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BEFORE THE SUBCOMMITTEE ON SUPERFUND, TOXICS AND ENVIRONMENTAL HEALTH
OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
MARCH 9, 2010
BUSINESS PERPECTIVES ON REFORMING U.S. CHEMICAL SAFETY LAWS

Chairman Lautenberg, Senator Crapo and members of the committee, I am happy to be here to talk about the important issue of modernizing US chemicals policies. My name is Linda Fisher and I am the Chief Sustainability Officer for DuPont. Some years ago, as the Assistant Administrator of the Office of Pollution Prevention and Toxic Substances and then Deputy Administrator of the Agency I had the privilege of working with the staff of EPA to implement TSCA. At DuPont I work with a group of equally dedicated professionals to assure that our products are safe. I am also actively involved in TSCA reform discussions at the American Chemistry Council and fully support ACC's reform principles.

DuPont is a broadly diverse 208 year old company. In addition to our agricultural seed and crop protection businesses, we use a wide variety of chemicals to make products for markets that include buildings, transportation, electronic goods and consumer products. We operate in 70 countries around the world under a variety of chemical management regimes. In the US alone we are regulated in some manner by EPA under both TSCA and FIFRA, USDA, FDA, and the Consumer Products Safety Commission. We also operate a global product stewardship process inside DuPont that assesses and manages the safe use of our products in commerce.

For years DuPont viewed the current TSCA as an appropriate tool for the regulation of industrial chemicals. However, as our own practices have evolved over time TSCA has not. And so our views of the need to update US chemical policies have evolved. Why? First there is growing public awareness of exposure to chemicals not only through environmental emissions but also through products. This has raised questions in the public's mind about the safety of those products, and that is having an effect on the market through consumer buying decisions. Secondly, chemical regulation is rapidly changing across the globe. Witness REACH, the new Canadian Chemicals Management Program and China's recent announcement of revisions to their chemicals program. For those of us who operate in the US or sell our products here it is important that our regulatory system keep pace and our government be a leader in global chemicals policy. And, of course, in the absence of reforms to TSCA we are seeing a plethora of State actions that are serving to create tremendous uncertainty in our markets. While there is a long standing tradition of both innovation and encouraging Federal action in State policies, we think a robust reformed TSCA would remove the motivation for state by state regulation of chemicals.

And so we believe that US chemical management practices, including TSCA, should be modernized, and intend to play a constructive role in seeking effective reforms. We have worked with a lot of different chemicals during our history and we have seen changes in public and marketplace expectations.

We have been responding to these changes for some time as well, using these trends to inform our innovation process. DuPont has become a leader in sustainability and green chemistry. We won the President's Green Chemistry Award for our biomaterial Bio-PDO™, a chemical produced from agricultural material instead of oil. Bio-PDO™ allows our customers Mohawk to market Smartstrand bio-based carpets and Killfrost to sell bio-based airplane de-icers. Our products are increasingly at the heart of solar photovoltaic cells, fuel cells, windmills and building and vehicle energy efficiency technologies.

The products of chemistry are some of the most actively traded materials in commerce. We operate globally under a variety of regulatory regimes, including the EU, where its modernized program REACH is coming into effect, and the Canadian Chemicals Management Program, where risk management decisions are currently being made for the highest priority chemicals. We are seeing chemical programs being updated in Australia, Turkey, Taiwan and China. Thus we face the challenge operating a global supply chain and market in the face of multiple regulatory regimes at different stages of development. We are also gaining experience with the significant administrative burdens of REACH, the large amount of data these programs will generate in the coming years, and the complexity of gathering all of the necessary data for chemical assessments from the wide variety of actors in the chemicals and materials value chain.

We do not believe it is wise to cede to the EU or China the responsibility to set the policies that will guide commerce in chemicals. We need to ensure the US chemicals management regime works with those frameworks and can take advantage of the data that will flow from them, while ensuring that the US continues to lead on sensible risk-based and cost effective environmental policy making. We also need a robust national framework for chemicals regulation that is predictable and manageable. State by state bans, restrictions, phaseouts and substitutions create a fractured and unpredictable market that makes it increasingly difficult to operate in the US. It is not often an industry asks to be regulated in a more comprehensive way, but that is precisely what we are asking for – regulations that provide greater public and market confidence in the safety of chemicals in commerce, greater predictability and greater transparency.

Modernizing TSCA is an important undertaking. It will also be a difficult and complex undertaking. The products of chemistry touch almost every corner of our economy, including buildings and their furnishings, electronics goods, advanced energy technologies, trains, planes and automobiles and consumer products. The economic breadth of chemicals policies are not unlike climate change legislation in their scope and complexity. It is important that we get this right, and that will mean a deliberate and thoughtful process that engages a wide variety of stakeholders. We have already begun that process ourselves, talking to NGOs, other companies, trade associations, EPA and

the Congress as we think through how best to reform TSCA. Getting it wrong could impede one of the US economy's engines of innovation and erode US competitiveness and employment.

Let me highlight some key elements that need to be on the table as we discuss modernizing TSCA. Broadly those fall into the categories of data and safety assessments, and what we do to ensure safety. I'll address each in turn.

TSCA does not currently require EPA to systematically assess existing chemicals. This has generated public concern about whether we know enough about the chemicals that we are exposed to every day. Moreover, current data gathering tools under TSCA are cumbersome and time consuming and the authorities it does have to identify and act on chemicals that pose concerns have proven difficult to implement. A modernized TSCA should include a streamlined approach for EPA to gather the data they need. We believe that chemical producers and our value chain partners need to provide adequate data to allow EPA to assess the safety of chemicals in use and to develop suitable risk management approaches. Today EPA's tools for data gathering are too cumbersome and slow, and if the new system is going to serve its purpose EPA needs the ability to promptly require industry to provide right data at the right time. EPA and companies should leverage existing data and data arising from other programs like REACH first, and then fill data gaps as necessary to make prioritization decisions and complete assessments. It is estimated that some five to nine thousand dossiers containing useful information will be submitted next year alone under REACH, with more submitted in 2013 and 2018. Where more information is required we should strive to minimize animal testing where there are tools to get adequate data with other means. We also believe that more data needs to be available to the public.

Revisions to TSCA should require EPA to work its way through the prioritized chemicals, assessing the safety of exposures associated with their uses. These assessments need to be risk-based and look at chemical hazard data of sound quality and the exposure data associated with the uses of the chemicals, integrating those into a picture of the safety of those exposures.

Perhaps the biggest question is what happens after the safety assessment. One of the most challenging parts of the current TSCA is the ability of the Agency to achieve timely risk reductions under Section 6 when faced with the need to reduce or eliminate exposures to a specific chemical. Although well intended by its drafters, the process under Section 6 has proven next to impossible for the Agency to successfully implement. This will be an area of significant debate and controversy as the Congress begins to reform TSCA. EPA should have a range of risk management tools at its disposal to reduce exposures to appropriate levels in a cost effective manner, including reducing plant emissions, improved manufacturing controls, and restrictions on chemical uses. In some cases even bans of specific uses of a chemical may be warranted to protect public health – after the proper risk-based assessment. It is important that the imposition of exposure controls be done so that safety is assured, but it is also important this be done in a cost-effective manner. Because exposure can occur through a variety of sources such

as plant emissions and waste management, not just products, EPA should seek exposure reductions where they are most cost-effective and best preserve beneficial uses of chemicals.

As it contemplates exposure reductions it is important that the agency be required to take into account the societal benefits from the use of chemicals and the time and complexity of bringing substitutes to market. We urge Congress to avoid presumptive bans or rigid phaseout schedules. Bans and deadlines for phaseouts or substitution fail to account for the realities of transitioning to new ingredients, receiving needed customer and regulatory approvals and modifying manufacturing facilities. Such actions could lead to unnecessarily disrupting markets, reduce public access to valued products and cede markets to global competitors.

Let me illustrate with two examples from DuPont's own experience. In the late 1980s, when we came to understand the chlorofluorcarbons, or CFCs, depleted atmospheric ozone, we committed to phasing out such ozone depleting substances. That effort took two successive large scale technology transformations and is still underway. It won't be substantially complete until 2020 – some thirty years after we started. And the Montreal Protocol under which we achieved this is widely viewed as one of the most successful environmental efforts of the last fifty years.

More recently we decided to cease use of a chemical that served as a manufacturing processing aid – it was not even an ingredient, and to change our chemistries that might create the chemical as an unintended byproduct. This was a voluntary action, global in scope, reflecting our business practices and market demands. It required millions of dollars to develop substitutes, and we are not done yet. It has required us to reformulate about 125 products. Another 30 or so products we simply dropped because of the cost to reformulate. We had over ten thousand individual customers to work with that spanned global markets including automobiles, aerospace, pharmaceuticals, textiles, paints and coatings and consumer products. We work with each customer to assure that the new product meets their specifications, a process that has taken six months to five years per customer depending on the application. We had to seek and receive over 70 product registrations from various regulatory agencies. Over 300 of our scientists, engineers and business people have been working on this for several years, and it has required $200 million in R&D investments and another $100 million in capital investment. It will take us at least eight years to complete. And this is for one processing aid that was never present in products above trace levels. While this new product development was underway, we achieved significant exposure reduction for this chemical by imposing process controls to dramatically reduced emissions from our plants.

I offer these examples to illustrate that removing existing chemicals from the marketplace is neither simple nor quick. Arbitrary timeframes for phaseouts simply will not work. Because exposure typically occurs from multiple sources, the Agency should focus on the most effective exposure reductions targeted to the risk at hand.

These steps will focus on existing chemicals, those were already in commerce when TSCA was enacted and were "grandfathered". But what about new chemicals? In order to facilitate innovation, increasingly bring green chemistry to market and allow substitution where warranted, we should preserve the ability of the pre-manufacturing notice, or PMN system, to provide a timely review of new chemicals. PMNs are often submitted at an early stage of development. EPA reviews the hazard and projected exposure information submitted as part of a PMN with a team of scientists, engineers and toxicologists, and applies a variety of evaluation tools. EPA has broad authority to reject or approve a new chemical with restrictions, such as imposition of use restrictions and/or production volume limits. The PMN program has been successful in allowing companies to explore the commercial viability of a new substance while allowing EPA to address any concerns through imposition of restrictions. This flexibility has helped to make the US a leader in chemistry innovation while providing EPA a strong role in the safety of new substances, and we need to preserve this ability. In particular, if we want to incent green chemistry, we need for it to be easy for producers to get new products into initial commercial application.

However, EPA should also have clear triggers that ensure that after receiving a PMN, if a new chemical enters the market and its production volume increase significantly, its uses expand, or at regular chemical inventory updates, it goes into the prioritization and assessment system for existing chemicals.

The issue of confidential business information, or CBI, has received a lot of attention. The ability to preserve legitimate CBI and prevent piracy of intellectual property is critical to competitiveness and innovation. There is active commercial and governmental industrial espionage seeking to steal trade secrets that needs to be recognized – if we simply give innovation away there is little reason to innovate. That said, I think everyone agrees that the CBI program is in need of review. At the time TSCA was written there were no relevant State agencies and other national or regulatory chemical regulatory programs did not exist. Sharing data with government peers wasn't an issue. Today, we believe there are some straightforward means to improve the CBI process.

Intergovernmental sharing of CBI data with proper protections, whether between state and federal governments or nation to nation, should be facilitated. Because CBI claims have not traditionally been systematically reviewed, it is certainly possible that some claims aren't as rigorous as they could or should be. Simple steps to require enhanced company certifications of claims, greater EPA review of claims, and the need to occasionally recertify claims would all drive more rigor that would help ensure only truly CBI info gets claimed for protection.

These measures would constitute a significant change in the US chemical regulatory regime. It would expand some authorities that are discretionary today, such as requiring a mandatory and systematic process for reviewing existing chemicals, and give EPA more tools to address chemical exposures where appropriate. It will require significant efforts on the part of companies and the government. It will produce significant amounts of information for the public to digest and for EPA to manage.

In closing, I thank you for this opportunity to share our views. Many of us in industry recognize that the time to modernize TSCA has come and that the United States needs to have the tools to be a leader in global chemicals policy. It will be a challenging undertaking, as the chemical industry is very complex. It is globally competitive with thousands of participants. We look forward to working with you on this effort. It is our sincere hope that we can continue a broad collaborative process amongst stakeholders to achieve legislation that brings TSCA into the 21st century.

I look forward to your questions.