



# Minnesota Pollution Control Agency

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March 23, 2015

The Honorable James Inhofe  
United States Senator  
Chairman, U.S. Senate Environment and Public Works Committee  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Barbara Boxer  
United States Senator  
Ranking Member, U.S. Senate Environment and Public Works Committee  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: Concerns about the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act, S. 697

Dear Senator Inhofe and Senator Boxer:

I write to share our concerns regarding certain provisions in the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act, S. 697. This letter focuses only on limitations imposed on states' abilities to take measures to protect their citizens and environment from potential risks posed by certain toxic chemicals in commerce. These concerns have been expressed by other states too.

Minnesota has closely tracked efforts in the U.S. Senate to develop a reformed Toxic Substance Control Act (TSCA) over the past several years. TSCA's well-known failures and the concerns of Minnesotans about inadequate regulation of chemicals in commerce and in consumer products led Minnesota's Legislature to enact the Toxic Free Kids Act (TFKA) in 2009, plus 25 other statutes regulating chemicals, products and packaging dating back to 1976, the year of TSCA's enactment. The same concerns led Minnesota to convene a multi-sector discussion group in 2010 that sought to develop consensus recommendations for a state level system of regulating and managing chemicals in the absence of an effective TSCA ("the Minnesota Chemical Regulation and Policy Project"). Participants included industry (3M, Ecolab, Segetis), business (Target), academia (University of Minnesota), state and local governmental agencies (Minnesota Department of Health, MPCA, Hennepin County) and advocacy groups (Healthy Legacy, Clean Water Alliance, and Minnesota Chamber of Commerce), among others. These stakeholders (of which I was one) met regularly for two years, with the most resounding outcome being unanimous support for congressional action to reform the federal chemical regulatory scheme and modernize TSCA.

Therefore, stakeholders in Minnesota affirm the vital need for effective federal action to address chemicals in commerce and provide adequate protection of public health and the environment. Nevertheless, the pre-emption language and the extraordinary restrictions on states' abilities to co-enforce federal regulations or take action when the federal government is unable or unwilling to do so mean we are unable to support S. 697.

Minnesota is especially concerned by the provisions in S. 697 that:

- Pre-empt new state statutes and administrative actions to restrict a chemical substance at the moment the Environmental Protection Agency (EPA) begins a safety assessment of that chemical. This would prevent states from acting to protect their citizens and the environment from a chemical of concern even though federal restrictions on that chemical may not be in place for up to seven years or more.
- Eliminate states' abilities to adopt federal chemical regulations into state law. This is standard practice by numerous states under several bodies of environmental law and allows states to enforce federal restrictions on

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toxic chemicals within their boundaries. The result of this practice is better, faster compliance than would occur with a federal-only approach to compliance assistance and enforcement. Given news of EPA's declining budget, this concern is even greater, as it portends a potentially reduced capacity by EPA to conduct enforcement actions.

- Are vague and non-specific. For example, the preemption of state action related to water quality, air quality or waste treatment or disposal if the action is "inconsistent with the action of the Administrator" is a vague but potentially expansive provision that could limit state's abilities to address potentially hazardous chemicals under not just TSCA, but other state and federal statutes. The MPCA is concerned that such broad and poorly defined restrictions in S. 697 could interrupt important toxics reduction and pollution prevention work at the MPCA and interfere with efforts to provide better information about the presence of chemicals of concern in consumer products.

Such information on toxics in finished, including imported, products (not the top of the supply chain, TSCA's focus) is essential to understand the sources and contamination pathways of toxics in Minnesota's environment which have been the focus of our nation-leading research the past 5 years. For instance, we find bisphenol A and other well-studied endocrine-disruptors consistently in the state's environment, and biological effects testing shows this stew of chemicals in ambient water causing hundreds of genetic changes in fish, with as-yet unknown impacts. Minnesota must maintain the ability to act more protectively than the federal government when the future of our lakes, rivers, and streams are under potential threat.

Experience over the last 40 years has shown that existing pre-emption provisions in TSCA have been workable and have not led to unmanageable conflicts between states, industry, and the federal government. In fact, the state-federal partnerships in TSCA and other federal statutes have enabled states to provide valuable leadership and learning about the best approaches to address developing and/or newer concerns that have led to better regulations on a federal level.

Unfortunately, we cannot support S. 697 in its current form due to the extraordinary and possibly unprecedented degree to which states are excluded from having any role relating to chemicals of concern within their borders. We strongly encourage the bill authors to address this deficiency and I welcome any opportunity to engage in this process as this effort moves forward.

Sincerely,



John Linc Stine  
Commissioner

JLS:COD:cmbg

cc: Honorable Amy Klobuchar  
Honorable Al Franken