

Center for Environmental Health

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The Honorable James Inhofe
Chairman, U.S. Senate Committee on Environment & Public Works
205 Russell Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
Ranking Member, U.S. Senate Committee on Environment & Public Works
112 Hart Senate Office Building
Washington, DC 20510

April 28, 2015

Dear Chairman Inhofe and Ranking Member Boxer:

The Center for Environmental Health (CEH) is a leading national nonprofit that works to protect American children and families from harmful chemicals in our air, water, food and in every day products. With offices in New York and California, our supporters nationwide are ardently concerned about the health threats they face from disease-causing chemicals that have effected their communities, their neighborhoods, and their loved ones.

With our nearly 20 years of work on chemical safety litigation, consumer education and policy development, and knowledge of TSCA inside and out, we know that the most recent draft of S. 697, despite its few positive changes, is still deeply flawed. In our analysis of previous versions of the bill, we identified a number of key failures that needed to be fixed. While the proposed substitute makes some welcome improvements, the bill fails to provide American children and families with basic and necessary protections from the effects of harmful toxic chemicals, and we oppose it, unless amended to address the problems. The Senate must pass TSCA reform legislation that preserves the rights of states to meaningfully protect their residents from dangerous chemicals, authorizes the EPA to address chemical hazards in products (in the form that most Americans encounter those chemicals) without needless bureaucratic delays, and empowers the EPA to quickly address the worst chemical hazards.

Everyone agrees that TSCA has failed to ensure that the thousands of chemicals we encounter every day – from those used in children’s toys to cleaning products to electronics – are definitively safe for all Americans to use. In the decades of federal inaction to address the law’s failings, the states have rushed in to implement safeguards. As a result, state laws and enforcement have successfully protected us from toxic threats like BPA in children’s sippy cups and pacifiers, lead and cadmium in children’s jewelry, phthalates in toys, and many other chemical health threats. Given the massive

number of chemicals in commerce, our nation requires both a strong regulatory framework and strong enforcement at the federal and state level to regulate toxic threats and protect public health and the environment.

The following provisions in S. 697 will jeopardize the health and safety of American children and families. This assessment is shared by Safer Chemicals, Healthy Families, a coalition of 450 diverse organizations and businesses. Among the problematic provisions in the bill, which still have not been fixed or have been added:

The Importance of State Laws. More than 150 laws in 35 different states now restrict or regulate chemical use with at least 28 states expected to consider further chemical legislation this year. While current state laws would be “grandfathered in” under S. 697, the landscape of chemical threats to human health is constantly changing (with approximately 2,000 new chemicals introduced annually), yet under S. 697 states would be prevented from taking new actions, even under existing laws, to protect their residents from new chemical dangers as they emerge.

“Regulatory Void” leaves all Americans unprotected for up to 7 (or more) years. As the California Attorney General noted in her letter to Senator Boxer (March 5, 2015), S. 697 would establish a “regulatory void” as it prohibits states from enforcing laws on the most toxic “high priority” chemicals once the EPA “commences a safety assessment.” Since the EPA could take up to seven years (or longer, given potential challenges) to issue a rule, and then has no deadline for implementing that rule, this could leave Americans at risk for a decade or more from chemicals that EPA has deemed to be among the most hazardous. The proposed substitute of S. 697 attempts to address the void by lifting preemption if the EPA decides that the chemical does not meet the safety determination, but only until the EPA takes final action. It also allows for states to apply for a waiver from preemption if the EPA misses the deadline. Unfortunately, this fix is complicated and process-laden, with lots of opportunities for derailment. And in practice, it is unlikely that a state would pursue these new protections when they will be eminently preempted by EPA’s final rulemaking.

Increased hurdles for Significant New Use Rules. We are also concerned about a new provision in the substitute, which would make it harder for the EPA to implement Significant New Use Rules (SNURs) for chemicals in products. We urge the committee to remove the provision.

In addition to these failures, the bill also:

- Puts a cap on the amount of fees collected to implement the program at a level that leaves the EPA without the resources to properly administer its new responsibilities.
- While there is restoration of co-enforcement of state laws, language needs to be clarified so that it can be effectively implemented.

We are very pleased to see some improvements in the bill and appreciate the work that the Senate has done to make these improvements. Among those include:

- The rollback to EPA’s authority over imports has been removed.
- Low priority listings are now subjected to judicial review.

- PBTs will be prioritized for review, though improvements are still needed to ensure that adequate expedited action can be taken for risk management.
- The requirement for EPA to find “significant exposure” before it can regulate a chemical substance in an article (product) has been removed.
- State actions in place up to August 1 of this year are grandfathered from preemption.

Given the critical deficiencies outlined in this letter, CEH opposes S.697 unless amended and encourages the Senate to pass a chemical safety bill that truly keeps Americans safe. For example, CEH strongly supports the amendment offered by Senator Gillibrand that would close the regulatory void and allow states to protect its residents. Though we have not had time to adequately review them, we understand that other amendments are under consideration to address concerns raised in this letter and others and we look forward to working with the Senate to pass a bill that will reform TSCA in a way that protects public health and the environment.

Sincerely,

Michael Green
Executive Director