

The test for any TSCA proposal must be whether it would provide greater protection of public health and safety. The July 31 Vitter draft fails that central test.

Overview

- The Vitter draft would make it easy for EPA to exempt chemicals from regulation, while preventing states from taking many actions to protect their citizens.

Details

- The Vitter draft does not require EPA to make real progress in reviewing existing chemicals.

BACKGROUND: The Vitter draft requires EPA to initially list only 10 chemicals as “high priority” – the designation that triggers a safety review – and to label more chemicals as high priority only as reviews of those 10 are completed. With the timetable in the bill, that means that five years from now, the public may have information on only 10 more chemicals than it does today. And regulations would not have to be put in place for those chemicals for another two years after that, and EPA could determine that none of them requires regulation.

- The Vitter draft allows EPA unilaterally to effectively exempt large numbers of chemicals from federal and state review or regulation without any recourse.

BACKGROUND: Under the Vitter draft, EPA designates chemicals as “high-priority” (meaning subject to safety reviews) or “low-priority.” A low-priority designation means that EPA will not have to review the chemical and that states are forbidden to regulate it. There are no limits on how many chemicals EPA can designate as low priority or on how quickly it can do so. The standard for labeling a chemical as low-priority is ambiguous and weak, especially compared with all the strictures the draft puts in place to regulate a chemical. Most important, low-priority designations cannot be challenged in court, under the draft. So, there is no recourse when EPA simply gives a chemical a pass. This would be bad policy under any circumstances, but the opportunity for abuse by an industry-friendly EPA is virtually unlimited.

- The Vitter draft eliminates most authority states now have to protect their citizens from toxic chemicals.

BACKGROUND: The Vitter draft pre-empts numerous state actions. Under the Vitter draft a state would be prohibited from putting in place any *new* laws or regulations restricting chemicals that EPA has begun to analyze (even though that analysis can take up to seven years under the bill), has regulated, has decided not to regulate, or has

exempted from regulation (“low priority”). The Vitter draft would also pre-empt all *existing* laws and regulations on chemicals EPA has decided meet the safety standard or has regulated itself. States also could not even enforce federal regulations, which is the usual way federal environmental statutes and decisions are enforced.

- The Vitter draft fails to ensure that chemical disposal and unintended releases, like the one in West Virginia, are covered by EPA reviews and regulations.

BACKGROUND: The Vitter draft does not allow EPA to consider the risks from unintended spills when deciding whether to evaluate or regulate a chemical.

- The Vitter draft fails to provide EPA with the resources it needs to carry out an effective chemical safety program.

BACKGROUND: The Vitter draft has no provision for fees to pay for the program even as it creates additional requirements. Senator Vitter has said he is willing “in principle” to impose fees, but none are included. Fees should be tied to increasing the number of chemicals EPA has to evaluate.

- The Vitter draft fails to require EPA to take expedited action on chemicals already known to be unsafe and widespread including Persistent, Bioaccumulative and Toxic (PBT) chemicals.

BACKGROUND: There is a worldwide scientific consensus that PBT’s are an especially dangerous class of chemicals because they persist in the environment, build up in the food chain, and harm humans. The Stockholm Convention, signed by President George W. Bush (but not yet ratified by the U.S.) and endorsed by the American Chemistry Council, enshrined this consensus.

- The Vitter draft fails to require EPA to take action on asbestos, a substance known to cause severe illness and death, which EPA was prevented from regulating previously because of weaknesses in TSCA.

BACKGROUND: Under the Vitter draft, EPA is not required to move quickly, or at all, to control asbestos and could literally take decades to deal with the substance.

- The Vitter draft has an ambiguous standard for evaluating whether chemicals are safe.

BACKGROUND: The Vitter draft requires EPA to determine whether chemicals present an “unreasonable risk” – an undefined term, as used in the draft – rather than using the more established and stronger standard of evaluating whether there is a “reasonable certainty” that a chemical will do no harm. “Unreasonable risk” is the weak standard

used in current TSCA and its continued use fails to ensure that the ineffective standard in the original TSCA law is clearly rejected.