Testimony
of
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On behalf of the

Society of Chemical Manufacturers & Affiliates

Before the

U.S. House of Representatives

Energy and Commerce Committee
Subcommittee on Environment and the Economy

On

"Testing of Chemicals and Reporting and Retention of Information under TSCA Sections 4 and 8"

February 4, 2014

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Good morning, Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee. My name is Beth Bosley, and I am the President of my company, Boron Specialties in Pittsburgh, Pennsylvania. I am pleased to testify before this subcommittee once again on behalf of the Society of Chemical Manufacturers and Affiliates (SOCMA) regarding the Toxic Substances Control Act (TSCA) – in this case, Sections 4 and 8.

SOCMA is the leading trade association representing the batch, custom, and specialty chemical industry. SOCMA's 200-plus member companies employ more than 100,000 workers across the country and produce some 50,000 products – valued at $60 billion annually – that make our standard of living possible and contribute to the chemical industry's position as one of the nation's largest exporters.

SOCMA member companies produce chemicals that are used in thousands of products vital to consumers and US industry. Our members produce materials that allow the manufacture of life saving drugs, ensure an abundant and safe food supply, and enable the production of thousands of other products that are vital to the US economy, including international brands we all know. Over 80% of SOCMA's active members are small businesses, and many have very small staffs. For example, my company has just hired our eighth employee; we are committed to manufacturing our products in the US, and produce unique chemicals via novel manufacturing techniques that are used in the electronics, aerospace, and nuclear energy sectors. SOCMA members' unique niche in the chemical industry – specialty/batch manufacturing – is known for its innovation, entrepreneurship, and customer focus.

I would like to begin by saying that SOCMA remains committed to strengthening TSCA and appreciates the Subcommittee's continued work on the issue. Below, I will repeat SOCMA's basic principles for TSCA reauthorization. Then I will turn to the issues that are the specific focus of this hearing.

I. General comments on TSCA reform: Congress must update TSCA with carefully tailored fixes.

The fate of the TSCA reform effort is important to us, especially given the nature of our sector. As SOCMA has testified in the past, Congress should avoid emulating the Europe's Registration, Evaluation, and Assessment of Chemicals (REACh) process. REACh is currently the single largest trade barrier for Small to Medium-Sized Enterprises (SMEs) in the United States trying to export to the EU. An approach like REACh in the United States could devastate our members.

We should also avoid approaches that would treat the vast universe of TSCA chemicals and uses like the far narrower universes of food additives, drugs and pesticides. In particular, the sheer number of new chemicals that are submitted to EPA each year (roughly 20/week) and the constantly evolving universe of new uses mean that the detailed scrutiny and use-by-use approvals that make sense for food additives, drugs and pesticides will never work for industrial chemicals more generally. The new chemicals review process under Section 5, including the exemptions under that Section, has worked exceptionally well and should be maintained.

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Finally, a TSCA reform bill should be fundamentally **risk-based**; it should require EPA to look at a chemical's inherent properties, or its hazards, along with its potential exposures when making regulatory decisions. That way, we can continue to innovate, create jobs and make our standard of living possible, while enhancing public confidence and protection of human health and the environment. This will also help ensure we avoid delays in getting low-risk chemicals to market and keep up with our customers' demands including those who formulate chemicals.

II. Updates to sections 4 and 8 should improve EPA's ability to attain a more complete picture of risk and expedite review of existing chemicals.

A. An improved Section 4 should be tiered, targeted and risk-based.

Generally stated, the real problem with TSCA has been the treatment of existing chemicals. These are chemicals that have been placed on the TSCA inventory and remain there, even if they are no longer in use at any given time. Section 4 gives EPA authority to require testing of existing chemical substances and mixtures once certain criteria are met. It is this section that allows EPA to obtain measured data on existing chemicals if currently available data and experience are insufficient to reasonably predict their effects.

The major shortcoming in this section is procedural. EPA is required to go through a rulemaking process, which has contributed to delays in EPA getting the data they need. For example, EPA has taken years to finalize a number of high production volume (HPV) chemical test rules, even though industry has strongly supported issuance of the rules. EPA has demonstrated some ability to implement this section more expeditiously, but has still ended up taking well over a year from proposed rule to final rule in all cases. Voluntary efforts and enforceable consent agreements (ECAs) have helped streamline the testing process, but this section of TSCA could be strengthened by considering authorization for EPA to issue orders.

In giving EPA such order authority, however, Congress should not authorize unnecessary blanket or one-size-fits-all testing requirements. Any testing approaches should be tiered and targeted. That is, they should start off at a screening level and focus on where exposures are most likely. A screening level analysis may show that the hazard is sufficiently low that additional test data will not be necessary. The same goes for scenarios where exposures are highly unlikely. In this connection, we support the notion that EPA should have to abide by basic standards of scientific quality in specifying and accepting screening and testing data – although we are also sensitive to concerns that the process of establishing those standards not unduly delay action under Section 4. We also believe alternatives to animal testing should be supported, where they have been sufficiently validated.

The second major shortcoming of Section 4 is the lack of any requirement that EPA act on any specific number or percentage of existing chemicals by any particular time. Absent such a mandate, EPA has allocated its resources to other, more pressing obligations. Congress should remove obstacles to more comprehensive EPA evaluation of inventory chemicals by mandating EPA to review a minimum number of chemicals annually via a risk-based prioritization process. We believe EPA has the expertise to do this (although it needs to be adequately resourced); we also believe EPA needs specific statutory direction to do so.

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B. Reforms to Section 8 could give EPA a better understanding of potential exposure scenarios and enable it to prioritize its resources and efforts where risks are highest

As mentioned above, testing of existing chemicals should be tiered, targeted and risk-based. Improvements to TSCA Section 8 could help EPA determine whether an existing chemical warrants testing. As I highlighted to this committee last June, EPA continues to improve its ability to collect information on chemicals under this authority, but more could be done.

One way Section 8 could be improved is by requiring an inventory reset to ensure that the inventory of existing chemicals is current. It could do so by placing chemicals in active and inactive buckets. This is a concept we have supported for many years and believe it is a vital first step in a robust and efficient existing chemicals policy.

Another significant problem with Section 8 is that it does not authorize EPA to collect use or exposure information from entities downstream of manufacturers and processors. The result is that, in many cases, manufacturers are forced to make educated guesses about the end use markets and exposure scenarios surrounding the use of their products. SOCMA would like to see an expansion of this section to allow collection of information from non-consumer downstream entities.

The onus under Section 8 has always been on manufacturers to obtain use and exposure data from their customers and other industrial or commercial downstream entities, even though such entities oftentimes do not want to share such proprietary market information. This is understandable -- no company wants to risk giving up its market to a potential competitor. But the consequence is an incomplete picture of a chemical's potential exposures, and hence its risks.

In principle, information should be sought from the entities in possession of the information. Downstream entities are naturally in a better position to provide information on the uses and exposure scenarios for the chemicals used in their plants. Such downstream entities could report directly to EPA to avoid the risks of promoting anticompetitive behavior or compromising Confidential Business Information (CBI).

Additionally, EPA should not necessarily be restricted in the purposes for which it uses information it collects, but it should be required to explain how it uses that information. The Subcommittee should explore with EPA ways to encourage greater sharing of use and exposure data where doing so does not raise antitrust concerns. EPA should be able to utilize more narrow approaches to requesting information, rather than relying solely on the broader chemical data reporting (CDR).

Finally, we urge you to amend Section 8(e) to authorize manufacturers, processors, and commercial downstream distributors and users to file reports with EPA regarding non-adverse findings regarding chemicals, whether gathered through research or anecdotally. Currently there is no mechanism to report such non-adverse data, and EPA resists companies making such "FYI" filings. The result is that the public database on existing chemicals is unnecessarily limited and

biased towards "bad news." With reasonable amendments, TSCA could provide an easier mechanism to submit such information -- and could require EPA to utilize it.

As I conclude, it is important to mention that the Lautenberg-Vitter Chemical Safety Improvement Act (S. 1009) introduced in the Senate last year is a remarkable example of well-reasoned, bipartisan TSCA legislation, and we endorse it as a vehicle for reform. The Subcommittee should be able to leverage much of the work done in there, including the work on sections 4 and 8.

I thank you for this opportunity to share with you our perspectives and I would be happy to answer your questions.

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