

Testimony of

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**before the
Committee on Environment and Public Works
United States Senate**

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Good morning, Chairman Boxer, Ranking Member Vitter, and other members of the Committee. Thank you for the opportunity to be with you today to discuss the topic of chemical risk management in the United States.

I want to thank you, Senator Boxer and Senator Vitter, as well as other members of this Committee, for your leadership on this very important issue and for your efforts to bring about comprehensive reform of the Toxic Substances Control Act (TSCA).

I also want to add that one of the great joys I had in government was getting to know the late Senator Frank Lautenberg and working with him on chemical safety issues. We miss him very much.

From July 2009 until the end of November 2011, I had the privilege to serve as the Assistant Administrator in charge of the U.S. Environmental Protection Agency's (EPA) Office of Chemical Safety & Pollution Prevention (OCSPP). I was honored to have been nominated by President Obama, approved by this Committee and confirmed by the full United States Senate.

I am now with the law firm of Squire Sanders (US) LLP, based in our Phoenix, Arizona office. I received my undergraduate degree from Brown University, where I graduated with Honors, and my law degree from Vanderbilt Law School, where I was Editor in Chief of the Vanderbilt Law Review.

Although I am a former EPA official, my testimony represents my own personal views

and not the views of EPA or any other organization or entity.

Prior to joining EPA I served as Director of the Arizona Department of Environmental Quality (ADEQ) in the Cabinet of then-Governor Janet Napolitano. I am the longest serving Director in ADEQ's history.

As the father of a child with asthma, protecting children's health has always been very important to me. Reducing children's exposure to toxic chemicals and pollutants was one of my top priorities at both ADEQ and EPA. As ADEQ Director, I launched Arizona's Children's Environmental Health Project and established an Office of Children's Environmental Health at the agency. Among our many efforts, we worked with schools to protect children from potential exposure to lead in drinking water, reduce mercury-containing equipment in schools, and minimize the use of pesticides on school properties through Integrated Pest Management (IPM). We promoted environmentally healthy schools and "green" schools, and we required facilities with permits or approvals from ADEQ to ensure that their activities do not present environmental health risks to children. At EPA I worked closely with EPA's Office of Children's Health Protection and made children's health an important element in EPA's chemical regulatory efforts.

While serving as ADEQ Director, I also became very active in the Environmental Council of the States (ECOS), the national organization for state environmental agency directors. I held several leadership positions within ECOS and served as ECOS President during my last year in office.

When I came to EPA in 2009, there was broad consensus that TSCA needs to be modernized. There also was a widespread expectation that Congress would act quickly to pass TSCA reform legislation.

As the Assistant Administrator for OCSPP, I was responsible for EPA's implementation

of TSCA, and I helped develop the Obama Administration's principles for TSCA reform (called the "Essential Principles for Reform of Chemicals Management Legislation"). As you may recall, former EPA Administrator Lisa Jackson announced those principles in September 2009, and I testified about them before this Committee while I was at EPA. Attached to my testimony is a copy of the Administration's TSCA reform principles (downloaded from the EPA website).

Administrator Jackson made assuring the safety of chemicals a top priority for EPA. Under her leadership, we followed a three-part strategy on chemical safety: (i) use EPA's existing TSCA authority to the fullest extent possible to assess and manage chemical risks; (ii) increase public access to chemical data and information; and (iii) work with Congress to achieve TSCA reform.

During my time as Assistant Administrator, we took a number of important actions under TSCA. Among many other steps, we prepared Action Plans on several priority chemicals. We developed Significant New Use Rules (SNURs) under TSCA section 5 to limit risks presented by certain existing chemicals. We issued rules under TSCA section 4 to require testing on a number of High Production Volume (HPV) chemicals (produced in quantities of a million or more pounds). We also issued the new Chemical Data Reporting Rule (CDR Rule), which requires chemical manufacturers to provide more detailed and comprehensive data on the chemicals they make and the ways in which those chemicals are used. Further, before I left EPA, we developed a framework for prioritizing chemicals for review, which led to the plan, announced by the Agency last year, to conduct risk assessments on 83 "work plan" chemicals and a number of flame retardants.

We launched an effort to reduce confidential business information (CBI) claims and "declassify" information where confidentiality is no longer warranted, while recognizing the legitimate business need to protect certain chemical information. We also made the TSCA

Inventory available for free on the EPA website and created the Chemical Data Access Tool (CDAT), a searchable data base that gives the public access to thousands of chemical health and safety studies that have been submitted to EPA under TSCA.

While we made some progress using TSCA, it was – and is – abundantly clear to me that TSCA is fundamentally flawed and must be fixed if the American people are going to be assured that the chemicals to which their children and families are exposed every day are in fact safe. Simply put, it is time to bring TSCA into the 21st Century.

TSCA was an important step forward when it was passed in 1976. Over the years, however, TSCA has proved to be an inadequate tool for providing the protection against chemical risks that the public rightfully expects, especially as new developments in science and technology have come about. As has been noted often, TSCA is the only major environmental statute that has not been updated since its passage. TSCA is 37 years old, and it is clearly showing its age – and its limitations.

When TSCA was enacted in 1976, it grandfathered in, without any evaluation whatsoever, more than 60,000 chemicals that were in commerce in this country at that time, and few of those chemicals have been evaluated since. In fact, TSCA does not require EPA to conduct safety assessments or make safety determinations about any chemicals at all, and it puts the burden on EPA to demonstrate essentially that a chemical is unsafe before the Agency can take action on it.

In addition, TSCA places substantial legal and procedural requirements on EPA before the Agency can request the generation and submission of data on the potential health and environmental effects of existing chemicals, and it does not provide EPA adequate authority to reevaluate existing chemicals as new concerns arise or science advances. As a result, in the 37 years since TSCA became law, EPA has only been able to require testing on just a little more

than 200 of the nearly 85,000 chemicals now listed on the TSCA Inventory.

It also has proven difficult to take action under TSCA to limit or ban chemicals found to cause unreasonable risks to human health or the environment. In 37 years, EPA has significantly limited or banned only five chemicals under TSCA. Even if EPA has substantial data and wants to protect the public against known risks, TSCA creates significant obstacles to quick and effective regulatory action, including requiring EPA to use the “least burdensome” alternative to address a chemical risk.

For example, in 1989, after years of study and nearly unanimous scientific opinion about the risks posed by asbestos, EPA issued a rule phasing out most uses of asbestos in products. Yet, in 1991 in the *Corrosion Proof Fittings* case, a federal court overturned most of this action because it found that the rule had failed to comply with the complicated requirements of TSCA. The hurdles in TSCA are so high that EPA has not even attempted to take action on a chemical under TSCA section 6 in the last 20-plus years since that decision.

While I am no longer at EPA, I believe that TSCA should be revised consistent with the principles announced by the Administration in 2009. Chemicals should be reviewed against a safety standard that is based on sound science and reflects risk-based criteria protective of human health and the environment, including vulnerable populations. Chemicals should be prioritized for safety reviews, and industry should be required to provide data to demonstrate that their chemicals meet the safety standard. EPA should be given greater authority to require any data necessary to assess the safety of chemicals and to take action on chemicals that present unreasonable risks. Requirements should be set for confidentiality claims, and EPA should be allowed to share critical data with states under appropriate safeguards.

The introduction of S. 1009, the Chemical Safety Improvement Act (CSIA), in May by a bipartisan group of Senators was a major breakthrough in the years-long effort to strengthen

chemical regulation and protect the public from unreasonable chemical risks. As the EPA Assistant Administrator charged with TSCA's implementation, I had first-hand experience with TSCA's many shortcomings. The CSIA is a significant improvement over the current outdated law.

Thank you again for the opportunity to testify today. I will be happy to answer any questions you may have.



Existing Chemicals

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Essential Principles for Reform of Chemicals Management Legislation

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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.



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