



The Chemical Company

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Assessing the Effectiveness of U.S. Chemical Safety Laws

**Subcommittee on Superfund, Toxics, and Environmental Health
Committee on Environment and Public Works
United States Senate**

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Good morning, Mr. Chairman. My name is Steve Goldberg, and I am employed by BASF Corporation as the company's Vice President for Regulatory Law & Government Affairs. Among my responsibilities within BASF, I am charged with ensuring the company's compliance with the Toxic Substances Control Act and other similar statutes, such as those governing pesticides, foods and pharmaceuticals. I have been active in discussions on TSCA modernization during the last two years through trade associations, such as the American Chemistry Council, Consumer Specialty Products Association and American Cleaning Institute, and I have maintained a dialogue with non-governmental organizations, including the Environmental Defense Fund and Natural Resources Defense Council.

BASF Corporation supports modernization of TSCA. While TSCA remains an effective statute in many ways, to ensure the confidence of the American public in the products of chemistry, TSCA needs to be updated. Toxicology, environmental science and risk assessment processes have also advanced considerably since TSCA was enacted in 1976. And new scientific methods are being used to assess the safety of chemicals as to both human health and the environment. Modernization of TSCA needs to ensure the safety of the products of chemistry; but it must also ensure the ability for the U.S. chemical industry and its customers along the value chain to innovate in order to meet the growing complexity and challenges faced by our society, including climate protection, health care, and related concerns.

TSCA modernization will not be an easy task. It will first require consensus around a set of principles. ACC, CSPA and ACI, the three groups that I have worked with, have put forth principles for TSCA modernization. BASF supports these principles. We have also seen principles put forth by NGOs, most specifically those set forth by EDF.

On many fronts, I believe that the regulated and the NGO communities are closer than one might think. As with so many issues, however, the difficulty lies in the details. This hearing will likely not delve into most of these details, but I do hope that it will help us to crystallize the principles that will eventually lead U.S. chemical regulation into the 21st Century.

About BASF

At BASF Corporation, *We create chemistry*. We are the U.S. subsidiary of German-based BASF SE, the world's largest chemical company. Our portfolio includes chemicals, plastics, performance and agricultural products and fine chemicals. As a reliable partner, BASF helps its customers in virtually all industries to be more successful. With our high-value products and intelligent solutions, BASF plays an important role in finding answers to global challenges such as climate protection, energy efficiency, nutrition and mobility. In the United States, BASF employs nearly 13,500 people and has facilities in more than half of the states.

What TSCA Does Right

It was not until 1976 when Congress passed and the president signed TSCA into law that the U.S. had a true chemical regulation program designed, as the statute says, "to ensure that chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment."

First and foremost, TSCA appropriately established a role for the federal government in the regulation of chemicals and it provided those of us in the regulated community with guidance to develop products that are safe for their intended use. The statute requires, for example, an inventory of existing chemicals and provides that new substances are to be added to the inventory after they are reviewed and approved by EPA. EPA has authority to collect data from manufacturers and processors and can require testing of a chemical if it finds that the chemical “may present an unreasonable risk to health or the environment.” In addition, TSCA was given built in flexibility, recognizing that not all chemicals are alike and allowing EPA to use different types of assessments depending on the chemical in question. Finally, TSCA gives EPA regulatory authority to impose risk management measures on chemicals found to present an unreasonable risk to health or the environment. These risk management measures include bans, warnings and labeling requirements.

Second, TSCA has promoted innovation. While establishing an appropriate role for government regulation, TSCA makes clear that such regulation “should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation.” If one were to look at the role chemistry plays today and the products that we all enjoy as a result of chemistry, TSCA has not only promoted safety, but also ensured economic growth and the creation of new technologies. It is estimated by ACC that over 96% of manufactured goods are directly touched by the business of chemistry. The chemical industry supplies its products into markets for consumer goods, transportation, pharmaceuticals, healthcare, paper, energy, housing and construction and numerous others. It is a leader in meeting the needs of a changing society, looking to enhance sustainability in areas such as energy and construction.

And third, TSCA has ensured the protection of confidential business information. Intellectual property is a company’s most valuable intangible asset. Like other forms of intellectual property (patents, trademarks, and copyrights), CBI represents a substantial investment of time and dollars. And, it must be safeguarded carefully from competitors. TSCA allows EPA to solicit and receive CBI, but at the same time correctly establishes criminal penalties for wrongful disclosure by the agency and its personnel.

Why We Need TSCA Modernization

While BASF believes that TSCA is protective of health and the environment, the statute is nearly 35-years-old and was adopted during a different era, one where the economy, science, and technology were not nearly as complex as they are today.

For example, newer forms of testing are rapidly being developed. This includes high throughput screening of chemicals and use of non-animal testing models for toxicity. In addition, biomonitoring, which measures human exposure to natural and manmade chemicals based on sampling of tissues, blood, and other fluids, has become more sophisticated. Scientists are now able to measure smaller and smaller amounts of chemicals in the human body.

And, as science and society have progressed, people’s understanding and expectations of chemistry have progressed along with it. Because of new media like the Internet, Americans have greater

access to information, and misinformation, about chemistry as well as what goes into the products they purchase. Americans want to know more and have confidence in the safety of the products of chemistry and in the federal government's regulatory role ensuring safety. At the same time, industry needs a more predictable, scientifically-based and efficient federal management system to avoid a multiplicity of state and local laws that inhibit innovation.

Most importantly, while EPA has an effective program to review the safety of new chemicals under TSCA, it has lacked an organized, systemic program for reviewing chemicals that were part of the original TSCA inventory.

Principles for Legislation

As noted previously, I have worked on principles for the modernization of TSCA with ACC, CSPA and ACI. Examining them, as well as principles set forth by EDF, suggests that there is commonality in the following areas:

- (1) A strong federal system is necessary to ensure the safety of chemicals in commerce. From the industry perspective, it is also necessary to avoid the multiplicity of state and local laws that inhibit commerce.
- (2) Chemicals should be safe for their intended use, and EPA should have authority to make appropriate safety determinations.
- (3) An appropriate TSCA safety standard should be risk-based, taking into account both hazard and exposure data to assess safety.
- (4) Industry should have the burden to come forth with information demonstrating the safety of chemicals for their intended uses for both new and existing chemicals.
- (5) Companies that manufacture, import, process, distribute or use chemicals should be required to provide EPA with information necessary to make appropriate safety determinations. Information needs to come not just from manufacturers but from others in the chain in order to make appropriate risk-based assessments.
- (6) EPA should systematically prioritize existing chemicals for the purpose of reviewing their safety. Given the large number of chemicals potentially in commerce, EPA should focus on specific chemicals of concern. How this prioritization would occur and what the basis of that prioritization would be under a modernized TSCA remains one of those important details I referenced earlier in my statement.
- (7) Considerations of costs and availability of alternatives should be separate from the risk assessment process. Questions of feasibility, cost, or availability (or lack thereof) of alternatives needs to be considered when a product is determined to require some risk management to be used safely. However, it must be recognized that manufacturers of chemicals and chemical products regularly use risk management tools to ensure that their

products are used safely. Examples of such measures include labeling, safety data sheets, packaging and protective equipment. Existing risk management measures must in fact be considered in determining whether a chemical is safe for its intended use.

- (8) EPA should have the authority to impose a range of risk management measures to ensure that chemicals can be used safely in commerce as well as work with other agencies having jurisdiction over chemical products
- (9) Potential risk to children should be an important factor in safety assessments.
- (10) Safety data regarding chemicals should generally be available to the public. Methods to limit claims of confidentiality to truly confidential business information should be established.
- (11) A modernized TSCA should encourage technological innovation, including the promotion of modern advances in science and the development of better products onto the market.
- (12) A modernized TSCA should ensure the scientific validity of information from all sources on which regulation relies and establish specific criteria to address the quality, reliability and relevance of scientific information.
- (13) EPA needs to be provided with the tools necessary to fulfill the mandates under a modernized TSCA.
- (14) EPA should be empowered to share with and receive information from state and foreign governments in order to foster a greater understanding of chemistry and promote cooperation for the good of public health and economic growth and innovation. That said, there should be provision to ensure that these governments continue to keep confidential the CBI data they receive from EPA.
- (15) Modernizing TSCA must be done in such a way as to allow it to succeed. Legislation that would bring innovation to a halt or would be unachievable with the resources available benefits no one.

Conclusion

Thank you, Mr. Chairman, for the opportunity to testify. BASF Corporation looks forward to working with this subcommittee and interested stakeholders on developing legislation for TSCA modernization. I would be pleased to answer your questions.