



Formerly the Association of Trial Lawyers of America (ATLA®)

April 29, 2014

The Honorable John Shimkus
Chairman
Subcommittee on Environment and Economy
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Paul Tonko
Ranking Member
Subcommittee on Environment and Economy
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Tonko:

The American Association for Justice (AAJ), formerly the Association of Trial Lawyers of America (ATLA), hereby submits comments in relation to the Energy and Commerce Committee Subcommittee on the Environment and the Economy hearing on the revised “Chemicals in Commerce Act” discussion draft.

AAJ, with members in United States, Canada and abroad, is the world’s largest trial bar. It was established in 1946 to safeguard victims’ rights, strengthen the civil justice system, promote public safety, and protect the constitutionally mandated right to a trial by jury. As advocates for people harmed by toxic chemicals, AAJ strongly supports efforts to reform TSCA to better protect American families from the harmful chemicals which are found in everything from our drinking water to children’s toys and consumer products. These chemicals pose significant and often deadly risks, especially to children, pregnant women, workers and the elderly.

After Chairman Shimkus and the subcommittee members heard near-unanimous agreement on the need for significant improvements to the “Chemicals in Commerce Act” discussion draft at the March 12, 2014 hearing on the original text, this revised draft still fails to meaningfully improve existing law in many aspects. Indeed, the revised draft actually remains less protective of public health and the environment than current law due to its sweeping preemption provisions which roll back vital state and civil justice system protections.

- **Sweeping preemption of state laws.** The revised draft prevents states from enacting new laws and regulations for chemicals deemed ‘low-priority’ by the EPA while preempting existing state laws for ‘low-priority’ chemicals before any judicial review has occurred. The revised draft also preempts new and existing state laws and regulations for chemicals deemed ‘high-priority’ by the EPA, potentially years before any enforceable regulation is in place, creating a total void of any regulation of toxic chemicals at the state or federal level for years. Additionally, the revised draft would still preempt both new and existing state laws just 90 days after the EPA receives a pre-manufacture notice from a chemical manufacturer, even if absolutely no action of any kind is undertaken by the EPA.
- **Failed savings clause.** The stated purpose of the draft bill is to “promote uniform protections...while minimizing undue burdens on commerce,” creating a uniform federal law which preempts state laws, and imposes a ceiling on regulation of toxic chemicals.

The revised draft's "savings clause" fails to adequately and specifically protect statutory and common law remedies, and fails to address unintended, but reasonably foreseeable toxic chemical exposures.

- **Unworkable safety standard.** The revised draft continues to maintain the same safety standard that has prevented the EPA from banning known, dangerous chemical substances such as asbestos. Even with factors for evaluating risk defined, the risk management standards for implementing regulations or restrictions would still result in the endless cost-benefit analysis of more cost-effective or economically feasible alternatives to regulation.
- **Scientific Preemption.** The revised draft places limits on the sources of science the EPA can consider when evaluating toxic chemical substances, limiting the scientific information the EPA considers to industry-captured studies, while studies from truly independent sources, even renowned universities, are discounted or suppressed entirely from the EPA's consideration because they don't meet certain industry-dictated standards.
- **Unduly burdens a resource-depleted EPA.** The revised draft bill, taken as a whole, would still singularly task the EPA with responsibility for prioritizing, testing, regulating, and enforcement of 80,000+ chemical substances, while simultaneously wiping out state and civil justice system protections. The EPA's budget has been slashed by over 20% since 2010, with the 2015 budget proposals continuing that downward trend, cutting an additional 3.7% from the EPA's 2014 budget.

Strong federal oversight is essential to ensuring public health, but federal standards but should not prevent Americans from seeking recourse when toxic chemicals cause harm. Just because a chemical is deemed 'safe' or 'low-priority' by a federal regulator should not mean that the chemical industry's duty to protect the public ends. If it turns out that the chemical industry learns additional information about the safety of its product, or hid information from the public and harm occurs as a result, individuals should have the right to hold that corporation accountable. AAJ firmly believes that any effort to reform TSCA must specifically and comprehensively preserve the ability of individuals to pursue their rights under both state statutory and common law.

AAJ applauds the effort to hold earnest discussions about how to keep Americans safe from toxic chemicals, but unfortunately the "Chemicals in Commerce Act," does not present an adequate place to begin the conversation.

AAJ looks forward to working with the committee to enact meaningful TSCA reform that ensures a federal scheme truly protective of the public health, while preserving the authority of state enforcement entities and the civil justice system to promote and effectively protect public health and the environment from the risks of toxic chemicals.

Sincerely,



Linda Lipsen
Chief Executive Officer
American Association of Justice