

## **Updating the Toxic Substances Control Act (TSCA):**

### **Reforming the Use of Toxic Chemicals in Consumer Products**

**Testimony Presented to the United States Congress – House Energy and Commerce,  
Environment and the Economy Subcommittee, Chairman John Shimkus**

**Wednesday March 12, 2014**

Thank you, Mr. Chairman and members of this subcommittee:

My name is Barry A. Cik. I am a Board Certified Environmental Engineer, a Certified Hazardous Materials Manager, a Certified Diplomate Forensic Engineer, a State of Ohio Professional Engineer, and an author of a textbook for Government Institutes on Environmental Assessments. I am a co-founder of Naturepedic, a manufacturer of certified organic mattresses and bedding products for adults and children.

More importantly, I'm here as a representative of the American Sustainable Business Council (ASBC) which includes the Companies For Safer Chemicals Coalition, a project of ASBC. The American Sustainable Business Council is a growing coalition of business organizations and businesses committed to creating a vision and framework and advancing market solutions and policies to support a vibrant, just and sustainable economy. Founded in 2009, ASBC and its organizational members represent more than 200,000 businesses and more than 325,000 business leaders across the United States. The Companies For Safer Chemicals Coalition represents a new alliance of companies focused on chemical reform based on the principles of transparency, safety and innovation.

Forty years ago, I was taught in my Engineering classes that "the solution to pollution is dilution". But, it soon became evident that Lake Erie and other water-bodies were dying from the chemicals, even in diluted amounts. The better solution was to eliminate toxic chemicals from these inappropriate places. Fortunately, the U.S. Congress agreed and did the right thing with the passage of RCRA.

Years later, I observed how the gasoline manufacturers swore that gasoline could not be made without lead. But it was evident that our environment was being seriously contaminated with all that lead. Fortunately, the U.S. Congress agreed and did the right thing by prohibiting lead from gasoline, and our automobiles are working just fine.

Eleven years ago, I walked into a baby store to buy a crib mattress for our first grandchild. It quickly became apparent that the various offerings contained phthalate plasticizers, brominated and/or organophosphate fire retardants, antimony, perfluorinated compounds, allergenic materials, pesticides and /or other chemicals. The turning point in my life was hearing the salesperson tell me that *"if the product wasn't safe, the government wouldn't allow it to be sold"*. However, I knew better. Due to my training I know that this is not necessarily the case, and I also know that regulations often lag behind scientific understanding.

I refused to buy any of the products. Instead, I decided that it was now time for me to stand up and say no to toxic chemicals in consumer products. I decided to use the power of business to make a difference and, together with my two sons, created Naturepedic, whose products are now sold by over 500 retailers across the nation.

On behalf of the American Sustainable Business Council, Companies For Safer Chemicals Coalition, and on behalf not only of my children and grandchildren, but on behalf of your children and grandchildren, I'm asking you to do the right thing again. Our chemicals are, for the most part, not regulated. Industry reportedly produces 250 pounds of chemicals every year for every man, woman, and child in this country, and there are over 80,000 chemicals available for industry to use, with very little regulation or oversight for any of it. This is not good for business.

Naturepedic and many other businesses are working hard to eliminate all toxic chemicals from our supply chain, but that is not enough. Market forces alone are not able to create widespread safer products in commerce. Industry stopped polluting our lakes when the law, supported by science, told them to stop. Industry stopped adding lead to gasoline when the law, supported by science, told them to stop. We need a system-wide change to deal with toxic substances.

Many business leaders, myself included, are committed to working with government to create comprehensive chemical policy reform. Such reform should work from the best science to properly restrict or eliminate toxic chemicals, incentivize the manufacture of safer chemicals, and create the clarity needed in the marketplace for businesses and for the American public.

The EPA needs to be given the ability under TSCA to remove chemicals without being hindered by what is known as the "unreasonable risk" standard, which has been unworkable since TSCA was originally enacted, and which is so unworkable that no chemicals at all have been banned in decades. TSCA needs to include deadlines and minimum requirements for identifying, assessing and regulating high-priority chemicals. Manufacturers need to be required to disclose

all ingredients, provide health and toxicity testing for all chemicals, and to avoid providing “regrettable substitutes” when changing ingredients.

The EPA needs to be permitted to follow the recommendations of the National Academy of Sciences and the American Academy of Pediatrics which call for focusing on the toxic effects of chemicals and of assessing the risks of chemicals “in aggregate” – adding up the different exposures. This is particularly of concern with vulnerable populations like children, pregnant women, and the elderly. The federal government also needs the authority to restrict imported products containing restricted chemicals. And, the federal government should not block the right of states to protect air, water or soil or for consumer product warning and labeling programs or any other state chemical safety oversight. The federal government can work with business to make the transition to safer chemicals and products a priority for this nation. This is good for business.

The public is increasingly becoming educated about the risks of consumer products containing untested toxic chemicals. Consumers deserve access to transparent information and full disclosure regarding the products that they buy. Consumers do, in fact, believe that if it wasn’t safe, the product would not be allowed to be sold. The public, and a large segment of the business community expects you – the U.S. government - to ensure that toxic chemicals are removed from commerce as evidenced by the strong bi-partisan small business support in independent polling.

Whenever there is a ban on harmful technology, there is innovation. When the gasoline companies were told to eliminate lead, they found innovative ways to make gasoline without the lead. It’s no different with any other toxic chemicals. American businesses can and will innovate, but we also need a government commitment to passing meaningful reform, which we presently do not see represented by the bills before Congress.

Please feel free to communicate with the American Sustainable Business Council and with me for more information. As well, helpful written information has been included with this presentation. Thank you for your time and consideration.

# Companies for Safer Chemicals

**Current chemical regulation is outdated and inadequate. Now is the time to change it. As business leaders we urge Congress to pass chemical safety reform legislation that protects all families from toxic chemicals, and incentivizes the production of cleaner and safer chemicals and products.**

The Toxic Substances Control Act (TSCA) was passed in 1976, and unlike other major environmental laws, has never been updated. As it currently stands, TSCA is a broken law. As a result, tens of thousands of potentially harmful chemicals continue to be used in the marketplace since the 1970's without proper testing and without disclosure by the companies that produce them.

**We believe this has to change.**

As companies and business leaders we're asking Congress to pass comprehensive and effective chemical safety reform legislation now. Chemical policy reform must protect the most vulnerable among us, and require public access to

information regarding the safety of chemicals. Reform must respect the rights of states to protect their residents when the federal government fails to do so, and require the Environmental Protection Agency to take fast action on the most harmful chemicals. Right now the Chemical Safety Improvement Act does NOT meet these criteria. Guided by good science, legislation can drive business innovation and success and protect public health.

**Parents and families should not have to worry about harmful chemicals in our everyday products. That's why we're working together to encourage Congress to pass chemical safety reform now.**

**This is good for business and for our economy.**

For more information about Companies for Safer Chemicals, please contact the American Sustainable Business Council at [bmcgannon@ascouncil.org](mailto:bmcgannon@ascouncil.org) or 202-595-9302 x106

See reverse for coalition logos.

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**American Sustainable Business Council**

1401 New York Ave. NW, Suite 1225, Washington DC 20005 tel: 202.595.9302 [info@ascouncil.org](mailto:info@ascouncil.org) [ascouncil.org](http://ascouncil.org)

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# The Business Case for Comprehensive TSCA Reform

Leading companies from electronics manufacturers to health care providers are highly motivated to identify and use safer alternatives to chemicals of high concern to human health and the environment. Today's business leaders are concerned about the health and business impacts that could arise if the products they use or sell contain chemicals of high concern. They recognize that safer chemicals protect human and environmental health and cut the costs of regulation, hazardous waste storage and disposal, worker protection, and future liabilities. Such steps also offer new business opportunities for innovation, by making U.S. businesses more competitive in a global marketplace and creating new jobs.

**“We’ve taken a cautious approach to materials, meaning that where there is credible evidence that a material we’re using may result in environmental or public health harm, we should strive to replace it with safer alternatives.”**

Kathy Gerwig, Vice President Workplace Safety and Environmental Stewardship Officer, Kaiser Permanente

The Toxic Substances Control Act (TSCA), which is intended to give the U.S. Environmental Protection Agency (EPA) the power to identify and regulate hazardous chemicals, simply does not work. In the absence of federal government action to ensure the safety of chemicals, leading American businesses are changing how they use chemicals. Companies in the healthcare, building, retail, electronic and cleaning product sectors are at the forefront of this movement. Dignity Health, Construction Specialties, Hewlett-Packard, Kaiser Permanente, Method, Novation, Perkins+Will, Premier, Naturepedic, Seventh Generation, Staples, and Bioamber are among the business leaders that have endorsed and are implementing a set of core principles on how to manage the use of chemicals in their own operations and their supply chains.

The failures of TSCA place significant burdens on downstream users of chemicals in products. They must:

- Research for themselves what chemicals are in products and what hazards they could pose to human health and the environment.
- Identify and test the safety of alternatives.



- Continue to use chemicals of high concern because producers do not offer safer alternatives.
- Make chemical and product selection decisions in the absence of adequate hazard information.
- Constantly respond to emerging health concerns about products from the public.
- Face potential liability from the use of hazardous materials.
- Steer through an unpredictable and constantly changing regulatory climate.

Two recent surveys of small businesses owners reveal that small business owners generally believe toxic chemicals pose a threat to people's health, and support stricter regulation and greater disclosure of toxic chemicals: 75% support stricter regulation of chemicals used in everyday products; 93% of small business owners see regulations as a necessary part of a modern economy and believe they can live with them if they are fair and reasonable; and 78% of owners want to see disclosure and regulation of toxic substances that are used in products (<http://asbcouncil.org/toxic-chemicals-poll>).

**“We think of chemicals policy as guiding us and helping us to be a better company.”**

Roger McFadden, Senior Scientist, Staples

### **The business case for safer chemicals**

Using safer chemicals makes sense for our economy, health, and environment. The benefits of comprehensive TSCA reform to businesses are significant and include:

- Leveling the playing field, by requiring existing chemicals to meet the same testing requirements as new chemicals.
- Expanding markets for safer and greener chemicals and products.
- Creating a more predictable regulatory system.
- Reducing the costs and risks associated with managing chemicals in products across supply chains.
- Lowering expenses from chemically-induced employee illness and enhancing productivity from improved employee health.
- Identifying chemicals of high concern to human health or the environment.
- Increasing trust among consumers, employees, communities, and investors.
- Improving transparency and communication throughout the supply chain, leading to increased confidence for downstream users.
- Creating a more competitive, innovative, and economically sustainable chemical industry in the U.S.\*

### **What downstream users need from TSCA reform**

Using common sense principles and current science, downstream users should work with Congress to repair our broken chemical management system. Downstream users of chemicals need TSCA reform to:

#### **1. Require chemical manufacturers to develop and submit hazard, use and exposure data on chemicals in commerce, and require the EPA to make such data readily available to the public.**

Chemical manufacturers should be held responsible for the safety of their products and should be required to provide full information on the health and environmental hazards associated with their chemicals, how they are used, and the ways that the public or workers could be exposed. Comprehensive information on all chemicals is essential to avoid the mistake of “regrettable substitutions

#### **2. Take immediate action to reduce the use of persistent, bioaccumulative and toxic (PBT) chemicals and other chemicals of very high concern.**

Exposure to PBT and other toxic chemicals, such as formaldehyde, that have been thoroughly studied need to be reduced and substituted with safer alternatives. Increasingly, downstream users incur reputational risks and a large financial burden for controlling and supervising the use of PBTs and other chemicals of high concern manufactured. The most cost-effective method for controlling the use of these chemicals is to limit their use.

#### **3. Clearly identify chemicals of high and low concern to human and environmental health, based on robust information.**

We need a credible, transparent source of information that clearly communicates what we know and don't know about chemicals on the market. TSCA reform can enhance the ability of companies to build and maintain the value of their brands by avoiding chemicals of concern and selecting safer alternatives.

**Simply put, it's time for a change. We have a very clear mandate to think differently about human health and take responsibility to move that agenda forward. When two thirds of consumers of the American public are concerned about their human health, it is very clear we need to act and behave differently. It's time to reform the weak and outdated Toxic Substances Control Act.**

John Replogle, President & CEO, Seventh Generation

#### **4. Require greater disclosure from producers of chemicals of high concern in products.**

This Federal policy requirement will directly address a significant barrier to implementing green chemistry at the user level: the lack of information on the chemical constituents in products.

#### **5. Promote safer alternatives.**

Green chemistry research should be prioritized and policy incentives developed by the federal government to promote and facilitate the use of safer chemicals over those with known health hazards. All too often the movement away from chemicals of high concern is impeded by the lack of safer alternatives. By fostering the development of green chemicals we invest in sustainable businesses, safer jobs and healthier products for Americans. Together, these elements of comprehensive TSCA reform will create an effective and trusted regulatory system that enhances the value of products across their supply chain.

\* On the benefits to downstream users of chemicals policy reform, see: ChemSec, 2005, *What we Need from REACH: Views on the Proposal for a New Chemical Legislation within the EU*. [www.chemsec.org/images/stories/publications/ChemSec\\_publications/What\\_we\\_need\\_from\\_REACH.pdf](http://www.chemsec.org/images/stories/publications/ChemSec_publications/What_we_need_from_REACH.pdf). Accessed October 15, 2009.

For more information and resources:

**Business-NGO Working Group for Safer Chemicals and Sustainable Materials • [www.BizNGO.org](http://www.BizNGO.org)  
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## Small Business Owners on Toxic Chemicals

Findings From A National Online Survey of 511 Small Business Owners

September 27<sup>th</sup>-October 2<sup>nd</sup>, 2012

Prepared by David Mermin, Maxx Caicedo and Christine Matthews





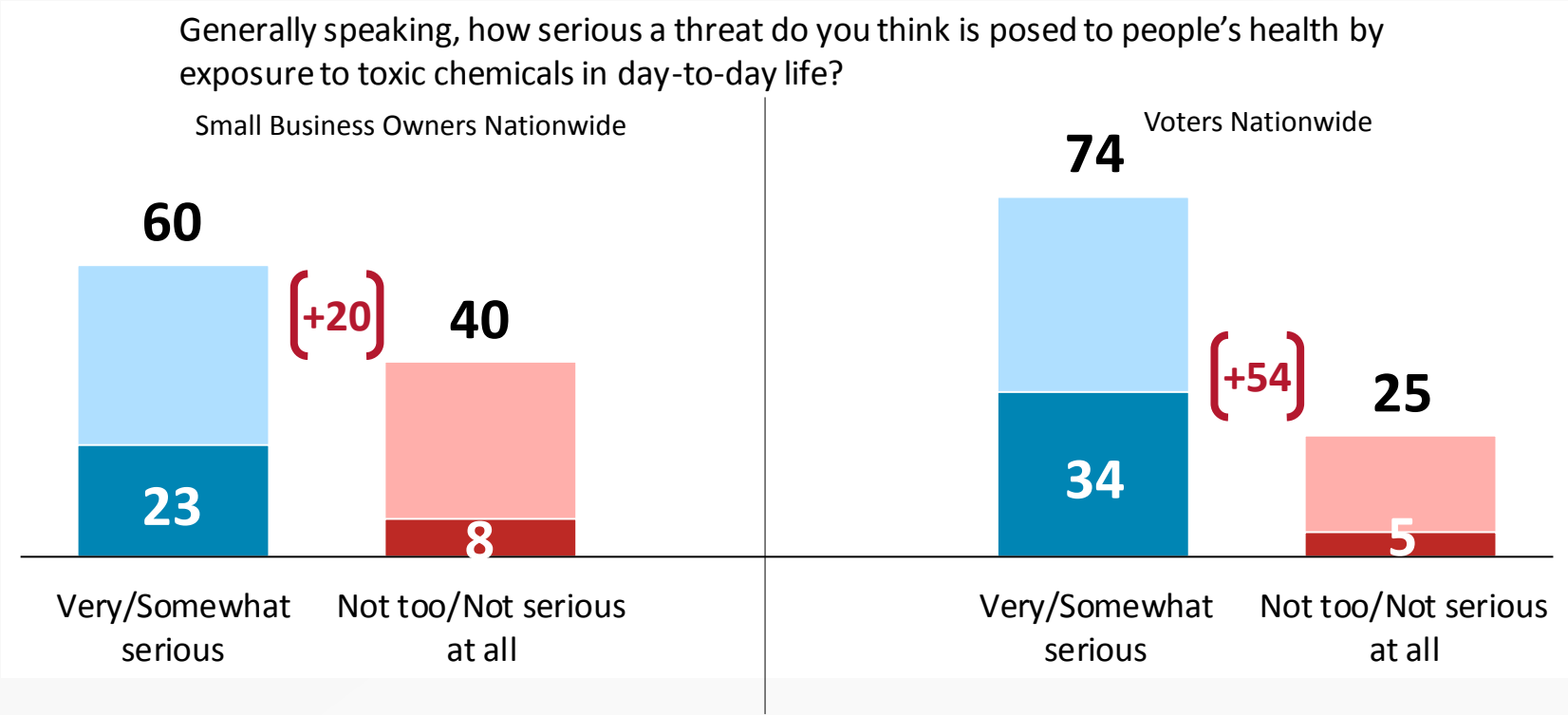
# Methods

- Lake Research Partners conducted a National online survey from September 27<sup>th</sup>- October 2<sup>nd</sup> , 2012 with analysis from Bellwether Research.
- Geographically stratified sample of 511 small business owners across the U.S.
- The margin of error for this survey is +/- 4.4%.
- The data were weighted slightly by gender, region, ethnicity, industry type and business size to match the sample to the national population of small business owners.

## Key Findings

- Small business owners generally believe toxic chemicals pose a threat to people's health, and support stricter regulation and greater disclosure of toxic chemicals. Three-quarters support stricter regulation of chemicals used in everyday products.
- The values driving the views of small business owners in this area are responsibility, safety, and accessible information. Nearly all SBOs believe there should be a publicly accessible database identifying toxic chemicals, and nearly all believe manufacturers should be held responsible for chemical safety.
- Most business owners explicitly support government regulations of the products companies buy and sell, and nearly three out of four support a proposed reform of the Toxic Substances Reform Act requiring manufacturers to show their chemicals are safe.
  - Three-quarters also support tax incentives for companies that innovate to provide safe chemicals.

60% of small business owners believe the threat posed to people’s health by exposure to toxic chemicals is very/somewhat serious, while 40% believe it is not too/not serious at all. Voters believe the threat is even more serious.

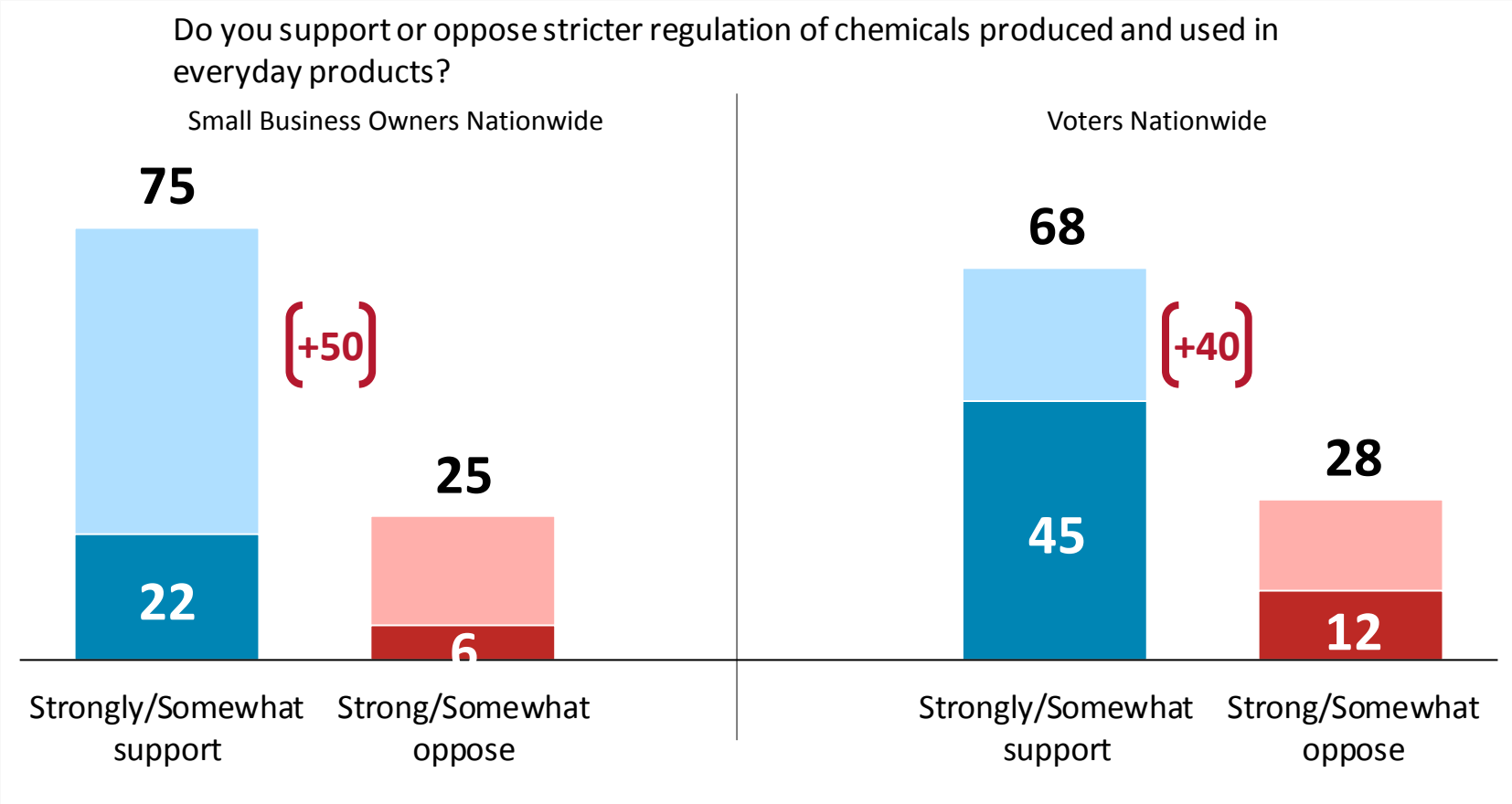


Public Opinion Strategies: National Omnibus Survey of 800 Voters (N=600 Landline/ N=200 Cell)  
 June 25-27, 2012 Margin of Error = + 3.46%

Lake Research Partners : National online survey of 511 Small Business Owners also w/ analysis from Bellwether Research .  
 September 27<sup>th</sup>- October 2<sup>st</sup>, 2012. Margin of error = +/-4.4 %.



Three-fourths of SBOs support stricter regulation of chemicals used in everyday products. Two-thirds of voters are also supportive of stricter regulation.



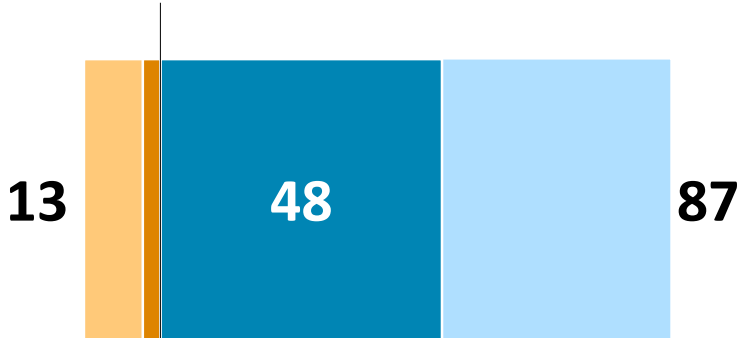
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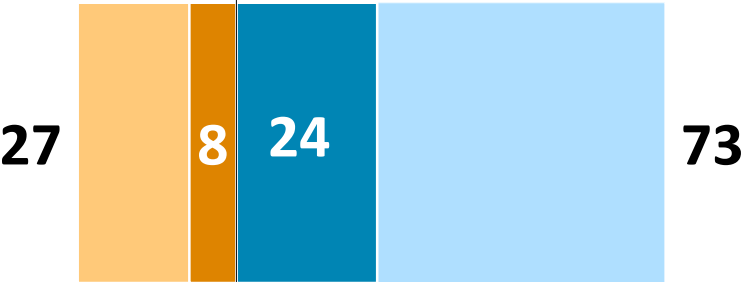


87% of SBOs support government regulation of chemicals used in growing food and 73% support government regulation to ensure the products companies buy and sell are non-toxic.

There should be government regulations to ensure that any chemicals used in growing food are safe for workers and consumers.



There should be government regulations to ensure that the products companies buy and sell are non-toxic.



For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

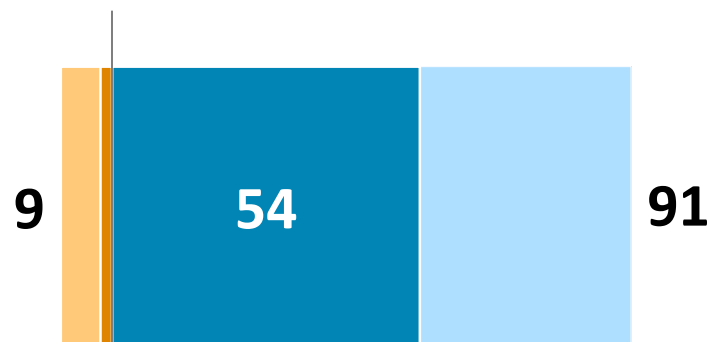
## An overwhelming 96% of Democrats and 83% of Republicans are supportive of regulating chemicals used in growing food.

% Strongly Agree (% Agree)	Total	Democrat	Ind./DK	Republican
There should be government regulations to ensure that any chemicals used in growing food are safe for workers and consumers.	48(87)	72(96)	42(88)	37(83)
There should be government regulations to ensure that the products companies buy and sell are non-toxic.	24(73)	36(89)	25(74)	18(64)

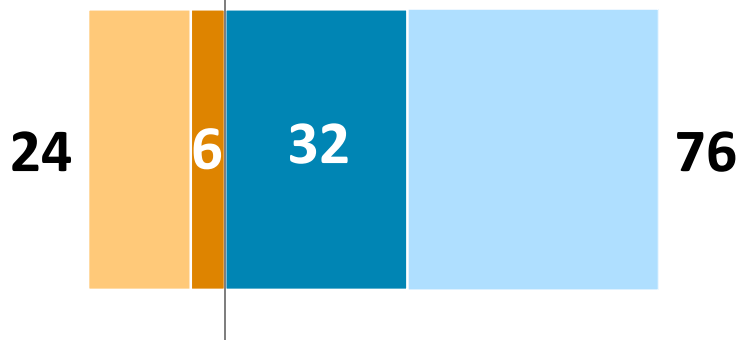
For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

9 in 10 SBOs believe chemical manufacturers should be held responsible for ensuring their chemicals are safe, while 76% believe there should be tax incentives for companies that innovate to provide safer chemicals.

Chemicals manufacturers should be held responsible for ensuring that their chemicals are safe.



There should be tax incentives for companies that innovate to provide safer chemicals in place of chemicals with known health hazards.



For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Across partisan lines, SBOs support holding chemical manufacturers accountable and creating tax incentives for companies that innovate to make safer chemicals.

% Strongly Agree (% Agree)	Total	Democrat	Ind./DK	Republican
Chemicals manufacturers should be held responsible for ensuring that their chemicals are safe.	54(91)	64(96)	56(87)	46(89)
There should be tax incentives for companies that innovate to provide safer chemicals in place of chemicals with known health hazards.	32(76)	41(86)	26(69)	31(74)

For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

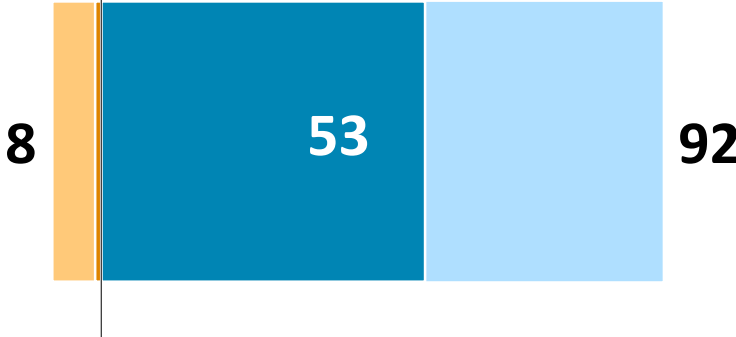


SBOs are also very open to increasing transparency, to the public and along the supply chain, with regard to the chemicals being used and their possible health risks.

Businesses should be required to share chemical ingredient information all along the supply chain--from chemical manufacturer to final product manufacturer.



There should be a public, easily accessible database identifying chemicals of high concern to human and environmental health.



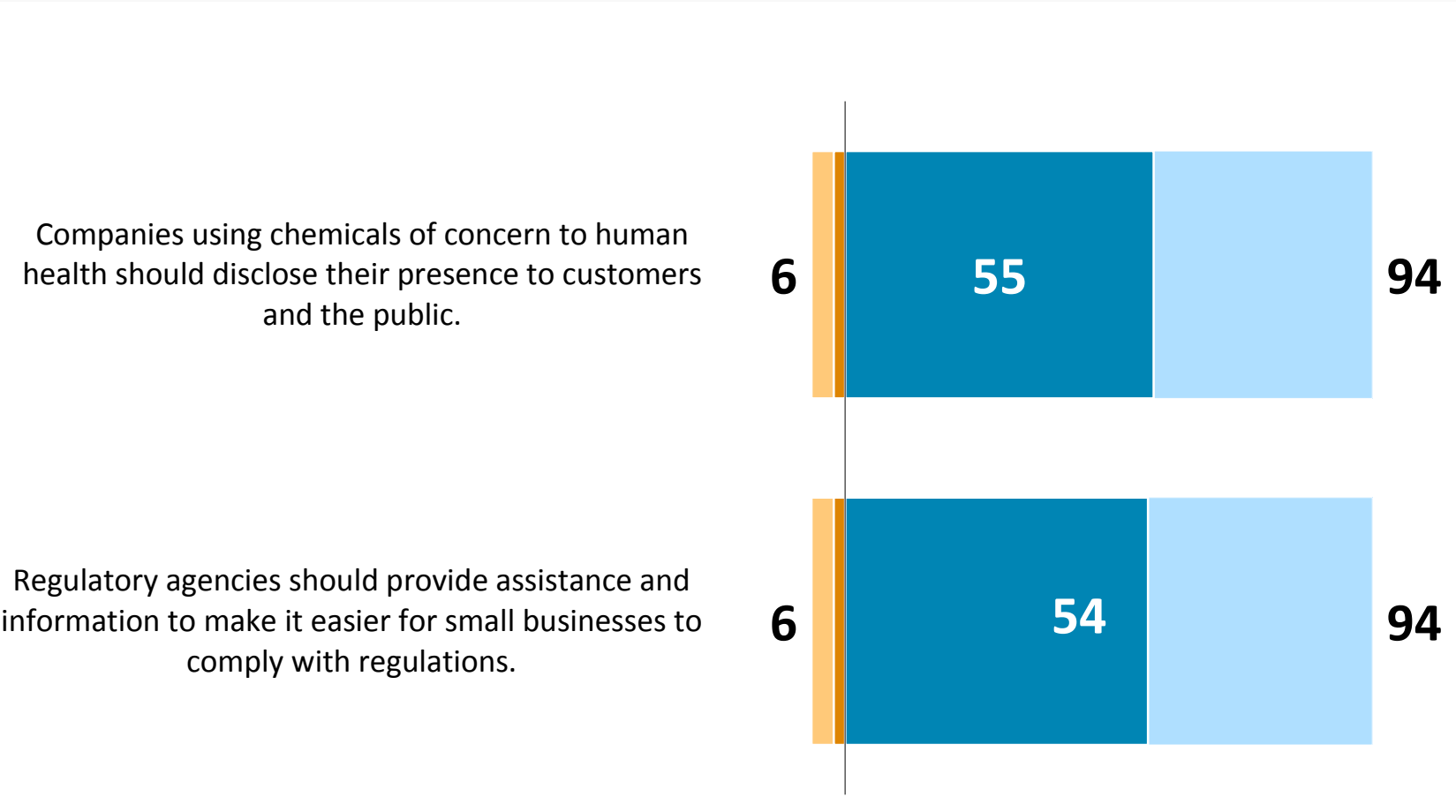
For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Across partisan lines, there is support for increased transparency along the supply chain and to the public.

% Strongly Agree (% Agree)	Total	Democrat	Ind./DK	Republican
Businesses should be required to share chemical ingredient information all along the supply chain--from chemical manufacturer to final product manufacturer.	38(82)	51(93)	39(81)	30(77)
There should be a public, easily accessible database identifying chemicals of high concern to human and environmental health.	53(92)	66(96)	52(89)	46(91)

For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Almost all SBOs agree that companies using chemicals of concern to human health should disclose their presence to customers and to the public, and that agencies should provide assistance to help businesses comply with these regulations.



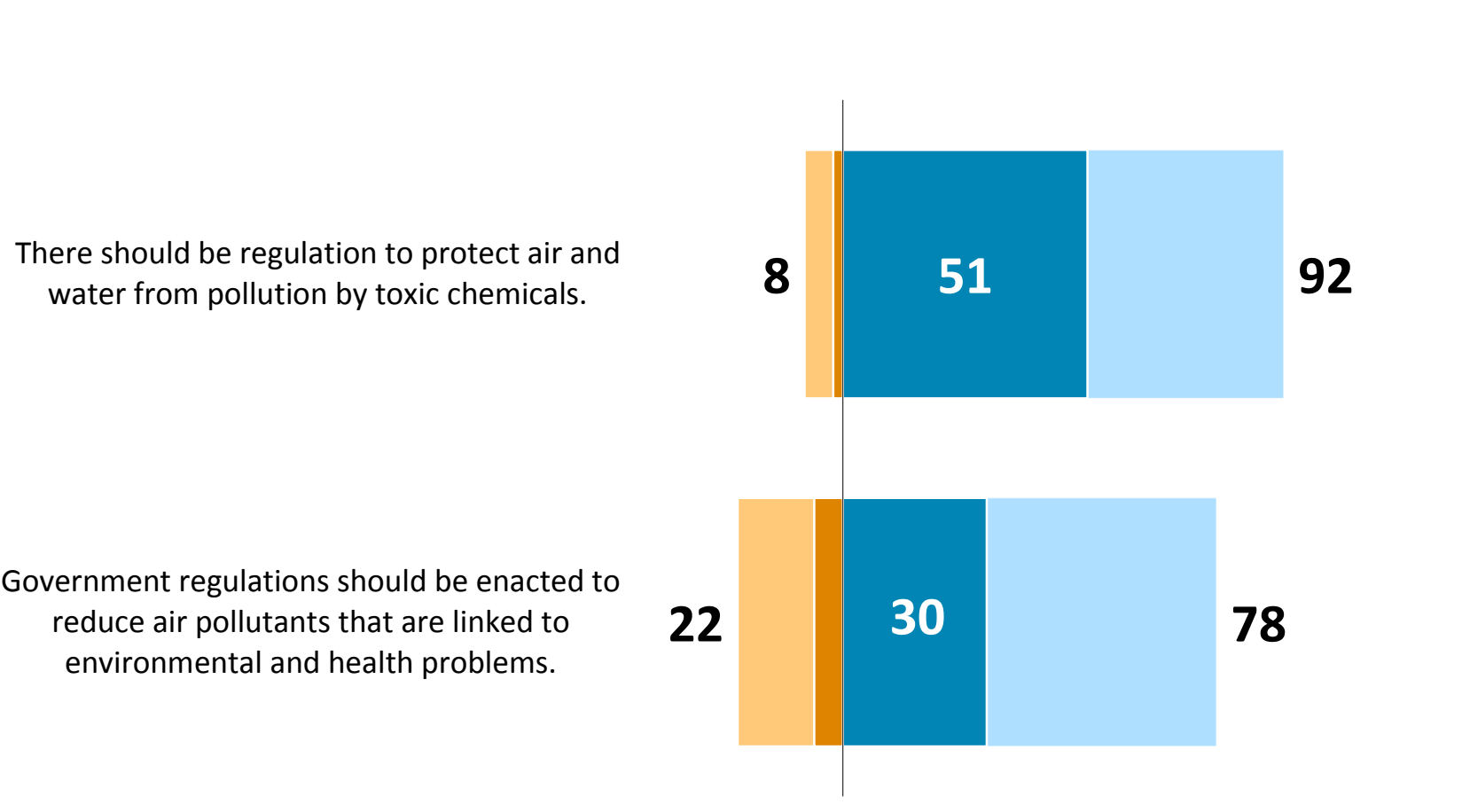
For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Republicans very much agree with both the disclosure, and agencies providing assistance, but with less intensity than Democrats and Independents.

% Strongly Agree (% Agree)	Total	Democrat	Ind./DK	Republican
Companies using chemicals of concern to human health should disclose their presence to customers and the public.	55(94)	66(96)	53(91)	50(93)
Regulatory agencies should provide assistance and information to make it easier for small businesses to comply with regulations.	54(94)	54(96)	57(94)	53(93)

For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

SBOs believe government regulations should exist to reduce air pollutants that are linked to environmental and health problems, and that regulations should be enacted to protect both air and water. The statement without the word “government” has stronger support.



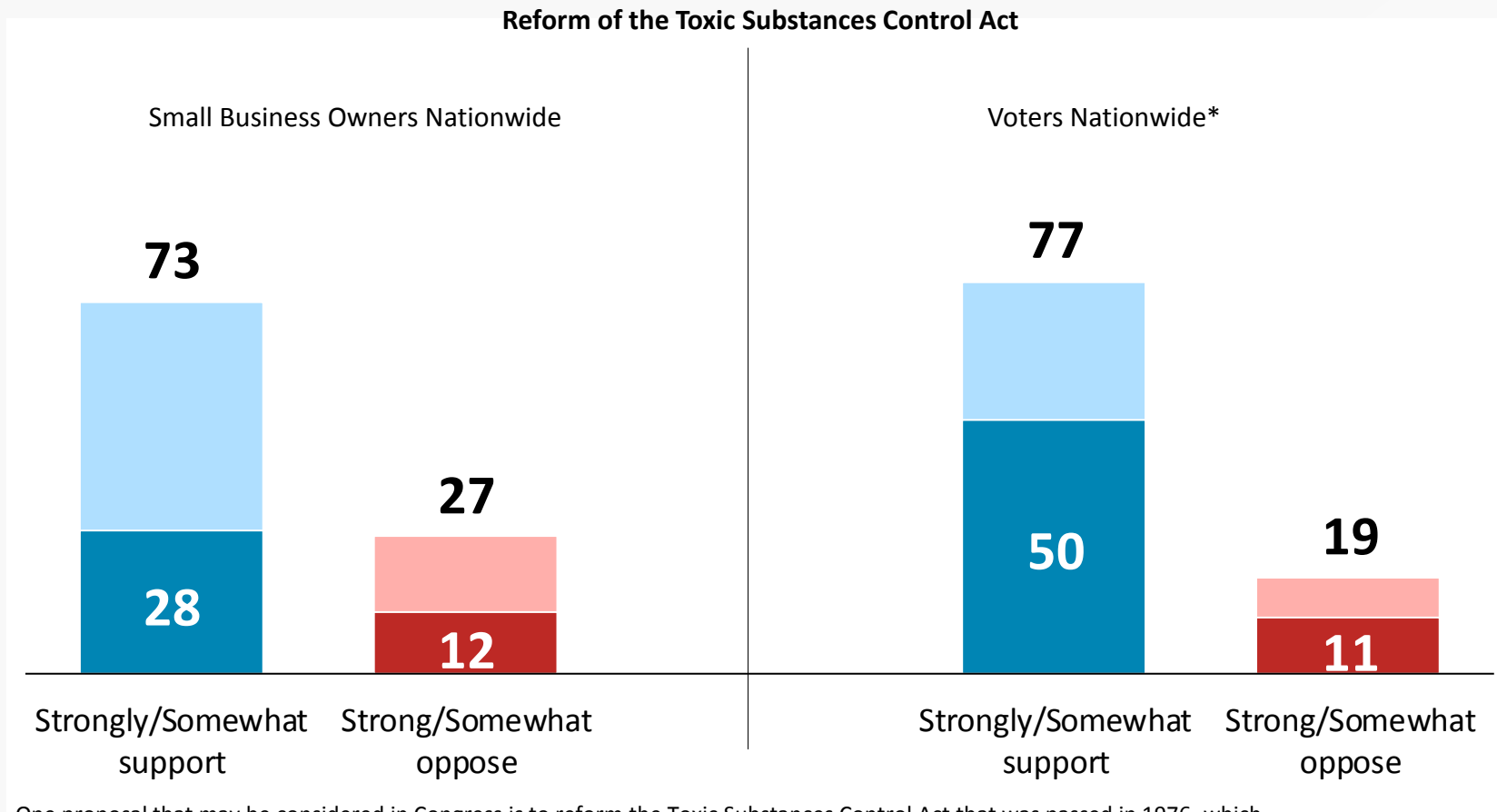
For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Democratic SBOs strongly agree that government regulations should be enacted to reduce air pollutants that are linked to environmental and health problems.

% Strongly Agree (% Agree)	Total	Democrat	Ind./DK	Republican
There should be regulation to protect air and water from pollution by toxic chemicals.	51(92)	78(98)	50(92)	37(90)
Government regulations should be enacted to reduce air pollutants that are linked to environmental and health problems.	30(78)	52(97)	30(79)	17(69)

For each of these statements, please answer whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the statement.

Small business owners overwhelmingly support the reform that would strengthen the Toxic Substances Control Act, though with less intensity than voters nationwide.



One proposal that may be considered in Congress is to reform the Toxic Substances Control Act that was passed in 1976, which provides the Environmental Protection Agency, or EPA, with the authority to regulate chemicals. Under this proposal, all chemical manufacturers would be required to show their chemicals are safe in order to sell them; the EPA would be able to limit some or all uses of a chemical that may harm the public health and would be able to provide support for research and development to help business innovate in producing safer chemicals.

Public Opinion Strategies: National Omnibus Survey of 800 Voters (N=600 Landline/ N=200 Cell)  
 June 25-27, 2012 Margin of Error = + 3.46% \*Slightly different wording on this question than Small Business Owners Survey

Lake Research Partners : National online survey of 511 Small Business Owners also w/ analysis from Bellwether Research .  
 September 27<sup>th</sup>- October 2<sup>st</sup>, 2012. Margin of error = +/-4.4 %.

# Conclusions

- In general, small business owners are concerned about the threat posed by chemicals to the health of humans and the environment, and are supportive of regulation aimed at mitigating that threat.
- Concern over the health risks posed to human and environmental health by toxic chemicals is shared among Democratic and Republican SBOs, as well as support for stricter government regulations to increase transparency and accountability so health risks can be minimized.





Lake Snell Perry Mermin Meadow Gotoff Ulibarri Udem

David Mermin  
[dmermin@lakeresearch.com](mailto:dmermin@lakeresearch.com)

[www.lakeresearch.com](http://www.lakeresearch.com)  
510.286.2097

Maxx Caicedo  
[mcaicedo@lakeresearch.com](mailto:mcaicedo@lakeresearch.com)

Christine Matthews  
[Cmatthews@bellwether-research.com](mailto:Cmatthews@bellwether-research.com)  
703.650.5203