



Center for Environmental Health

National Office:
2201 Broadway, Suite 302
Oakland, CA 94612

T: 510.655.3900
F: 510.655.9100

East Coast Office:
6 East 39th Street, 12th Floor
New York, NY 10016

T: 212.689.6999
F: 212.689.6549

ceh@ceh.org • www.ceh.org

STATEMENT OF
ANSJE MILLER
EASTERN STATES DIRECTOR
CENTER FOR ENVIRONMENTAL HEALTH

BEFORE
THE U.S. SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

HEARING ON
STRENGTHENING PUBLIC HEALTH PROTECTIONS BY ADDRESSING TOXIC CHEMICAL
THREATS

JULY 31, 2013

Thank you, Chairman Boxer and Ranking Member Vitter for the opportunity to appear before this subcommittee today. I am Ansje Miller, Eastern States Director of the Center for Environmental Health.

The Center for Environmental Health's Commitment to Addressing Toxic Chemical Threats

For more than seventeen years, the Center for Environmental Health has worked to protect children and families from harmful chemical exposures. We work collaboratively with major corporations, helping them identify ways they can reduce their use of toxic chemicals, often resulting in economic savings while protecting public health. In some cases, we use litigation to reduce the use of and exposure to toxic chemicals. The Center for Environmental Health has protected millions of Americans across the country from toxic chemicals by testing consumer products and contaminated facilities and reaching agreements with companies to remove the toxic health threat.

Background

Most Americans believe that if a product is on the store shelf, it has been tested for safety. But unfortunately, that is simply not true. The Toxic Substances Control Act of 1976 (TSCA), the law that is supposed to provide that assurance to Americans, is a stunning public health failure that

harms American children, families, workers, and communities every day, leaving us all vulnerable to thousands of chemicals associated with cancer, obesity, developmental delays, and other devastating health problems.

During its thirty-seven years of ineffectiveness, states have stepped into the void to protect its residents. One such law is California's Safe Drinking Water and Toxic Enforcement Act of 1986, known as Proposition 65, which is a strong state consumer protection law. The Center for Environmental Health has been a public interest enforcer of Proposition 65 since 1996.

Using this law, we achieve national and even international changes in production practices that set limits on lead and/or other chemicals in children's products. We have reached industry-wide legal agreements that have eliminated threats to children's health from arsenic-based preservatives used in the wood play structure industry and from lead in home water filters, diaper creams, children's medicines, children's jewelry, imported candies, children's vinyl lunchboxes and vinyl baby bibs.

Many of these agreements and other state laws have lead to federal laws and regulations not only by the Environmental Protection Agency, but also by the Food and Drug Administration, and the Consumer Product Safety Commission. These are all examples of the success of the United States' federal system codified by the 10th Amendment of the Constitution. The states are the laboratories where critical reforms are taking shape and then over time are adopted nationally.

While the states continue their role as laboratories, it is also important that we fix TSCA's problems so that the EPA can effectively do its job as well. As founding members of Safer Chemicals Healthy Families, the Center for Environmental Health has worked in a concerted way to reform the Toxics Substances Control Act to give the Environmental Protection Agency the tools it needs to effectively protect the public health and the environment from toxic chemicals.

Recommendations

As members of Safer Chemicals Healthy Families, the Center for Environmental Health endorses its platform for reforming TSCA as follows. That platform states:

A reformed Toxic Substances Control Act (TSCA) would serve as the backbone of a sound and comprehensive chemicals policy that protects public health and the environment, while restoring the luster of safety to U.S. goods in the world market. Any effective reform of TSCA should:

- **Immediately Initiate Action on the Worst Chemicals:** Persistent, bioaccumulative toxicants (PBTs) are uniquely hazardous. Any such chemical to which people could be exposed should be phased out of commerce. Exposure to other toxic chemicals, such

as formaldehyde, that have already been extensively studied, should be reduced to the maximum extent feasible.

- **Require Basic Information for All Chemicals:** Manufacturers should be required to provide basic information on the health hazards associated with their chemicals, how they are used, and the ways that the public or workers could be exposed.
- **Protect the Most Vulnerable:** Chemicals should be assessed against a health standard that explicitly requires protection of the most vulnerable subpopulations. That population is likely to usually be children, but it could also be workers, pregnant women, or another vulnerable population.
- **Use the Best Science and Methods:** The National Academy of Sciences' recommendations for reforming risk assessment at the Environmental Protection Agency (EPA) should be adopted. Regulators should expand development and use of information gleaned from "biomonitoring," the science of detecting human chemical contamination, to inform and impel efforts to reduce these exposures.
- **Hold Industry Responsible for Demonstrating Chemical Safety:** Unlike pharmaceuticals, chemicals are currently presumed safe until proven harmful. The burden of proving harm falls entirely on EPA. Instead, chemical manufacturers should be responsible for demonstrating the safety of their products.
- **Ensure Environmental Justice:** Effective reform should contribute substantially to reducing the disproportionate burden of toxic chemical exposure placed on people of color, low-income people and indigenous communities.
- **Enhance Government Coordination:** The EPA should work effectively with other agencies, such as FDA, that have jurisdiction over some chemical exposures. The ability of the states to enact tougher chemical policies should be maintained and state/federal cooperation on chemical safety encouraged.
- **Promote Safer Alternatives:** There should be national support for basic and applied research into green chemistry and engineering, and policy should favor chemicals and products that are shown to be benign over those with potential health hazards.
- **Ensure the Right to Know:** The public, workers, and the marketplace should have full access to information about the health and environmental hazards of chemicals and the way in which government safety decisions are made.

The Center for Environmental Health endorsed the Safe Chemicals Act of 2013 because it embodies these important principles.

Center for Environmental Health's Position on the Chemical Safety Improvement Act

Unfortunately, the current effort to reform TSCA – the Chemical Safety Improvement Act (Lautenberg/Vitter S.1009) (CSIA) – would perpetuate and in some cases worsen many of TSCA's unacceptable failures.

One of the CSIA's many prominent weaknesses is its failure to forcefully preserve the right of states to protect their residents from toxic chemicals. Since TSCA's passing some 38 years ago, American families' major victories against toxic chemicals have been won by state and local governments that have stepped into the regulatory void left by TSCA. With these state-level victories in mind, we note that the current version of the CSIA does little to improve the federal government's ability to protect American families from toxic chemicals. And worse, the CSIA would cripple state efforts to fill the regulatory void it creates. The CSIA represents a long, backward step for the health of American families.

The Center for Environmental Health opposes the bill unless it is amended to address the following concerns.

The CSIA Must Explicitly Preserve the Legal Authority of States to Protect their Residents from Toxic Chemicals

If passed, industries will argue that the CSIA preempts state regulation of toxic chemicals in at least four significant ways:

1. Under the CSIA, once EPA has made a "safety determination" regarding a toxic chemical, all state laws restricting the use or distribution of that chemical in commerce could be preempted. If, for example, EPA in its review of the strong neurotoxin lead decides to ban lead in ammunition, but defers action on other uses of lead, industry will argue that California's Proposition 65 can no longer allow the state to regulate lead in toys, candy, jewelry, or any product. Further, all existing Proposition 65 consent judgments mandating that consumer products comply with Proposition 65's lead limits could be rendered unenforceable. The CSIA could similarly preempt other laws that states have adopted to protect their residents from toxic chemicals. Once EPA acts on BPA, state laws that protect children from bisphenol A (BPA), a hormone disrupting chemical still often found in baby products such as pacifiers and formula containers would be vulnerable. Under the CSIA, if EPA issues a safety determination requiring that BPA be phased out over time, industry will argue that this action preempts all state laws banning BPA in baby products, including New York's groundbreaking BPA ban. The same fate would likely befall laws prohibiting the use of BPA in cash register receipts, such as Suffolk County's innovative ban on these receipts. These are just a few of countless examples of how the CSIA could hobble state and local efforts to protect families from toxic chemicals.

2. Once EPA puts a chemical on a “low-priority” or “high-priority” list, all new state restrictions on the use or distribution of that chemical in commerce could be preempted in their entirety. This means that state laws such as California’s Proposition 65 could no longer be used to regulate any new chemical introduced by industry into the market once EPA puts that chemical on a list, whether low- or high-priority. Since there are no clear deadlines or timetables for action, the EPA can put the chemicals on the list, fail to take action for 20 years, and effectively tie the hands of state and local governments from protecting their residents from the chemical in the meantime.
3. Once EPA requires information or testing regarding a chemical, all state laws that are “reasonably likely to produce the same data or information” could be preempted by CSIA. For example, the CSIA’s preemption provisions may prevent California’s Department of Toxic Substances Control from fulfilling its responsibilities under the state’s Safer Consumer Products regulations – a pioneering effort to protect people’s health and strengthen the state’s economy. These include the responsibility to provide information to consumers, to restrict certain chemical-consumer product combinations, to create requirements relating to the end-of-life of products that contain toxics, and more broadly to promote safer chemistry and engineering. The CSIA could similarly prevent state agencies in Washington from fulfilling their obligation under the state’s Children’s Safe Products Act to obtain data about chemicals in children’s products to inform parents which products contain toxic chemicals.
4. People could be prevented from recovering monetary relief and/or equitable remedies under state tort law when they are injured by exposure to a chemical about which EPA has made a “safety determination.” In addition, a person injured by a toxic exposure after a “safety determination” may be prevented from obtaining a remedy under tort law if EPA determines the chemical meets applicable safety standards for certain uses. For instance, a person injured by a chronic, years-long exposure to a toxic chemical deemed safe by EPA would be unable to seek recourse under state tort law.

Legislation to reform TSCA must clearly and explicitly protect states’ rights to continue to take action and protect American families from toxic chemicals.

The CSIA Must Make Particular Efforts to Protect those Most Affected by Toxic Chemicals

A central moral failure of the CSIA is that it does not require particular protections for communities and populations that bear the worst brunt of toxic pollution or are more vulnerable to toxic chemicals. These are developing children, pregnant women, and other people who are more vulnerable to harm from toxic chemicals, as well as workers and low-income communities populated predominantly by people of color who have suffered the worst harm from inadequate regulations, often for generations.

The CSIA's sponsors must define "vulnerable populations" and "toxic hot spots" to reflect the unjust reality of chemical exposure today. We urge the sponsors to amend the CSIA such that it requires EPA to regulate emissions and other industrial activities and reduce persistent, bioaccumulative toxic chemicals in these hot spots immediately. American families in our nation's most disenfranchised communities deserve the same clean air, clean water, and other fundamental health opportunities as our nation's most privileged communities.

The CSIA Must Require that EPA Review Sufficient Data before Deeming Chemicals to be "Of Low Concern"

The CSIA would allow EPA to deem chemicals to be of low concern without sufficient data to make such a determination. In one of its more troubling provisions, the CSIA would also allow chemical companies to control which data that government bodies at the federal and state levels are allowed to review as they consider regulations on toxic chemicals.

Before EPA deems a chemical to be low priority, the agency should have adequate data to demonstrate that the chemical truly has a "reasonable certainty of no harm." The CSIA must require chemical companies to submit minimum information sets in a timely manner, equipping EPA to evaluate new chemicals and new uses of chemicals and to evaluate chemicals for prioritization. It must also allow government bodies at all levels to make important regulatory decisions based on all available and credible data.

The CSIA Must Call for Immediate Action on the Most Dangerous Chemicals

Scientists and regulatory bodies worldwide have classified certain chemicals as persistent, bioaccumulative, and toxic (PBTs). One of the key failures of TSCA is that it does not equip EPA to protect our nation's families from PBTs or from other similarly harmful chemicals. EPA's inability to regulate asbestos is a tragic example of this failure. Fixing TSCA will require that we give EPA the tools to protect our nation's children from the worst chemicals by expediting action on PBTs and other chemicals of equivalent concern.

Instead, the CSIA requires that EPA undergo a prohibitively cumbersome and bureaucratic process in order to phase out dangerous chemicals. This would undermine, long-overdue action to protect families from toxic chemicals. The CSIA must reduce red tape and assign top priority to the swift regulation of the most dangerous chemicals.

The CSIA also adopts a vague safety standard that will not guarantee that chemicals entering the marketplace and used in manufacturing are actually safe. To protect American families, EPA should follow the National Academy of Sciences' assessment methods and rely on a more conservative standard of "reasonable certainty of no harm."

The Health and Safety Information About Chemicals Must Not be Kept Secret from American Families

The CSIA would grandfather confidential business information (CBI) claims on products and chemicals made prior to the enactment of the bill. Further, the bill does not require EPA to disclose the number and duration of CBI claims it grants to chemicals, making it difficult for families to know what chemical hazards they might be exposed to. The CSIA also fails to require that EPA release the secret data at the end of the CBI protection period. Given these flaws, it is troubling that the CSIA would simultaneously limit health care professionals' access to information about the identity of secret chemicals, even in medical emergencies.

CSIA must protect people's right to know which chemicals they are exposed to.

Next Steps

While the Center for Environmental Health is concerned about the deep flaws in CSIA, we are pleased to see that Washington is taking seriously the issue of TSCA reform, and we look forward to working with leaders in the Senate and Congress to fix and pass a CSIA that truly protects the health of American families.



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3+

Disney
PRINCESS

Bracelet Keyring

With Clip on &
Zipper Pull Functions



WARNING:

CHOKING HAZARD — Small parts.
Not for children under 3 years.





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