

**TESTIMONY OF
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BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

April 29, 2014

Good morning Chairman Shimkus, Ranking Member Tonko, and other members of the Subcommittee. Thank you for the opportunity to discuss reform of chemicals management in the United States.

It is clear that there is wide agreement on the importance of ensuring chemical safety and restoring the public's confidence that the chemicals used in the products they and their families use are safe. This Administration also believes it is crucial to modernize and strengthen the Toxic Substances Control Act (TSCA) to provide the EPA with the tools necessary to achieve these goals and ensure global leadership in chemicals management.

We continue to be encouraged by the interest in TSCA reform indicated by the introduction of several bills in recent years, the hearings on TSCA related issues that are being held, and the bipartisan discussions that are taking place. Key stakeholders share common principles on how best to improve our chemicals management programs. We at the EPA remain committed to working with this committee and others in both the House and Senate, members of the public,

the environmental community, the chemical industry, the states, and other stakeholders to improve and update TSCA.

Chemicals are found in almost everything we buy and use. They can be essential for our health, our well being, and our prosperity. However, we believe that it is equally essential that chemicals are safe. While we have a better understanding of the environmental impacts, exposure pathways, and health effects that some chemicals can have than we did when TSCA was passed, under the existing law it is challenging to act on that knowledge.

TSCA gives the EPA jurisdiction over chemicals produced and used in the United States. Unlike the laws applicable to drugs and pesticides, TSCA does not have a mandatory program where the EPA must conduct a review to determine the safety of existing chemicals. In addition, TSCA places burdensome legal and procedural requirements on the EPA before the agency can request the generation and submission of health and environmental effects data on existing chemicals.

While TSCA was an important step forward in 1976, it has over the years fallen behind the industry it is intended to regulate. TSCA has also proven a challenging tool for providing the protection against chemical risks that the public rightfully expects. A strong reauthorization measure would enable us to significantly strengthen the effectiveness of this outdated law.

When TSCA was enacted, it grandfathered in, without any evaluation, about 60,000 chemicals in commerce at the time. In addition, the statute did not provide adequate authority for the EPA to

reevaluate existing chemicals as new concerns arose or science was updated. The law also failed to grant the EPA full and complete authority to compel companies to provide toxicity data.

It has also proven challenging in some cases to take action to limit or ban chemicals that the EPA has determined pose a significant health concern. For example, in 1989, after years of study and with strong scientific support, the EPA issued a rule phasing out most uses of asbestos in products. Yet, a federal court overturned most of this action because it found the rule had failed to comply with the requirements of TSCA.

As a result, in the more than three and a half decades since the passage of TSCA, the EPA has only been able to require testing on just a little more than 200 of the 84,000 chemicals listed on the TSCA Inventory, and has regulated or banned only five of these chemicals under TSCA's section 6 authority to ban or limit chemicals that pose an unreasonable risk.

TSCA should be updated and strengthened, including providing the appropriate tools to protect the American people from exposure to harmful chemicals. The EPA believes that it is critical that any update to TSCA include certain components.

In September 2009, the Administration announced the attached principles to update and strengthen TSCA. These include the need to provide the agency with the tools to quickly and efficiently obtain information from manufacturers that is relevant to determining the safety of chemicals. The EPA also should have clear authority to assess chemicals against a risk-based safety standard and to take risk management actions when chemicals do not meet the safety

standard, with flexibility to consider children's health, economic costs, social benefits, and equity concerns. The principles further state that both chemical manufacturers and the EPA should assess and act on priority chemicals, both existing and new, in a timely manner. This means that the EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive populations. Legislation also should provide the EPA with tools to ensure that protections put in place are carried out and provide a level playing for the companies that comply.

On April 22, 2014, a revised version of the "Chemicals in Commerce Act" discussion draft was released by Chairman Shimkus. According to materials released by the Subcommittee accompanying an earlier draft, the legislation seeks to provide needed updates and improvements to current law. The current discussion draft includes provisions on the regulation of new chemicals, protections for Confidential Business Information, and many provisions on existing chemicals, including the process for the EPA to obtain new information, the process for prioritizing chemicals for review, standards to determine if a chemical poses an unreasonable risk, the role of state governments in managing chemicals, and other miscellaneous provisions.

While the Administration has not yet developed a formal position on the discussion draft of the bill, there are several important observations that I would like to offer. As stated in the principles above, we feel strongly that updated legislation should include improvements that will provide

the EPA with the ability to make timely decisions if a chemical poses a risk and the ability to take action, as appropriate, to address that risk.

The Administration principles state that priority chemicals should be assessed and acted upon in a timely manner, with clear, enforceable and practicable deadlines for completion of chemical reviews. The current discussion draft does not include a mechanism that would provide for the timely review of existing chemicals that may pose a concern, which we believe is vitally important to assuring the American public that the chemicals they find in the products they buy and use are safe.

As stated earlier, the use of section 6 of TSCA to limit or ban a chemical that poses a significant risk has been a major challenge. By including a standard very similar to the current TSCA section 6 authorities, the draft bill fails to address another key element of meaningful chemical safety reform. Administration Principle 1 states that chemicals should be reviewed against a safety standard based on sound science and risk-based criteria protective of human health and the environment. By this, we mean that assessment of safety should not include consideration of costs or the availability of substitutes. We address those issues in Principle 3, which states that when addressing chemicals that do not meet the safety standard, risk management decisions should take into account cost and availability of substitutes, as well as sensitive subpopulations and other factors. The draft bill does not align with the approach delineated in the principles.

The new chemicals provisions in Section 5 of the current discussion draft also do not align with the principles, in that they do not require that the EPA conclude that new chemicals are safe and

do not endanger public health or the environment, elements of Principle 2 and another keystone of a credible chemical safety program. In addition, the risk management authorities for new chemicals in the current discussion draft are weaker than those in TSCA.

Mr. Chairman, thank you again for your leadership on TSCA reform. I will be happy to answer any questions you or other members may have.

APPENDIX: Essential Principles for Reform of Chemicals Management Legislation

The U.S. Environmental Protection Agency (EPA) is committed to working with the Congress, members of the public, the environmental community, and the chemical industry to reauthorize the Toxic Substances Control Act (TSCA). The Administration believes it is important to work together to quickly modernize and strengthen the tools available in TSCA to increase confidence that chemicals used in commerce, which are vital to our Nation's economy, are safe and do not endanger the public health and welfare of consumers, workers, and especially sensitive sub-populations such as children, or the environment.

The following Essential Principles for Reform of Chemicals Management Legislation (Principles) are provided to help inform efforts underway in this Congress to reauthorize and significantly strengthen the effectiveness of TSCA. These Principles present Administration goals for updated legislation that will give EPA the mechanisms and authorities to expeditiously target chemicals of concern and promptly assess and regulate new and existing chemicals.

Principle No. 1: Chemicals Should Be Reviewed Against Safety Standards That Are Based on Sound Science and Reflect Risk-based Criteria Protective of Human Health and the Environment.

EPA should have clear authority to establish safety standards that are based on scientific risk assessments. Sound science should be the basis for the assessment of chemical risks, while recognizing the need to assess and manage risk in the face of uncertainty.

Principle No. 2: Manufacturers Should Provide EPA With the Necessary Information to Conclude That New and Existing Chemicals Are Safe and Do Not Endanger Public Health or the Environment.

Manufacturers should be required to provide sufficient hazard, exposure, and use data for a chemical to support a determination by the Agency that the chemical meets the safety standard. Exposure and hazard assessments from manufacturers should be required to include a thorough review of the chemical's risks to sensitive subpopulations.

Where manufacturers do not submit sufficient information, EPA should have the necessary authority and tools, such as data call in, to quickly and efficiently require testing or obtain other information from manufacturers that is relevant to determining the safety of chemicals. EPA should also be provided the necessary authority to efficiently follow up on chemicals which have been previously assessed (e.g., requiring additional data or testing, or taking action to reduce risk) if there is a change which may affect safety, such as increased production volume, new uses or new information on potential hazards or exposures. EPA's authority to require submission of use and exposure information should extend to downstream processors and users of chemicals.

Principle No. 3: Risk Management Decisions Should Take into Account Sensitive Subpopulations, Cost, Availability of Substitutes and Other Relevant Considerations

EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns.

Principle No. 4: Manufacturers and EPA Should Assess and Act on Priority Chemicals, Both Existing and New, in a Timely Manner

EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the Agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations

Principle No. 5: Green Chemistry Should Be Encouraged and Provisions Assuring Transparency and Public Access to Information Should Be Strengthened

The design of safer and more sustainable chemicals, processes, and products should be encouraged and supported through research, education, recognition, and other means. The goal of these efforts should be to increase the design, manufacture, and use of lower risk, more energy efficient and sustainable chemical products and processes.

TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI). Manufacturers should be required to substantiate their claims of confidentiality. Data relevant to health and safety should not be claimed or otherwise treated as CBI. EPA should be able to negotiate with other governments (local, state, and foreign) on appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety.

Principle No. 6: EPA Should Be Given a Sustained Source of Funding for Implementation

Implementation of the law should be adequately and consistently funded, in order to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is meeting

that goal. To that end, manufacturers of chemicals should support the costs of Agency implementation, including the review of information provided by manufacturers.