

March 9, 2015

Dear Senator:

EWG strongly opposes the new chemical safety legislation developed by Sens. Vitter and Udall. Simply put, this draft would fail to ensure that chemicals are safe, fail to set meaningful deadlines for reviews, fail to provide EPA with adequate resources and would deny states the ability to protect public health and the environment.

In particular:

- 1) **Chemicals Still Not Safe** – Toxic industrial chemicals that end up in people’s bodies, and even contaminate babies before they are born, should be at least as safe as pesticides. However, the chemical industry bill would retain the far weaker “no unreasonable risk of harm” health standard, rather than the “reasonable certainty of no harm” standard applied to pesticides on produce and food additives.
- 2) **Chemical Company Costs Will Still Trump Health** – The bill is, at best, ambiguous about whether the EPA must consider costs and benefits when determining if a chemical poses no unreasonable risk of harm. While the definition of “safety standard” seems to exclude consideration of costs and benefits, the section that defines how the safety of chemicals will be assessed requires consideration of costs (Sec. 6(d)(4)). What’s more, the bill *explicitly* requires a cost-benefit analysis upon industry request for any chemical ban or phase-out (Sec. 6(d)(5)(D)).
- 3) **Chemical Spills, Fence-line Communities Are Not Addressed** – The industry bill requires consideration of “reasonably foreseeable” chemical exposures, but there is no requirement for safety assessments of the exposures and risks that might result from spills. About 10,000 tons of chemicals are spilled every year in the U.S. The bill also lacks explicit environmental justice protections for fence-line communities that bear the brunt of the harm from routine toxic emissions from chemical plants and accidents such as last year’s West Virginia spill.
- 4) **Deadlines** – The EPA estimates that roughly 1,000 chemicals need immediate health and safety review. Under the industry bill, that process would take hundreds of years. It would require only that EPA *start* reviews of 25 chemicals within five years and would allow the agency at least seven years to review each substance and impose any necessary restrictions to protect the public. As under current law, the EPA would deal with only a tiny fraction of the thousands of chemicals to which the public is exposed. There is no deadline for implementing restrictions, phase-outs or bans of even the most toxic chemicals, which in many cases have contaminated Americans’ blood for decades.
- 5) **Pay to Play for Safety Reviews** – The industry bill would allow manufacturers to receive expedited review of their favored chemicals if they are willing to pay a fee, but it

would not require expedited review for asbestos or extremely dangerous chemicals that persist in the environment and build up in people..

- 6) **Regulates The Chemical, Not the Couch** – If the EPA determines that a toxic flame retardant in furniture or other chemical is unsafe, the agency would have limited authority to regulate products containing the chemical and would have to clear the additional hurdle of showing that the public has “significant exposure” to the product. This would significantly impair EPA’s ability to act to protect public health.
- 7) **Judicial Review** – The bill would retain the “substantial evidence” standard for judicial review – which confers an enormous advantage to industry in regulatory and judicial proceedings – rather than the “arbitrary and capricious” standard that strengthens EPA’s authority in nearly all other agency actions. What’s more, the bill fails to provide for judicial review of EPA decisions to classify chemicals as “low priority,” even though these chemicals would then be considered “safe” and would not be subject to meaningful EPA review.
- 8) **Blocks State Action** – Under the industry bill, states would be preempted from taking new actions to regulate any chemicals that the EPA designates “high priority.” This designation would block state action for seven years or more. What’s more, states would be blocked from adopting and co-enforcing EPA restrictions on chemicals. More importantly, states could be blocked from using their own clean air and water laws to control chemicals if their actions are deemed “inconsistent” with EPA’s. The industry proposal would make it effectively impossible for states to be granted a waiver to set more protective standards than EPA. Indeed, even where there is no preemption, states would have to notify the EPA of proposed chemical restrictions.
- 9) **Imported Chemicals Get Looser Regulation** – The industry bill would weaken the EPA’s ability to intercept imported chemicals containing unsafe chemicals.
- 10) **Minimal Fees On Industry, Continued Taxpayer Subsidies** – Under the bill, industry would pay only minimal fees for new chemical reviews and chemical inventory reporting. Industry would be required to generate only \$18 million in revenue or 25 percent of total program costs. In combination with the absence of meaningful deadlines, EPA could take a century to review the 1,000 chemicals that need immediate attention.

Although TSCA is badly broken, the legislation developed by Sens. Vitter and Udall is worse than current law and should be rejected.