- Allow new chemicals to begin production before EPA has completed its determination whether they pose an unreasonable risk to human health or the environment. Because Congress wanted EPA to make an affirmative determination of safety for all new chemicals, TSCA explicitly provides that no new chemical can enter production until that determination has been made. The bill would completely reverse this policy.
- In addition to the newly added consideration of costs and any other non-risk factors to EPA's analysis, which will lengthen the time necessary for review, the bill simultaneously prevents EPA from extending the review period for chemicals designated "critical energy resources." The inevitable result will be rushed and superficial reviews that fail to identify risks to health and the environment or incomplete reviews that result in default approvals of unsafe chemicals. As we have seen over and over, when a toxic chemical begins manufacture without a thorough review by EPA, it is almost impossible to end its production, or retrospectively establish sufficient protections from the chemical to protect the public.
- Create a limitless loophole from TSCA's chemical assessment and health protection requirements. "Critical energy resource" is an open-ended and undefined concept that could apply to virtually any chemical that plays a role in the production, refining, distribution, and use of energy and is designated as "critical" by the Department of Energy. Once a substance is deemed to be a "critical energy resource" and therefore fast tracked through the PMN process, there is no limit on how the substance can then be used beyond its ostensible "critical energy resource" use and no constraint on non-energy applications that could be harmful to health and the environment.

The bill would establish a precedent for enacting further loopholes to gut the health protective provisions of the Act. If it is acceptable to gut health reviews of chemicals for “critical energy resources,” what is the principle that will prevent other broad categories or uses of toxic chemicals from also getting special treatment under Section 5 of TSCA?

Notably missing from the draft bill are any findings demonstrating the need for the bill. In fact, there is no evidence that the public must sacrifice health protections from toxic chemicals in exchange for clean energy. We can develop and deploy new energy technologies without waiving chemical review requirements or placing the communities burdened by PFAS and other toxic chemicals at risk. The draft bill’s rejection of that clean and health-protective energy future sells American innovation short.

Overwhelmingly, the public needs and wants more, not less, protection from toxic chemicals.¹ Yet the draft bill would roll back critical public health protections and weaken a core environmental law.

We look forward to speaking to all Members about the pernicious and dangerous nature of this legislation and working to prevent it from becoming law.

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¹ University of California San Francisco Program on Reproductive Health and the Environment, *Public Opinion on Chemicals*, <https://prhe.ucsf.edu/public-opinion-chemicals>

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