November 13, 2013

The Honorable John Shimkus
Chair, Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Paul Tonko
Ranking Member, Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

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

Dear Chairman Shimkus and Ranking Member Tonko,

Thank you for holding this important hearing on "S. 1009 -- the Chemical Safety Improvement Act." I very much appreciated the opportunity to testify at the Subcommittee's June 13 hearing entitled "Title I of the Toxic Substances Control Act: Understanding its History and Reviewing its Impact," and hope that the information I provided at that time was useful to the Subcommittee's work. That hearing provided an important opportunity to discuss the failings of the Toxic Substances Control Act (TSCA), but it was not directly focused on the recently introduce Senate bill, the Chemical Safety Improvement Act (CSIA). On behalf of the Breast Cancer Fund, I would like to take this opportunity to express our deep concerns with the CSIA.

The Breast Cancer Fund is the only national organization focused solely on preventing breast cancer. We do that by working to eliminate our exposures to toxic chemicals and radiation linked to the disease. Reform of the outdated and ineffective Toxic Substances Control Act has long been a priority of our organization.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.

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. The Breast Cancer Fund greatly appreciates this shift, and is eager to work with policy makers and stakeholders of every perspective to make meaningful reform a reality for our nation and our children.

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Protecting public health and the environment should be the primary and overriding goal of TSCA reform. Unfortunately, the CSIA 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 Environmental Protection Agency (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. 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 around areas of high chemical exposures all need and deserve our protection; and by protecting them, we will protect not only ourselves, but future generations as well.

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 that 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 exposure levels. The 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 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 that shows adverse health effects and increased health risks associated with specific chemicals. The language in the CSIA reflects those chemical industry efforts to

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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 a particular 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 are "likely to meet the safety standard," and once so designated, they are set aside with no further action unless the EPA is explicitly requested to reevaluate the low priority designation of a specific chemical. Under the 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 required of the industry that stands to benefit from the beginning. The bill should make clear that no chemical will be designated as low priority without sufficient data to affirmatively show it is safe.

Action on the worst chemicals. For some chemicals we already have enough scientific evidence showing harm to be able to take action now to reduce unsafe exposures. TSCA reform must allow the EPA to take fast action on the worst chemicals, including persistent, bioaccumuative toxins (PBTs): toxic chemicals that break down extremely slowly in the environment, often over the course of decades, and accumulate in the tissues of organisms, including humans.

Instead of allowing for fast action on the worst chemicals, the 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 needed restrictions, or even halt them altogether, 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. The 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,"

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"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 the continuation of 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 the industrial chemicals that end up in their environment, workplaces, communities and consumer products. The bill would allow the EPA to share confidential business information ("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 a 15 to 30 day delay after 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 any serious review of their legitimacy. Knowledge of the 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.

The 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. Instead, it could roll back the current state protections in place and would stifle future state protections. State laws that are in

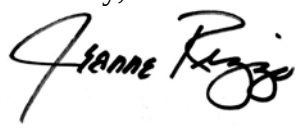
place when the CSIA is enacted would be preempted once the EPA has completed a safety determination of the particular chemical in question. However, completion of the safety determination is not the same as having federal safety protections in place. The process and timeframe between issuing a safety 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 the 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.

Chemical policy reform is a public health necessity and it is urgent and essential that we create a chemicals management system that protects all of us, including the most vulnerable among us. Congress has a moral imperative to pass legislation strengthening the way chemicals are regulated to provide the public real protection from dangerous chemicals. For the reasons outlined in this letter, the Breast Cancer Fund opposes the CSIA in its current form. We are committed to working with the committees in both the House and the Senate to make the changes necessary to create a bill to reform TSCA that is truly health protective.

Thank you again for holding this important hearing. We look forward to working with both the House Subcommittee on Environment and the Economy, and the full Energy and Commerce Committee, to craft and adopt a bill that reforms TSCA in a truly health-protective manner.

Sincerely,



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