

1 National Life Drive
Davis 2
Montpelier, VT 05620-3901

Tel: (802) 828-1294
Fax: (802) 828-1250

www.anr.state.vt.us



Deborah L. Markowitz
Agency Secretary

Trey L. Martin
Deputy Secretary

State of Vermont
Agency of Natural Resources

March 13, 2015

The Honorable Jim Inhofe
Senate Environment and Public Works Committee
112 Hart Senate Office Building
Washington, DC 20510

RE: Comment on Frank R. Lautenberg Chemical Safety for the 21st Century Act Working Draft

Dear Chairman Inhofe:

I am writing to express the concerns of the Vermont Agency of Natural Resources regarding the Frank R. Lautenberg Chemical Safety for the 21st Century Act Working Draft, dated March 4, 2015 (the "Working Draft"). Our office works together with the Vermont Department of Health and the Vermont Office of the Attorney General to administer a number of laws that restrict or prohibit the use of certain chemicals that pose a risk to public health and the environment. We have closely followed federal legislative proposals on TSCA reform and are anxious to see meaningful improvements enacted to this federal legislation that is long overdue. We believe that the current Working Draft is an improvement over the Chemical Safety Improvement Act (CSIA, S.2009) introduced in May 2013, however we still have serious concerns with the current Working Draft that we feel must be addressed through amendment, including the following:

- (1) there should be no preemption of state authority to enact legislation on high priority chemicals before EPA has fully acted to do so, including the burdensome process to obtain a state waivers to act;
- (2) the pace at which EPA is required to list and assess high priority chemicals is still inadequate to protect public health;
- (3) EPA should be mandated to act more quickly on bio-accumulative toxins (PBTs) and asbestos, for which health effects are well known and extensively studied; and
- (4) we question the adequacy of resources for EPA to carry out the intent of this legislation in a timely manner.

Preemption of State Authority

Under TSCA, state action to restrict a chemical is preempted only *after* EPA has *finalized* a restriction on a chemical. The Working Draft would preempt state action on a chemical when EPA designates the

chemical as “high priority,” even if EPA is still many years away from a final decision to either declare a use of a chemical safe or determine that it does not meet a safety standard and restrict its use. Although states may apply to EPA for a waiver from preemption, the conditions under which this can be accomplished are onerous and difficult to achieve. In our opinion, preemption of state authority to restrict a chemical use should be eliminated for: (a) any state action taken prior to enactment of the law; (b) any state action taken prior EPA’s completion of an enforceable regulation on chemical restriction; and (c) any state action to adopt and enforce a chemical restriction requirement equivalent to a federal requirement.

The Pace of Chemical Assessment and Review

The Working Draft addresses many deficiencies of CSIA, including establishing deadlines for major steps such as chemical prioritization, safety assessment, and regulation promulgation. However, the Working Draft requires that only 10 chemicals every 5 years to be identified as high priority and fully assessed. We believe this pace is much too slow, given the tens of thousands of chemicals in commerce. A much more aggressive pace of chemical assessment is in order, with a goal of at least 25 chemicals assessed per year.

Asbestos and Persistent Bio-accumulative Toxins

Asbestos and PBTs are designated as Substances of Very High Concern by the European Union and are subject to phase-out for most uses. Much is already known about the health risks of these chemicals. Any final legislation should place a priority for action on these chemicals through an expedited process of assessment and review.

EPA Resources

Although the Working Draft includes a funding mechanism to better support EPA activities under the bill, user fees charged to manufacturers are to be set at a level to cover 25% of relevant EPA program costs up to \$18 million per year. EPA should be given more flexibility in establishing fees that will cover all program costs for prioritization screening, safety assessments and any needed regulation, without an arbitrary cap on manufacturer fees. EPA will also have significant startup costs in development of regulations and procedures to implement the Act. Adequate resources must be dedicated to assure that implementation occurs in a timely manner.

In summary, the Working Draft raises significant concerns regarding the limits of state authority to protect public safety from chemicals of concern, as well as the robustness of the chemical assessment and review process in some respects. However, we believe that the bill is sound in many respects and Vermont can support this Working Draft with amendment in these areas of concern.

Sincerely,



Deborah Markowitz, Secretary