The Chemical Safety Improvement Act
Does Not Meet the Minimum Standard for Meaningful Reform

On May 22nd, Senators Lautenberg and Vitter introduced the Chemical Safety Improvement Act (CSIA) S.1009. The bi-partisan legislation raised hopes that reform could pass in this Congress. But the true measure of reform is in its content, not in its bipartisanship. As drafted, the CSIA would not deliver the critical elements of meaningful public health and environmental protection. It should not move forward unless the following issues are fully addressed. *

The CSIA does not deliver the critical fixes to EPA's authority over chemicals under the Toxic Substances Control Act (TSCA).

TSCA was doomed from the start because it placed the burden on EPA to find that a chemical caused an "unreasonable risk" to human health and the environment, and required EPA to demonstrate that it had chosen the "least burdensome" way of addressing that risk. The unreasonable risk finding required a balancing of the benefits of a chemical against its health threats. Almost immediately, the legal burdens of TSCA caused the EPA to spend 10 years developing its first proposed chemical regulation of asbestos, a notorious substance with a signature disease and tens of thousands of documented victims. Nevertheless, once completed, a federal appeals court promptly determined that the EPA had not met its legal burden under the Act, and overturned the proposed regulation of asbestos in 1991. The program has remained in limbo ever since.

CSIA retains the "unreasonable risk" standard of the original TSCA but its sponsors maintain that the standard has been fixed to address the problems that led to the court decision. A close reading shows that it has not. The standard has not been redefined to specify that it is "health only" and a version of the "least burdensome" requirement remains. The bill as drafted largely repeats the mistakes of the past and guarantees new litigation.

The CSIA places new barriers in front of EPA's regulation of chemicals and provides new handles for litigation that will significantly delay any public health improvements.

Section 4 of the CSIA requires the EPA to develop multiple new policies, guidances, and "frameworks" before it can get started regulating any chemical. Taken together, these hurdles will prevent the start of any safety determinations for at least for 5 to 8 years. In addition, the CSIA requires EPA to adhere to certain scientific guidelines and assess chemicals using methodologies favored by the chemical industry rather than those of the National Academy of Sciences. In addition to delaying the start of safety assessments, and weakening the EPA’s ability to effectively and accurately assess the risk of chemicals, these provisions provide new handles for chemical makers to sue EPA when they disagree with a safety determination.

EPA should be allowed to use its existing policies and methodologies for prioritization and conducting risk assessments, coupled with a direction to follow the recommendations of the National Academy of Sciences.

Safety Determinations under the CSIA do not reflect the mainstream medical consensus of what is needed to protect public health.

The chemical policy recommendations of every leading medical organization- including the American Academy of Pediatrics, American Congress of Obstetricians and Gynecologists, and the National Medical Association- have similar core provisions. They include that the EPA should identify whether there is a vulnerable population that is particularly susceptible to a given chemical and then ensure that any regulations protect that population as well as the general population. Vulnerable populations

usually include children - whose bodies are uniquely vulnerable to damage by many chemicals- but they can also include heavily contaminated communities or workers where the exposure is unusually high. In addition, the mainstream medical position is that all sources of exposure to a chemical should be added together - a concept known as "aggregate exposure"- to ensure that the government's assessment of how much of a given chemical the population is exposed to reflects real-world conditions.

The concepts of aggregate exposure and vulnerable populations are fundamental to whether the EPA's safety determinations will be credible and meaningful, yet they are only loosely included in the CSIA. They must be incorporated as fundamental elements of any new program.

Reform should make it easier for the EPA to require testing of chemicals and it should allow more of that information to be made public. CSIA falls short on both counts.

A basic problem with TSCA is that it is very hard for the EPA to require toxicity testing. Also, its provisions allowing companies to claim "confidential business information" are widely abused, hiding critical information from the public. The CSIA purports to address both problems but falls short.

The CSIA allows the EPA to use *order* authority to require testing rather than the existing *rule-making* authority, which has proven cumbersome. However, the CSIA only allows test orders for 'High Priority' chemicals -- those that EPA has already determined need a safety determination. In addition, the CSIA imposes a very strict requirement for "tiering" any testing. A chemical must first flunk a screening level test before the EPA can require a longer, more expensive test, like those typically needed to determine whether a chemical causes cancer. However, the screening tests often don't predict which chemicals need the next tier, so the provision could prevent crucial toxicity testing for the health problems the public is most concerned about. CSIA "grandfathers" all existing CBI claims- including those whose abuses fueled calls for reform- and enshrines the idea of a "secret inventory" of chemicals for the first time.

The CSIA strips states of much of their existing authority to regulate a chemical, even in the absence of meaningful federal action.

TSCA's only real success has been that it allowed states to innovate their own chemical policies and enact necessary restrictions until and unless the federal government took action. As a result, even though TSCA has largely failed at the federal level, twenty-two different states have enacted restrictions of some kind in response to new scientific evidence about various chemicals. These state programs are generally considered to be one of the primary reasons for the chemical industry's desire to pass a federal law.

CSIA would "pre-empt" (overrule) many of these state policies at the point at which the EPA either sets a chemical aside based on a cursory review (called a “low priority” designation) or when the EPA merely schedules the assessment process for a high priority chemical, which could take years. Instead, any legislation should retain the principle in existing TSCA that states are generally free to act unless and until the federal government has either fully reviewed and exonerated a chemical, or imposed federal restrictions that conflict with state restrictions.

*There are additional issues of drafting or legislative intent that we urge the EPW Committee to address.

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