CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

Statement of Daryl W. Ditz
On Behalf of the Center for International Environmental Law
Before the U.S House of Representatives
Subcommittee on Commerce, Trade and Consumer Protection
At a Hearing on Prioritizing Chemicals for Safety Determination
November 17, 2009

Thank you, Chairman Rush, Ranking Member Radanovich, and members of the subcommittee for the opportunity to testify today. My name is Daryl Ditz and I am a Senior Policy Advisor at the Center for International Environmental Law (CIEL). CIEL is a nonprofit organization founded in 1989 and dedicated to protecting the environment, promoting human health, and ensuring a just and sustainable society through international and domestic law and institutions. CIEL is also a member of the Safer Chemicals, Healthy Families Coalition, a broad-based network of more than 100 health, environmental and justice organizations working to protect Americans from dangerous chemicals.

I appreciate your concern about the effectiveness of our national system for ensuring chemical safety. The public is concerned about the long-term effects of chemicals on health, including increasing incidence of asthma, autism, birth defects, infertility, and certain types of cancer. These problems are especially troubling in light of the growing evidence that industrial chemicals are building up in our bodies and in the environment.

Despite its aspirational title, the Toxic Substances Control Act (TSCA) has failed to assess, let alone guarantee, the safety of the great majority of chemicals in use today. TSCA stymies action by EPA and other agencies, perpetuates a reliance on dangerous substances, leaves businesses in the dark, and undermines U.S. competitiveness. Adopted by Congress over 30 years ago, TSCA today is failing to protect the health of Americans, our children, and their children. So I am especially grateful for this opportunity to discuss with you today practical improvements that can bring TSCA into the 21st Century.

In the current debate over TSCA reform, there is broad agreement that the United States must set priorities if we are to succeed in safely managing chemicals. I would like to offer three recommendations.

First, to expedite action, Congress should authorize EPA to promptly identify and phase out non-essential uses of a set of high-priority chemicals. A phase out of high-priority chemicals will jump start the process of protecting public health and inform decisions by other federal agencies, the States, businesses, and consumers. A slow, cumbersome safety determination process for these high-priority chemicals is neither necessary nor appropriate.

Second, Congress should authorize EPA to prioritize the order in which *all* chemicals, new as well as existing, are assessed against a health-based standard. Systematic review of all chemicals is not only possible, but necessary to identify dangerous as well as safer chemicals.

Third, Congress should ensure that up-to-date, comprehensive information is available on all chemicals, to protect the health and safety of Americans and foster confidence in the market.

These three reforms, already familiar to U.S. policy makers and businesses, should form the core of a new federal policy on chemicals that improves our international competitiveness while protecting the health of American workers, consumers, and communities.

Prioritization should play an important part in a new U.S. policy on chemicals. Setting priorities will help us to get started. But setting priorities is no substitute for a comprehensive system to identify, assess and control chemicals of concern. This is especially important because the United States must overcome an enormous backlog – tens of thousands of chemicals lack the basic information needed for preliminary screening. So it makes sense to focus public and private resources where they can do the most good.

1) Prioritizing chemicals for action

Despite major data gaps about chemical hazards and uses, we are not starting from scratch. A reinvigorated TSCA should recognize that sufficient and reliable information is already available for some chemicals to support prompt action by EPA and businesses.

One set of chemicals should be a top U.S. priority for action. Sometimes called the “worst of the worst,” these chemicals persist in the environment, bioaccumulate in the food chain and in our bodies, and pose serious threats due to their toxicity. These three properties -- persistence, bioaccumulation and toxicity, or “PBT” for short – defy

traditional risk assessment, because human exposure can continue to rise long after production has ceased.

But with the exception of PCBs, chemicals which Congress identified by name in the 1976 statute, TSCA has proven virtually powerless to eliminate such long-lasting threats to health and the environment. A reauthorized TSCA should prioritize PBTs for phase-out, subject to narrow exemptions for critical uses.

Targeting PBT chemicals for priority action is a pragmatic way to accelerate action on toxic chemicals. This is not a new concept for the United States. The U.S.-Canada Binational Toxics Strategy, for instance, was launched in 1997 with the goal of reducing or eliminating PBT chemicals in the fragile Great Lakes ecosystem. Several states (including Washington, Maine, California, and Minnesota), frustrated by the slow pace of federal progress, have taken decisive action on PBTs. EPA's Toxic Release Inventory already includes 20 PBT chemicals and chemical groups.

Eliminating PBTs is also the central objective of the Stockholm Convention on Persistent Organic Pollutants. This international treaty was signed under President George W. Bush and has since been ratified by at least 168 countries. PBTs are accumulating fastest in the Arctic, resulting in dire contamination of traditional foods of Native Americans and Indigenous people in Alaska. Just last week the National Congress of American Indians called on Congress to ratify this agreement and to enact comprehensive reform to ensure its implementation.[1]

PBTs are not the only chemicals that deserve priority action. Other notorious substances have been extensively studied, often for years, but remain on the market due to EPA's weak authority under TSCA. The recent example of high formaldehyde in imported plywood used in trailers after hurricane Katrina is especially tragic. But EPA has also found it nearly impossible to regulate asbestos, vinyl chloride, and other chemicals with well-known hazards and widespread human exposure.

The Environmental Protection Agency, under the leadership of Administrator Lisa Jackson, recently announced its plans to initiate risk management actions on formaldehyde, PCBs and several other chemicals. The agency is also developing action plans to target risk management efforts on other chemicals of concern, including bisphenol A (BPA), brominated flame retardants, phthalates.[2]

While EPA's goals are warranted and welcome, these actions hinge on TSCA's "unreasonable risk" standard, the Achilles' heel that has prevented EPA action since the Agency's asbestos rules were overturned by the courts nearly two decades ago.

Congress should provide EPA a stronger footing by granting it clear authority to reduce use of and exposures to these and other high-priority chemicals and to promote their replacement with safer alternatives.

Taking action on PBTs and other high hazard chemicals is good for public health and good for U.S. business. These chemicals, which represent a small fraction of the full set of chemicals to which Americans are exposed, deserve action without delay.

2) Prioritizing chemicals for safety determination

A second important role for prioritization is found in establishing an orderly process for safety determination. We support the concept of applying a health-based standard to all chemicals under a revised TSCA. Chemical manufacturers should shoulder the burden of proof for demonstrating the safety of their products. These companies have the resources and technical expertise to undertake this analysis, and a commercial incentive to win approval. There is a corresponding responsibility for EPA to determine whether companies have met this burden. In short, chemical producers should make the case; but EPA should make the call.

Determining the safety of all chemicals is a big job that will require years to complete. So where should EPA begin? The proposed 2008 Kid-Safe Chemicals Act would have had EPA prioritize chemicals by considering a variety of criteria: high production volume; known hazards; presence in air, water or food; and, evidence of human exposure.[3] It is impossible to know which chemicals pose the greatest risks before this process begins. But these are reasonable considerations to inform EPA's decisions on which chemicals should be assessed first.

But here is an essential point. Prioritization should not be used to exclude chemicals from review, only to determine the order in which they are reviewed. As Administrator Jackson stated, "we need to review all chemicals" against a safety standard. It would be a serious mistake if chemicals escape scrutiny in the name of prioritization. Not only would we fail to catch dangerous chemicals, we would never learn which chemicals pose little or no concern. That would also deprive U.S. companies that invest in the developing with safer alternatives of the competitive advantage that should rightly reward their efforts.

Escaping scrutiny was an unfortunate result of EPA's misguided ChAMP initiative under the previous administration. In an attempt to speed up review of existing chemicals, the Agency pledged to sort some 6,750 chemicals into categories of high, medium and low risk. The fatal flaw of this approach is that many chemicals were wrongly labeled "low risk" on the basis of spotty and unreliable information. Indeed, EPA designated such

chemicals as requiring no further action – not even action to develop better information that could determine their true risk. The American Chemistry Council's new principles for TSCA modernization would repeat this mistake by subjecting only a fraction of existing chemicals, selected on the basis of whatever information can be cobbled together, to a safety determination and letting the majority of chemicals sidestep credible evaluation.[4]

3) Prioritizing chemicals to fill data gaps

Here's a third way that prioritization should be incorporated into federal law. Prioritization decisions are only as good as the data on which they are based. Therefore, U.S. policy should require chemical manufacturers to develop, submit and periodically update data on the potential hazards, exposures, and uses of the chemicals they manufacture or import. This should be an ongoing process, reflecting new information, emerging science and evolving patterns of chemical use. It should continue even while EPA works through the inventory of chemicals in commerce.

Major data gaps frustrate efforts to set priorities. For example, the U.S. chemical industry spent much of the past ten years compiling hazard data under a voluntary program for a few thousand of the largest volume chemicals. Even now, however, hundreds of these chemicals still lack the bare minimum data needed even for initial screening purposes, and data quality problems abound. Obviously, we can't solve this problem overnight. That is why Congress should establish priorities to remedy these knowledge gaps.

Mandatory minimum data requirements for all chemicals are a necessary ingredient for effective prioritization. Chemical manufacturers should be responsible for developing and providing information on the physical and biological properties of their products, including persistence, bioaccumulation and toxicity, and exposures to workers or the environment from their operations. Providing reliable information on *uses* of chemicals is more challenging, because manufacturers often have limited information on how their own chemicals are used. Downstream companies that process and formulate chemicals often have an interest in concealing how they use a chemical to avoid being scooped by their suppliers.

Safety determinations also depend on understanding exposures to chemicals, but such information might not be readily available to manufacturers or even downstream users. Biomonitoring, as exemplified by the valuable work of the Centers for Disease Control and Prevention (CDC), helps to fill this data gap by indicating aggregate chemical exposures, providing an important check on human exposures in the real world.

Finally, the United States, and U.S. chemical companies, can benefit from the European Union's efforts to revise its own law on chemicals. REACH, the regulation on Registration, Evaluation and Authorization of Chemicals, is already resulting in the generation of new data that can be useful here. For example, under REACH data on roughly 3,000 high volume chemicals is due by December 1, 2010, just a year from now. Additional information will be available on many more chemicals in 2013 and 2018. At each milestone, data on chemical hazards will be publicly available. The U.S. government can also gain access to confidential business information submitted under REACH.

Conclusions

In conclusion, prioritization should play an important role in a reauthorized, revitalized TSCA. However, whether prioritizing chemicals for early action, expedited review, or other risk management measures, Congress should ensure that *all* chemical receive adequate scrutiny. Anything less would leave millions of Americans at risk from dangerous chemicals and would undercut U.S. companies that are bringing safer products to market.

Thank you.

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[1] National Congress of American Indians, Resolution PSP-21-2009, "Protection of the Health and Human Rights of Present and Future Generations through Ratification and Implementation by the United States of the Stockholm Convention on Persistent Organic Pollutants, November 12-16, 2009. http://www.ncai.org/fileadmin/resolutions/PSP-09-021_final.pdf

[2] Enhancing EPA's Chemical Management Program, http://www.epa.gov/oppt/existingchemicals/pubs/enhanchems.html

[3] Introduced as S. 3040 and H.R. 6100 in 110th Congress, 2nd Sess., May 20, 2008.

[4] American Chemistry Council, 10 Principles for Modernizing TSCA, August 4, 2009.