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BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

March 18, 2015

Good morning Chairman Inhofe, Ranking Member Boxer, and other members of the Committee. I appreciate the opportunity to join you today to discuss much needed reform of chemicals management in the United States and the recently introduced bill, The Frank R. Lautenberg Chemical Safety for the 21st Century Act.

There continues to be wide agreement on the importance of ensuring chemical safety and restoring the public's confidence that the chemicals used in the products they and their families use are safe. This Administration also believes it is crucial to modernize and strengthen the Toxic Substances Control Act (TSCA) to provide the EPA with the tools necessary to achieve these goals and ensure global leadership in chemicals management.

We continue to be encouraged by the interest in TSCA reform indicated by the introduction of several bills in recent years, the hearings on TSCA related issues that are being held, and the discussions that are taking place. Key stakeholders share common principles on how best to improve our chemicals management programs. We at the EPA remain committed to working with this committee and others in both the House and Senate, members of the public, the

environmental community, the chemical industry, the states, and other stakeholders to improve and update TSCA.

As you know, chemicals are found in almost everything we buy and use. They contribute to our health, our well being, and our prosperity. However, we believe that it is essential that chemicals are safe. While we have a better understanding of the environmental impacts, exposure pathways, and health effects that some chemicals can have than we did when TSCA was passed in 1976, under the existing law it is challenging to act on that knowledge.

TSCA gives the EPA jurisdiction over chemicals produced, used, and imported into the United States. Unlike the laws applicable to pesticides and drugs, TSCA does not have a mandatory program that requires the EPA to conduct a review to determine the safety of existing chemicals. In addition, TSCA places burdensome legal and procedural requirements on the EPA before the agency can request the generation and submission of health and environmental effects data on existing chemicals.

While TSCA was an important step forward when it was passed almost forty years ago, it has proven to be a challenging tool for providing the protection against chemical risks that the public rightfully expects. It is the only major environmental statute that has not been updated or revised since enactment. We believe the time is now to significantly strengthen the effectiveness of this outdated law.

When TSCA was enacted, it grandfathered in, without any evaluation, about 60,000 chemicals that were in commerce at the time. The statute did not provide adequate authority for the EPA to reevaluate these existing chemicals as new concerns arose or science was updated. The law also failed to grant the EPA effective tools to compel companies to generate and provide toxicity data.

It has also proven challenging in some cases to take action to limit or ban chemicals that the EPA has determined pose a significant health concern. For example, in 1989, after years of study and with strong scientific support, the EPA issued a rule phasing out most uses of asbestos in products. Yet, in 1991, a federal court overturned most of this action because it found the rule had failed to comply with the requirements of TSCA.

As a result, in the more than three and a half decades since the passage of TSCA, the EPA has only been able to require testing on a little more than 200 of the original 60,000 chemicals listed on the TSCA Inventory, and has regulated or banned only five of these chemicals under TSCA's section 6 authority, the last of which was in 1990. In the 25 years since, the EPA has relied on voluntary action to collect data and address risks. In the absence of additional Federal action, an increasing number of States are taking actions on chemicals to protect their residents and the private sector is making their own decisions about chemicals to protect their interests and respond to consumers.

This Administration is committed to using the current statute to the fullest extent possible but the nature of the statute has limited progress. In the last six years, the EPA has identified more than

80 priority chemicals for assessment under TSCA. We have completed final risk assessments on specific uses of four of these chemicals with a fifth to issue soon. Of these five chemical uses, two show no significant risk. The remaining three uses show risk. To address the risks identified in these three assessments, the EPA is considering pursuing action under Section 6 of TSCA.

It is clear that even with the best efforts under current law and resources, we need to update and strengthen TSCA and provide the EPA with the appropriate tools to protect the American people from exposure to harmful chemicals. The EPA believes that it is critical that any update to TSCA include certain components.

In September 2009, the Administration announced the attached set of six principles to update and strengthen TSCA. The principles are:

Principle 1: Chemicals Should Be Reviewed Against Safety Standards That Are Based on Sound Science and Reflect Risk-based Criteria Protective of Human Health and the Environment.

Principle 2: Manufacturers Should Provide EPA With the Necessary Information to Conclude That New and Existing Chemicals Are Safe and Do Not Endanger Public Health or the Environment.

Principle 3: Risk Management Decisions Should Take into Account Sensitive Subpopulations, Cost, Availability of Substitutes and Other Relevant Considerations.

Principle 4: Manufacturers and EPA Should Assess and Act on Priority Chemicals, Both Existing and New, in a Timely Manner.

Principle 5: Green Chemistry Should Be Encouraged and Provisions Assuring Transparency and Public Access to Information Should Be Strengthened.

Principle 6: EPA Should Be Given a Sustained Source of Funding for Implementation.

While the Administration has not yet developed a formal position on the new bill, we continue to feel strongly that updated legislation should provide the EPA with the improved ability to make timely decisions if a chemical poses a risk and the ability to take action, as appropriate, to address that risk. We believe that this is vitally important to assuring the American public that the chemicals they find in the products they buy and use are safe.

Mr. Chairman, thank you again for your leadership on TSCA reform. I will be happy to answer any questions you or other members may have.

APPENDIX: Essential Principles for Reform of Chemicals Management Legislation

The U.S. Environmental Protection Agency (EPA) is committed to working with the Congress, members of the public, the environmental community, and the chemical industry to reauthorize the Toxic Substances Control Act (TSCA). The Administration believes it is important to work together to quickly modernize and strengthen the tools available in TSCA to increase confidence that chemicals used in commerce, which are vital to our Nation's economy, are safe and do not endanger the public health and welfare of consumers, workers, and especially sensitive sub-populations such as children, or the environment.

The following Essential Principles for Reform of Chemicals Management Legislation (Principles) are provided to help inform efforts underway in this Congress to reauthorize and significantly strengthen the effectiveness of TSCA. These Principles present Administration goals for updated legislation that will give EPA the mechanisms and authorities to expeditiously target chemicals of concern and promptly assess and regulate new and existing chemicals.

Principle No. 1: Chemicals Should Be Reviewed Against Safety Standards That Are Based on Sound Science and Reflect Risk-based Criteria Protective of Human Health and the Environment.

EPA should have clear authority to establish safety standards that are based on scientific risk assessments. Sound science should be the basis for the assessment of chemical risks, while recognizing the need to assess and manage risk in the face of uncertainty.

Principle No. 2: Manufacturers Should Provide EPA With the Necessary Information to Conclude That New and Existing Chemicals Are Safe and Do Not Endanger Public Health or the Environment.

Manufacturers should be required to provide sufficient hazard, exposure, and use data for a chemical to support a determination by the Agency that the chemical meets the safety standard. Exposure and hazard assessments from manufacturers should be required to include a thorough review of the chemical's risks to sensitive subpopulations.

Where manufacturers do not submit sufficient information, EPA should have the necessary authority and tools, such as data call in, to quickly and efficiently require testing or obtain other information from manufacturers that is relevant to determining the safety of chemicals. EPA should also be provided the necessary authority to efficiently follow up on chemicals which have been previously assessed (e.g., requiring additional data or testing, or taking action to reduce risk) if there is a change which may affect safety, such as increased production volume, new uses or new information on potential hazards or exposures. EPA's authority to require submission of use and exposure information should extend to downstream processors and users of chemicals.

Principle No. 3: Risk Management Decisions Should Take into Account Sensitive Subpopulations, Cost, Availability of Substitutes and Other Relevant Considerations

EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns.

Principle No. 4: Manufacturers and EPA Should Assess and Act on Priority Chemicals, Both Existing and New, in a Timely Manner

EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the Agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations

Principle No. 5: Green Chemistry Should Be Encouraged and Provisions Assuring Transparency and Public Access to Information Should Be Strengthened

The design of safer and more sustainable chemicals, processes, and products should be encouraged and supported through research, education, recognition, and other means. The goal of these efforts should be to increase the design, manufacture, and use of lower risk, more energy efficient and sustainable chemical products and processes.

TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI). Manufacturers should be required to substantiate their claims of confidentiality. Data relevant to health and safety should not be claimed or otherwise treated as CBI. EPA should be able to negotiate with other governments (local, state, and foreign) on appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety.

Principle No. 6: EPA Should Be Given a Sustained Source of Funding for Implementation

Implementation of the law should be adequately and consistently funded, in order to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is meeting

that goal. To that end, manufacturers of chemicals should support the costs of Agency implementation, including the review of information provided by manufacturers.