

# **The Dow Chemical Company**

**STATEMENT FOR THE RECORD**

**SUBCOMMITTEE ON ENVIRONMENT & ECONOMY  
COMMITTEE ON ENERGY & COMMERCE**

**U.S. HOUSE OF REPRESENTATIVES HEARING  
ON THE DISCUSSION DRAFT,**

**Chemicals in Commerce Act**

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## **Introduction**

The Dow Chemical Company is pleased to offer our comments relating to the March 12, 2014 Subcommittee hearing on the Discussion Draft, Chemicals in Commerce Act, which would amend the Toxic Substances Control Act (TSCA).

Dow, founded in Michigan in 1897, has become one of the world's leading manufacturers of chemicals and plastics. We supply products to customers in 160 countries around the world, connecting chemistry and innovation with the principles of sustainability to help provide everything from fresh water, food, and pharmaceuticals to paints, packaging, and personal care products.

Dow is committed to sustainability. Our ambitious 2015 sustainability goals underscore this commitment<sup>1</sup>, along with our actions to ensure product safety (see Appendix).

As a global company, Dow complies with multiple regulatory programs across different countries and regions, has developed and adheres to its own high standards for product safety<sup>2</sup>, as well as voluntary industry initiatives<sup>3</sup> including Responsible Care®, and leads in international efforts to improve the safe management of chemicals. Our policy is to comply with regional standards or our own standard, whichever is greater, with a management system in place to ensure that each of our products is safe for its intended use and meets or exceeds the requirements of our customers. Furthermore, we have adopted and published principles upon which product safety legislation or regulation should be based.<sup>4</sup> For many years now, these principles have guided our efforts and our advocacy in the USA and abroad.

## **Reform TSCA**

The United States needs a stronger and more effective federal program for ensuring that chemicals in commerce are safe (for the public and for the environment) for their intended uses. Such a federal program should be complementary to, and coordinated with, voluntary programs designed to promote the safety of chemical products. Any system must foster public confidence, through a consistent approach to chemicals in commerce, and provide certainty for business investment, while maintaining the benefits for society associated with the use of chemical products.

Toward that end, Dow supports reform of the Toxic Substances Control Act (TSCA). We have been active participants in stakeholder dialogues and processes dedicated to improving chemical safety in general and TSCA in particular. We are not alone in our view; there is a consensus among stakeholders to modernize this 38-year-old statute by

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<sup>1</sup> To learn more about Dow's commitment to sustainability, go to our website at <http://www.dow.com>

<sup>2</sup> To learn more, go to <http://www.dowproductsafety.com>

<sup>3</sup> For an example, go to <http://www.icca-chem.org/en/Home/ICCA-initiatives/Global-product-strategy/>

<sup>4</sup> To learn more, go to <http://www.dow.com/commitments/goals/principles.htm>

leveraging the best available science and to create a chemical management system that will be effective long into the future.

We urge the Subcommittee to improve the federal chemical management regulatory system for safe use of chemicals in commerce. A reformed TSCA ought to (1) ensure that existing chemicals as well as new chemicals meet the safety standard, (2) ensure objectivity in EPA's evaluation of safety using the best available scientific information, (3) allow EPA to take actions that are both timely and effective, (4) provide incentives for innovation in sustainable chemistry, and (5) enhance the competitiveness of US companies. Such a system must be transparent and instill public confidence in its implementation and execution.

With these criteria in mind, Dow has evaluated the discussion draft Chemicals in Commerce Act and has concluded that it represents a significant step forward for our federal chemical management system. The remainder of this testimony describes our perspective on the bill and some suggested improvements. Our perspective is influenced by S.1009, the Chemical Safety Improvement Act, which is currently under consideration in the United States Senate.

### **Ensure Existing Chemicals Meet the Safety Standard**

An ideal federal chemical safety program would screen all current chemicals in commerce to determine further information needs, prioritized in a tiered, risk-based fashion. An approach that focuses on initial screening of chemicals based on existing information and a tiered approach to gather additional hazard and exposure information needs will allow the development of necessary and appropriate safety information in a way that informs regulatory action, conserves resources, and accelerates the evaluation process. Because a typical chemical has multiple uses/applications, each posing a unique safety profile, the focus should be on those chemical uses/applications where exposures could be expected to be higher.

There should be a systematic gathering of available validated hazard and exposure information to be used in chemical management decisions by EPA. This includes utilizing information gathered on similar chemicals though the use of validated non-animal test methods, computer modeling and/or quantitative structure-activity relationship (QSAR) activities.

Chemicals that have strict controls and have limited exposure and environmental release potential (e.g., intermediates in a chemical process) or limited potential to enter commerce are likely to require less information.

There should be a cooperative effort among producers, distributors, and users of chemicals (e.g., appropriate sharing/compensation systems) that ensures the information necessary in chemical safety assessment is developed, shared as appropriate, and applied.

The discussion draft aligns with this approach. Prioritization of existing chemicals in commerce based on available information and on considerations of risk, and EPA is given order authority for gathering information necessary for it to make a safety determination for high priority chemicals. Provisions are added to ensure a fair and equitable testing burden among affected parties.

### **Ensure a Scientifically Objective Evaluation of Safety**

An ideal chemical safety program would base its decisions on a consistent scientific evaluation of both hazard and potential exposure (an evaluation of risk), using a weight-of-evidence approach. The Presidential/Congressional Commission on Risk Assessment and Risk Management, in a 1997 report required under the Clean Air Act, concluded that “a good risk management decision is based on a careful analysis of the *weight of scientific evidence* [italics added] that supports conclusions about . . . risk to human health and the environment.” The importance of a weight-of-evidence approach was further explained in the EPA’s report on reference dose and reference concentration processes in 2002. “A weight of evidence approach . . . requires critical evaluation of the entire body of available data for consistency and biological plausibility.” The report further states that “If the mechanism or mode of action is well characterized, this information is used in the interpretation of observed effects in either human or animal studies.” In other words, the cornerstone of a weight-of-evidence approach is to evaluate and use all available, valid, scientific information.<sup>5</sup>

Studies conducted and funded by Dow are necessary and valuable contributions to the understanding of potential public health and environmental effects related to the manufacture and use of its products. Our scientists have expert knowledge of the chemicals we manufacture, especially as this relates to the development and interpretation of the science needed to comply with governmental requirements around the world. Research has a long and accepted history that it can be done transparently (capable of being reproduced). Information should be judged on the basis of scientific merit and not de-selected simply based on the funding source or where the studies are conducted (e.g. academia, government, or industry). A number of practices and procedures are in place by which policymakers and the public can be assured that studies performed by or funded by Dow and the rest of industry meet high scientific standards.

The discussion draft aligns with this recommendation to use a weight-of-evidence approach to making safety determinations. The draft also sets neutral quality criteria for evaluating studies, and does not discriminate against a study based on the source of funding.

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<sup>5</sup> In a 2007 memorandum, the Office of Science and Technology and the Office of Management and Budget asked each federal agency to employ the best reasonably obtainable scientific information to assess risks to health, safety, and the environment. Pursuant to the 1996 amendments to the Safe Drinking Water Act, EPA is directed to use the best available, peer-reviewed science and supported studies conducted in accordance with sound and objective scientific practice.

### **Allow EPA to Take Timely and Effective Action**

An ideal chemical safety program ensures that the safety determination process is solely focused on the expected impact on human health and the environment and is separate from decisions about risk management. Such a program would ensure a role for cost/benefit analysis in risk management decisions. If warranted, substitution should be considered only after a comparison of substances based on performance, health, environmental and socio-economic aspects in the relevant applications.

To instill public confidence and provide regulatory certainty for business planning purposes, it is important that appropriate risk management actions be taken expeditiously and consistently.

This discussion draft aligns with these recommendations to have a separate safety assessment and determination process. The discussion draft requires EPA to consider the costs and benefits before selecting a risk management option. It requires EPA to choose a risk management option that is “proportional” to the risk, provides a net benefit, is cost-effective, and for which chemical alternatives are available.

Statutes designed to reduce risk to human health or the environment typically include “decisional criteria” that prescribe or guide the regulatory agency when making risk management decisions. As the Subcommittee considers this issue, please note that EPA and other regulatory agencies currently follow principles for regulatory analysis that are spelled out in Presidential executive orders and OMB guidance: EO 12866 (Clinton), EO 13563 (Obama), and OMB Circular A-4. To summarize, these documents advise an agency to identify a manageable number of regulatory options, and to select the option that maximizes net benefits, and to make a determination that the benefits justify the cost. As a rule of thumb, the bigger the impact of the rule, the more robust the supporting analysis should be.

Unfortunately, because these principles are contained in executive orders and guidance documents, they do not allow for enforcement as provided by a statute, and so it will be critical to incorporate decisional criteria into any bill to reform TSCA.

We recommend that the long-standing executive orders and OMB guidance – adopted by Republican and Democratic Presidents alike – be used to inform the Subcommittee as it seeks to strike the right balance.

### **Include Incentives for Sustainable Chemistry**

An ideal chemical safety program would provide incentives for sustainable chemistry. Dow uses the term “sustainable chemistry” to describe a concept that drives us to use resources more efficiently and safely, address the total lifecycle of the product while

providing value to our customers and stakeholders, delivering solutions for customer needs and enhancing the quality of life of current and future generations.<sup>6</sup>

We believe that chemical policy should provide incentives for investments in sustainable chemistry. Such incentives could include, but not be limited to, government support for research and development and for lifecycle assessment to promote sustainable chemistry, and government priority given to new products and processes that represent a significant improvement in sustainability over existing products and processes.

The discussion draft does not contain provisions explicitly labeled “sustainable chemistry” or “green chemistry”. Nevertheless, we believe the bill would advance sustainable chemistry by (1) requiring EPA to evaluate existing chemicals against a safety standard and, if necessary, to take risk management action, and (2) minimizing changes to EPA’s new chemicals program, which we know provides an effective entry point into commerce for more sustainable or “green” chemicals.

### **Enhance US Competitiveness**

An ideal chemical safety program would ensure that chemicals are safe for their intended uses and would do so in a timely manner and with a minimum of additional resources. Such an ideal program would position the USA as a leader in chemical management, bringing safer products to market faster, and therefore enhance the competitiveness of US companies.

Chemistry is such an enabling science, that a poorly designed policy can impact the competitiveness of businesses through the entire chain of commerce. Therefore, Congress should consider the views of all businesses that rely on chemical products to provide value to their customers. We are encouraged that today’s hearing, and others held by the Subcommittee on the subject of TSCA, have featured a range of business witnesses that span sectors of the economy.

Under TSCA, EPA’s new chemical program has been largely successful in fostering innovation while providing EPA with the tools it needs to ensure safety. Dow urges Congress to maintain these attributes of the new chemical program, which is largely acknowledged to be a success story in the US chemical management system.

It is important that legitimate confidential business information (CBI) be protected under any chemical safety program that relies on information provided by commercial interests. Details that implicate proprietary interests, such as certain information on the ingredients in a product, should be protected as confidential business information to ensure stimulus for innovation.

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<sup>6</sup> Sustainable chemistry builds on the strong foundation of green chemistry and engineering (as developed by Warner and Anastas and supported by the American Chemical Society and EPA) to include social dimensions which recognizes the value of chemical products to enhance our quality of life and protected the environment.

An ideal federal chemical safety program should develop and support means to share relevant safety information with other governments, while protecting legitimate business interests in proprietary information.

If the information that is used to make a determination of safety is of commercial value, provisions should be made for protecting the commercial interest while ensuring public access to the information.

Companies that invest in the conduct of chemical, physical property or health and environmental safety testing should receive fair compensation from other companies who choose not to participate in such studies, but wish to use the information generated for registration or compliance purposes. Health and safety information such as would appear on a material safety data sheet or otherwise be used solely for risk management should be made publicly available.

The discussion draft meets these criteria. It largely maintains the successful new chemicals program, which is a model for the world. It would protect legitimate confidential business information (CBI). And it would ensure a fair and equitable testing burden among relevant parties.

## **Conclusion**

Dow urges the Subcommittee to modernize TSCA so that it creates confidence by the public on how chemicals are evaluated for safety in their application and use and ensures that the United States remains a leader in innovation for manufactured products. We stand ready to assist Congress in its efforts to foster public confidence, ensure that existing chemicals in commerce meet the safety standard, and provide certainty for business investment, while maintaining the benefits for society through the science of chemistry.

The House discussion draft, Chemicals in Commerce Act, represents a significant advance over our current chemical management system, and we urge the Subcommittee to introduce, debate, improve, approve, and move this bill so that enactment of TSCA reform becomes a reality this year.

## **Appendix: Dow Commitment to Product Safety**

At Dow, chemical safety is a top priority, and it always has been. Dow first established a toxicology laboratory in 1934 to evaluate chemical hazards, and we continue to be a global leader in this field today. Dow was a pioneer when it established a formal product stewardship program in 1970. In the 1980s, Dow led in development of Responsible Care®, which represents the chemical industry's commitment to continuous improvement in environmental, health, and safety performance. Most recently, our 2015 Sustainability Goals emphasize our commitment to continually improve the safety of our products throughout their lifecycle. For example, we have committed to conducting safety assessments for all of our products and making the information publicly available. In developing these safety assessments, we will address relevant gaps in hazard and exposure information. See [www.dow.com/productsafety/index.htm](http://www.dow.com/productsafety/index.htm) to better understand our processes by which we evaluate the safety of our products for their intended uses and to access these safety assessments. We are also committed to continuous improvement in our product safety assessment processes and to increased stakeholder scrutiny and dialogue on these topics.

Via our product stewardship program, we strive to develop, manufacture, transport and market our products in a safe and responsible manner. We work to ensure our products are handled safely and recycled or disposed of appropriately. Dow welcomes appropriate review by governments to maintain and enhance public acceptance of its operations and products.

If any party within the value chain identifies improper practices involving a product, it should work to improve those practices and, if, in the party's independent judgment, sufficient improvement is not evident, then the party should take further measures up to and including termination of product sale or use. Dow routinely refuses to sell products into applications where we don't believe the conditions for safe use can be met.

Dow believes there should be widespread support for the development of capabilities (competency) in nations that need to build their chemicals management framework to support the protection of human health and environment. We are actively working to assist small- and medium-sized companies and governments in developing countries to improve their capabilities to assess and manage chemicals safely.