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**Before the Senate Environment and Public Works Committee**

**U.S. Senate**

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I want to thank Chairman Boxer and Ranking Member Vitter for the opportunity to testify on the important issue of preventing toxic chemical threats. The ongoing conversation to modernize our national chemicals management program is an important step forward. This is a unique moment for us to consider how we can work together to deliver greater environmental and human health benefits to the American people and the important role of the states.

I want to particularly recognize the efforts of the members of the committee for engaging the states in meaningful dialogue during the last Congress, including efforts by the late Senator Lautenberg. This has been a very helpful and informative process for the states and we appreciate the opportunity to share our perspective.

Today, I'd like to focus my comments on why states' programs are important, what states are doing, and why Washington and other states are compelled to act and will continue to in the absence of a federal solution.

Across the country, states have implemented programs to advance sound chemical management policies and programs. Beginning in the early 1990s, many states began to supplement existing end-of-pipe regulation with a

prevention-based approach aimed at reducing pollution at the source. It's encouraging that collectively our state pollution prevention programs have provided almost $6.6 billion in economic benefits and eliminated or reduced more than seven billion pounds of pollution for our most recent data for the years from 2007 – 2009.[1]

Despite this achievement, we still have chemical safety gaps as evidenced by accelerated state legislative actions over the past decade.

Over 77 individual chemical restriction bills have been passed by states in recent years, including 31 bills alone related specifically to mercury. In most cases, these bills have passed with broad bipartisan support. Washington State, as well as other states, enacted laws that require the identification and prioritization of chemicals of concern, the reporting by industry on the presence of priority chemicals in children's products, and phased reductions of copper levels in brake pads to reduce toxic stormwater pollution.

My job, and that of colleagues around the county, is to protect people and the environment from hazards and risks from toxic chemicals. This job has become more challenging with an outdated federal system. I think almost everyone agrees we need a fix at the federal level. A strong federal system that works is a more efficient use of our limited resources and reduces transaction costs for chemical management programs.

State and federal pollution prevention program have evolved over the past 30 years, but unfortunately, we have more work to do. Almost every state environmental and public health agency today has environmental data that show

[1] National Pollution Prevention Roundtable

increasing levels of toxic chemical contamination to people and the environment.

While the states have valuable programs and solutions, ultimately we need a federal TSCA that improves the safety of chemicals and restores trust in our institutions to protect our communities and economies from toxic threats.

What are states doing about these issues? State legislators have passed laws in reaction to these toxic threats – typically with chemical or product specific approaches. State legislation includes individual chemical bans like lead, mercury and cadmium and more recently on toxic flame retardants, addressing chemicals of concern in children's products, and other consumer products.

Some states are looking at more comprehensive approaches to chemical safety, rather than fear the next set of toxic chemicals that we haven't even heard of yet.

The current federal program does not prevent tomorrow's problems. Obviously, it will take time to work ourselves out of our current situation and retooling the chemical sector for future innovation is an effort that needs a phased approach – many of the production units currently in use are designed to run 40 years or more. We cannot change the enterprise overnight, but starting this effort will put us on the road toward a more sustainable economy and keep the United States as global chemical producer while keeping good paying jobs in our states. A modern TSCA should promote innovation and green chemistry as the strategy for future economic growth.

The states need a modernized TSCA to help us avoid the types of legacy problems that continue to impact our states. I have two brief examples.

Over the past decade the private sector and taxpayers collectively spent over $100 million to clean-up the Foss Waterway in Tacoma, Washington from legacy

toxic pollution. After successfully measuring improvements to the Puget Sound which the Foss Waterway flows into, we are now concerned with recontamination from a new class of pollutants called phthalates. Phthalates are used as plasticizers in a variety of everyday products such as flexible piping, soft plastic toys or some common packaging materials for consumer products. After spending $100 million on cleanup it is likely our children will have to address additional future cleanup costs-- a travesty for future generations. And without fixes to TSCA, we could be facing additional untold new chemical cleanups.

Another example is located in eastern Washington on the Spokane River. In this case, polychlorinated biphenyls or PCBs continue to contaminate fish and sediments in the river. Like most Americans, I figured we solved the PCB problem with the passage of TSCA in 1976. But, PCBs are still allowed in products at low levels and we now know that they are inadvertently produced during manufacture of other materials such as pigments in inks. Inland Empire Paper Company, a regional paper company that's been around for more than 100 years began to notice PCBs in their wastewater resulting from their raw material – recycled newsprint and magazines. The company is now in a real regulatory bind – the desire to promote the recycling is now threatening to make it nearly impossible to meet water quality limits for PCBs set by the Clean Water Act. The company will need to meet strict water quality standards at levels orders of magnitude below as what's allowed in products under the TSCA regulations. It's a tall regulatory hurdle to meet.

This isn't an isolated problem. As more states look at these issues, we find similar problems. Over 10 years ago, Washington became increasingly concerned that persistent, bioaccumulative or toxic (PBT) chemicals were building up in the food chain and in our bodies. As a result, in 2000 we became

the first state in the nation to target these chemicals and adopted regulations in 2006 to phase out their uses and releases. Our state became the first in the nation to ban decaBDE, a commonly used flame retardant. Since then, several other states have banned decaBDE and the EPA announced the phase-out of decaBDE.

Washington State is not alone. Many states across the country are trying out creative solutions and providing leadership in the effort to advance sound chemicals management policy.

Today, as a manager of a pollution prevention program, I've come to the conclusion that federal action is essential. I'd like to share a few ideas to consider as we reach the tipping point for action.

Many of the federal bills that have been introduced over the past several years include good ideas for a workable national solution. These include granting authorization for the EPA to share confidential business information (CBI) with the states. This is not currently allowed under TSCA. The states recognize the importance of CBI data for companies to continue to bring new products and chemistries to market. The EPA has showed a willingness to share data with the states that can demonstrate compliance with federal CBI standards. As long as state agencies can ensure that CBI will be protected from disclosure to the same extent as it would be in the hands of federal regulators, there's no reason to prevent such exchange of information. States can be trusted with CBI data as demonstrated by over 40 years of states' implementation of federally delegated programs such as the federal Clean Water Act and the Resource Conservation and Recovery Act.

Chemicals prioritization for safety assessments should allow EPA to gather necessary data for making good prioritization decisions. New science related to computational toxicology and predictive models will continue to emerge in the coming years, so a modernized TSCA should support the advancement of new data and methods. Requiring the EPA to set and meet safety determination targets will be critical to the success of addressing and prioritizing the significant work ahead. A modernized TSCA would allow EPA to require manufacturers to collect additional information about chemicals if that information is needed for prioritization or development of the safety standard.

States should be able to continue to act and bring forward chemicals of concern to EPA as part of this effort, including providing peer reviewed data and information. EPA should be required to consider the availability of safer alternatives when conducting safety assessments. Also, a modernized TSCA should include specific timeframes for actions by EPA with funding commensurate with those expectations.

Finally, a modernized TSCA should also address the emergence of new tools such as alternatives and life cycle assessment. I am not aware of any of the federal legislative proposals that recognize or encourage the use of alternatives assessment as a smart method to addressing chemicals of concern, but the states have recognized alternatives assessment as a tool that could significantly improve our ability to prevent future legacy type problems from occurring.

Including alternatives assessment and life cycle thinking in TSCA reform is a proactive method for identifying, comparing, and selecting safer alternatives to chemicals of concern. Today, leaders from industry, U.S. EPA, the states, and nongovernmental organizations are working to design a process for prevention-

based decision making. Some in industry are already using these tools to support product development, reduce hazard and minimize exposure in an effort to promote transparency and seek competitive advantage in the marketplace. Washington State and several other states have been working with stakeholders to develop and refine the principles of alternatives assessment. California's Safer Consumer Products regulations include Alternatives Analysis provisions.

As we all know, any discussion related to preemption is of high interest to the states. A strong federal system that works will help reduce state concerns as some states don't want to set up and staff chemicals management programs.

Washington supports a strengthened federal-state relationship as part of TSCA modernization, including adequately resourcing both federal and state programs.

TSCA is unlike most federal environmental statues where the states are considered co-regulators with the federal government in protecting public health and the environment. Amendments to TSCA must preserve the existing authority of the states to act to enforce laws, support state chemicals management programs, and be strengthened to meet state needs.

Until we have a national solution, we will continue to act on chemical safety in our states. It's our obligation to respond to the citizen's of our state.

Finally, states have a demonstrated history of stepping up to fill federal gaps, introducing and passing laws to help mitigate the threats and costs to public health and supporting consumer demand that manufacturers produce safer products with more transparent disclosure. At the same time, businesses remain concerned that conflicting state regulatory actions will become increasingly challenging. An effective federal framework will do much to resolve this situation.

Continued gaps and holes leave consumers and constituents reliant upon the states to step up.

I want to end by emphasizing that we see TSCA reform as both a true necessity to protect people and the environment and as a real opportunity to strengthen American products and industry.  The U.S. is a global leader in chemistry and there is increasing market demand for better products. I thank you for your leadership to move forward on practical solutions to improve our nations' chemical management system. Thank you for the opportunity.

**Chemical Safety Improvement Act (S. 1009)**
**Washington State Department of Ecology Addendum**
**July 31, 2013**

## Introduction

These comments on the Chemical Safety Improvement Act of 2013 (CSIA) are submitted on behalf of the Washington State Department of Ecology (Ecology), a state environmental agency working to support reform of the Toxic Substances Control Act (TSCA).

Ecology is very pleased by the bipartisan nature of the CSIA, but we note that clarification and intent is still needed. As written, S. 1009, contains concerning requirements that make the onerous preemption provisions particularly problematic in that it will severely limit the states' ability to protect their citizen's health, children's health and their environments from toxic chemicals.

Reforming the Toxic Substances Control Act of 1976 (TSCA) is a key issue for Ecology, as well as other states. In 2010, Ecology worked with other state environmental commissioners as part of the Environmental Council of States (ECOS) to pass a resolution calling for responsible TSCA reform. The resolution included actions to cover both new and existing chemicals, provide for responsive actions when needed, allow for assessment of safer alternatives, ensure preservation of state authority by limiting preemption only to situations where compliance with both federal and state law would be impossible, and enhance collaboration and information sharing between federal and state programs.

Our state legislature has actively engaged with chemical policy legislation. Through our work, we have learned many lessons about what has worked and what has not in the federal TSCA law and about how to successfully address toxic chemical risks. Our comments address a number of key issues for Ecology, which are that TSCA reform should:

- Establish a strong federal system that protects the most vulnerable and ensures the safety of chemicals in commerce.
- Preserve States' ability to protect public health and the environment by limiting preemption of state authority, including preemption that limits the state's ability to establish environmental programs more stringent than federal programs, to situations where compliance with both federal and state laws would be impossible, and by expanding environmental authority to the States.
- Ensure EPA has adequate data to make informed prioritization decisions.
- Require manufacturers to generate adequate data to show that chemicals meet the safety standards.
- Require EPA to make safety determinations in an efficient and timely manner.
- Create a system where manufacturers have a responsibility to demonstrate that their chemicals are safe.

- Share information and coordinate between state and federal programs to maximize use of resources and ensure a predictable regulatory environment for all stakeholders

We respectfully ask for your consideration of the following comments and would welcome the opportunity to provide additional information, answer questions, engage in discussion, and provide suggested language on any or all of these issues.

**Enhance States Role by Eliminating Preemption of State Authority and Programs to Protect Citizens and Environments**

Under most federal environmental statutes, the states are considered co-regulators with the federal government in protecting public health and the environment (for example, Superfund or CERCLA, hazardous waste laws or RCRA, etc.). For more than 40 years, states have worked as partners with the U.S. Environmental Protection Agency (EPA) and other federal agencies to co-implement the nation's environmental laws facilitating the development, implementation and enforcement of environmental programs.

Congress has provided by statute for delegation, authorization or primacy of certain federal program responsibilities to the states, which, among other things, enables states to establish state programs that meet or go beyond the minimum federal program requirements.

States, where supported by their legislators and citizens, should be able to take necessary actions to reduce toxic chemicals and protect public health and the environment. Many of the states' regulatory and prevention-based actions have resulted in beneficial changes in chemical use and consumer product composition, and have provided our citizenry with information that is helpful in making individual choices about the products they wish to purchase and use. Some of these provisions have been models for subsequent federal legislation, such as the banning of phthalates in toys and children's products that was included in the federal Consumer product Safety Improvement Act of 2008.

This "co-regulator partnership" must be recognized in the modernization of the Toxic Substances Control Act (TSCA). States have a very different relationship with the U.S. EPA than we did over 35 years ago when TSCA was first passed. One area where the states have played a significant role is the use of chemicals in consumer products. Many states have passed laws requiring the labeling of products that contain hazardous chemicals, banning the use of chemicals in certain products or classes of products, and establishing reporting requirements on the use of hazardous chemicals in certain products. These laws have been important as they have taken action with regard to chemicals of significant concern to human health where federal action has lagged (example: brominated flame retardants, mercury); they have also provided information to consumers who are concerned about the complex and not yet fully understood effects on human health from exposure to low

levels of chemicals in everyday products (e.g. endocrine disrupting chemicals, chemicals linked to epi-genetic effects that can span generations, etc. ) and choose to avoid these chemicals in their everyday purchasing decisions. Without these state-based regulations, this information would not be available.

CSIA would preempt states from adopting new laws addressing the manufacture and use of toxic chemicals following an EPA pioritization determination wheteher or not EPA takes timely or effective federal action to ensure safety. Existing, effective, state toxics laws are also subject to preemption following the mere completion of a safety determination by EPA, limiting state's abilty to take action based on new science indicating a risk not addressed by EPA, or if EPA fails to take effective action. This elimination of state's rights to take steps to protect their citizens and the environment is unaccpetable to a number of states and, on balance, outweighs the postive elements of the Act.

**Prioritization**

The CSIA directs the EPA to develop a framework for the assessment of chemical substances. This framework includes policies and procedures for the collection of existing information from manufacturers and processors of chemical substances; criteria for evaluating the quality of this data and information; and a process for prioritizing chemical substances for safety standard assessments.

The bill will prioritize chemicals into one of two groups, either low-priority or high priority. The EPA is to identify chemicals that, relative to other substances, have the potential for high hazard and high exposure, and may consider listing chemicals that exhibit only one of these characteristics, as high-priority substances. Low-priority chemicals substances are substances that the administrator determines are likely to meet the safety standard, on the basis of available information and under the intended conditions of use. High-priority chemical substances will undergo a safety assessment in accordance with a schedule published by EPA.

The states have many years of experience in the prioritization of chemicals substances, the evaluation of chemical substances for safety, and evaluating alternatives to hazardous chemicals.

We would like to raise several concerns regarding the proposed prioritization and screening process:

1. **Chemical Test Data** – Washington is concerned that CSIA will continue the common problem that that discourages the testing of existing chemical substances under the current TSCA. Unless a chemical is up for prioritization under CSIA there will be little incentive to generate new data. As testing could find evidence of hazard or risk and result in the chemical being scheduled for a safety standard assessment. Therefore, there would be little incentive to test existing chemicals, which lack toxicity data or have not been identified as a chemical of concern.

2. **Minimum Data Set** - CSIA needs revised language to require a minimum data set.
    a. ***High Priority Chemical* s**- The language in the current proposal is not clear or sufficient regarding "lack of data" as a criteria for prioritization. We recommend that the Act require EPA to categorize chemicals lacking sufficient data as a high priority.
    b. ***Low Priority Chemicals*** – This language should be clarified to require a minimum amount of data to classify a chemical as a low-priority chemical substance. The amount of required information could be tiered based on production volume but should at a minimum include information on carcinogenicity, mutagenicity, developmental toxicity, acute toxicity, chronic toxicity, endocrine disruption, environmental toxicity, or other toxic effects as determined by EPA.
    c. ***Harmonization*** - The SCIA should support global harmonization of chemical safety data and information, including required basic health and safety information for all chemicals in commerce. At a minimum it should require manufacturers of chemicals to provide the same safety information provided in other countries. Washington is concerned that much of the information provided under international chemical management programs may not be considered "existing data." This is due to the complex financial arrangements required to pay for new testing of chemical substance. This data is often generated under contracts which provide that the data may only be used for purposes related to the other countries' chemical management programs. The language in the CSIA should be clear that the same information provided to other countries must be provided to EPA.
3. **Safer chemicals** – SCIA should require manufactures of chemicals to provide similar data for new chemicals. Lack of data can hamper innovation and prevent the adoption of safer alternatives. Many companies are working to remove hazardous chemicals from their products and processes – often saving money in the process. When companies remove a hazardous chemical they often have to identify a safer alternative. When doing this they must gather toxicity information on the proposed alternative chemical, to ensure they are making a smart substitution. If toxicity information for an alternative is not available they are left with two choices, search for another alternative or conduct the testing themselves. Manufacturers of chemical substances should bear the burden of generating basic health and safety information for all chemicals they sell.

**Safety Assessments and Determinations**

Ecology supports efforts in CSIA that call for an evaluation of all chemicals in commerce. After chemicals are prioritized, the EPA must conduct a safety assessment of high priority chemicals. A safety assessment is a risk based assessment of a high priority chemical. The EPA is required to develop rules to establish the procedures for carrying out the safety assessment. If EPA determines

that existing data is not adequate to complete a safety determination, they may require manufacturers and processors of chemicals to generate new data and information. Safety assessments are not subject to judicial review.

After completing a safety assessment EPA is directed to make a safety determination. This is a determination as to whether a chemical meets the safety standard of unreasonable risk or does not. If a chemical does not meet the safety standard, EPA has the authority to implement risk reduction measures, including labeling requirements, restrictions on the quantity of the chemical that may be manufactured, restrictions on use, or bans and phase outs. All risk reduction measures are implemented through rules and there are various additional requirements on EPA if they wish to ban or phase out the use of a chemical, including identifying economically feasible alternatives, evaluating the risks posed by these alternatives, and conducting an economic and social cost benefits analysis.

Ecology has the following comments on the safety assessment and determinations process:

1. **Determination Criteria** - It is unclear from the current bill language how these determinations are to be made. The bill states that these determinations are to be based solely on considerations of risk to human health and the environment, yet the safety standard is clearly defined as ensuring that no unreasonable risk of harm occurs. EPA is also called upon to evaluate issues unrelated to the risk of human health or the environment including an analysis of the economic and societal costs and benefits of an alternative chemical substance. This would appear to indicate that the determinations and EPA's ability to take action are not biased solely on the risk to human health and the environment. Ecology is concerned that this recreates the same high bar for EPA action as in TSCA.
2. **Shared Responsibility** - At each step in the review process, CSIA places the responsibilities squarely on EPA. The responsibilities should be more equitably shared between the manufacturers and EPA. For example manufacturers of high priority chemical substances should be required to conduct alternative assessments in accordance with guidelines established by EPA. The assessments should be publicly available. In cases where safer alternatives are available, chemical policy should help shift uses towards the safer alternatives. Manufacturers should also propose appropriate risk reduction measures, when their chemicals are reviewed for safety. These proposed risk reduction measures should then be required by EPA upon the completion of a safety determination.
3. **Timeframes & Implementation** - There may be a significant gap between the time a determination is made and when risk reduction measures are implemented. Risk reduction measures are implemented through rule and are implemented after safety determinations. Rule making can be very lengthy, with significant rules taking many years to complete. Risk reduction measures should take effect immediately after determinations are made.

4. **Authority and Rulemaking** - Certain risk reduction measures should not require rulemaking. For example EPA should not have to conduct rulemaking to require the labeling of a chemical substance. The EPA should be able to issue orders to implement certain risk reduction measures. Rulemaking should only be required when implementing a phase out or ban.

**Safety Standard**

The safety standard in the current proposal is "a standard that ensures that no unreasonable risk of harm to human health or the environment will result from exposure to a chemical substance" under its intended condition of use. While there have been some changes to this language the standard is very similar to the current safety standard – a standard that has proved nearly impossible to fail, as shown by the Corrosion Proof Fittings V. the EPA case. Based on this case, Ecology identified three principle concerns with the current safety standard:

1. The substantial evidence standard of judicial review.
2. The requirements on EPA to select the least burdensome risk reduction measure
3. The complex calculations EPA is required go through to determine what constitutes an unreasonable risk.

We are pleased that this proposal addresses one of these concerns, the requirement to select the least burdensome risk reduction measure; however we fear that these changes alone will not ensure an adequate level of safety for the use of chemicals in commerce. Ecology is significantly concerned that EPA will face a considerable "burden of proof" when adopting rules to implement risk reduction measures. Rules promulgated under TSCA should be subject to the same level of judicial scrutiny as other federal regulations.

Ecology would recommend striking the sections of TSCA which create this higher standard of judicial review.

One of the current problems with TSCA is that EPA has the burden of gathering evidence that a chemical poses an unreasonable risk before taking risk reduction measures. Ecology supports the principle that manufacturers should have to provide EPA with evidence that the chemicals they manufacture are safe. The EPA should then evaluate this evidence to determine if a chemical meets the safety standard.

A reformed TSCA should shift from the current process whereby EPA has to show that there is substantial evidence of an unreasonable risk, before taking risk reduction actions, to one where manufacturers must provide adequate evidence that the chemicals they manufacturer may be used safely in commerce.

**Timelines and EPA Funding**
The timelines and schedules in SCIA need to be revised to promote efficiencies when EPA starts implementation of the bill. While some elements of the SCIA contain specific timelines that EPA must meet many others do not. Without specific timelines it is impossible to know how long it will take to implement risk reduction measures or to evaluate chemicals for safety. There should be clear expectation on EPA to complete tasks within specific time frames. The EPA should also be required to complete the evaluation of a specific number of chemicals within a given amount of time.

In order to realistically ensure timely progress, a funding mechanism needs to be included in the bill. Without a dedicated funding source EPA will be unable to meet these timelines and the chances for delays increase. The cost of a federal chemical regulatory program should be borne by the manufacturer, importers, processors, and users of chemicals.

**Confidential Business Information (CBI)**
Section 13 of the CSIA revises confidential business information (CBI) will be treated. The proposal creates three categories of information and prevents the disclosure of CBI. The categories of information created by the proposal are information that is presumed to be protected from disclosure, information not protected from disclosure, and other information which may be protected from disclosure if a manufacturer files a claim. The proposal also provides for a process for the EPA to review claims, exemptions from CBI protection, and an appeal process.

Ecology understands the need to protect certain information from public disclosure. A strong chemical management system, however, should provide for the maximum amount of publicly available data.

We have the following specific comments related to the proposal:

1. **Information presumed to be protected**: The identity of the constituents in a mixture should not be presumed to be protected from disclosure. The identity of the chemical substances in a mixture should be treated in the same manner as the identity of the chemical substances themselves.
2. **Exemptions to protection from disclosure**: This section provides for information to be disclosed to state or local governments upon written request. The current language requires:
   > "1 or more applicable agreements with the Administrator ensure that the recipient government will take appropriate steps, and has adequate authority, to maintain the confidentiality of the information in accordance with procedures as stringent as those which the Administrator uses to safeguard the information."

   We would recommend changing this language to read:

"1 or more applicable agreements with the Administrator ensure that the recipient government will take appropriate steps~~, and has adequate authority,~~ to maintain the confidentiality of the information in accordance with procedures ~~as stringent as~~ comparable to those which the Administrator uses to safeguard the information."

This will avoid future concerns over whether a specific authority is adequate or if one procedure is more or less stringent than another. A written agreement with EPA should be sufficient to protect the confidentiality of this information.

3. **Timeframes** - In general, CBI information claims should not be granted indefinitely. We would recommend that the proposal require that manufacturers periodically recertify CBI claims still needing protection.
4. **Authority to Request Data** - The EPA should have the authority to require manufacturers to document any claims for CBI protection regardless of when those claims are submitted. The CSIA proposal creates a division between data and information submitted before the adoption of the act and after. This proposal expressly removes EPA's authority require documentation or re-documentation of claims submitted prior to the adoption of the act.

**Preemption**

The preemption previsions in the CSIA legislation are broad and sweeping. This makes it difficult to conduct a meaningful assessment of what is or is not preempted. Ecology is concerned that this language is open to a variety of judicial interpretations, which could have far reaching and unexpected consequences on areas of law never intended by the authors. Ecology has identified dozens of laws or regulations which could or would be preempted if this language were passed as written. It is likely that there are a similar number of laws and regulations, which could, or would be, preempted in other states.

For example, states are preempted from enforcing existing laws or requirements if the law places a prohibition or restriction on a chemical that has been subject to a safety determination when the prohibition or restriction is within the scope of this determination, requires the submittal of data that is likely to produce the same data as required by the EPA, or places a requirement for the notification of a new use for a chemical, where notice to EPA is also required.

The CSIA preempts states from establishing a new "prohibition or restriction on the manufacture, processing, distribution in commerce or use of a chemical" that has been prioritized as low priority or high priority by EPA.

While the CSIA provides for states to seek a waiver from EPA from the pre-emption requirements, Ecology, in consultation with the Office of the State Attorney General, has concluded that the proposed wavier provisions would be extremely difficult and costly to meet. It is highly unlikely that any state would likely attempt to seek a waiver under the current proposal, and if they did it is unlikely that it would be granted.

**Chemical Alternatives Assessment**
Chemical policy reform should shift chemical use from chemicals that possess a high intrinsic hazard to chemicals with lower hazard. In many cases there are equally effective and safer alternatives to hazardous chemicals. Manufacturers should be required to conduct safer chemicals alternative assessments as part of the safety assessment/determination process, prior to implementing any proposed risk control measures.

In instances where safer alternatives are available, for the intended use of a chemical, chemical policy should help shift uses towards these safer alternatives. When faced with the choice between implementing control measures to reduce exposure and reducing intrinsic hazard, Ecology has often found that the cheapest and most effective option is reducing hazard. Protection of public health and the environment requires identification and substitution of safer alternatives, irrespective of current known risks.

**States Program Grants**
Grant funding should be provided for state programs to reduce the use of and exposure to hazardous chemicals.

Ecology proposes amending section 28 – State Programs to read:

(a) In general - For the purposes of complementing the actions taken by the administrator, under this act, the administrator shall make grants to states for the establishment, operation, and expansion of programs that support the goals of this act. The administrator shall make grants to programs:
  (1) providing business with voluntary technical assistance to:
    (A) eliminate or reduce the use of hazardous chemical substances;
    (B) accelerate the adoption of safer alternatives to hazardous chemicals substances;
    (C) encourage the use of alternative assessment as a tool for reducing risk; and
    (D) promote and aid in the adoption of risk reduction measures
  (2) facilitating collaboration, data, and information exchange among the administrator, states, and local governments regarding:
    (A) chemical health and safety information;
    (B) product information;
    (C) safer alternatives; and
    (D) education outreach
  (3) recognizing business for leadership in reducing the use of hazardous chemical substances;

(4) monitoring for the presence of chemicals in the environment, animals, or humans; and
(5) coordinating, expanding, or enhancing green chemistry education at colleges, universities, and public schools;

Adequate funding for the purposes of making state grants will need to be authorized to be appropriated.

**Regulation of PCB Waste and Residuals**

TSCA Section 6 should be amended to provide for regulation of the management and disposal of polychlorinated biphenyl (PCB) waste and residuals under the appropriate provisions of RCRA and CERCLA. Currently, the management and disposal of PCB wastes and residuals are subject to overlapping regulation under three separate federal environmental statutes: TSCA, RCRA, and CERCLA. PCBs are identified as a hazardous constituent under RCRA and as a hazardous substance regulated under CERCLA. The existing regulatory authority under RCRA and CERCLA governing the management and disposal of hazardous and toxic wastes and residuals is broader in scope than the authority under TSCA. The coordination of management of PCB wastes and residuals under these overlapping authorities often requires substantial time and effort between the three regulatory programs, resulting in a redundant, cumbersome approval process that impedes the timely and efficient remediation of contaminated properties and management of PCB wastes and residuals.