May 29, 2014

The Honorable Barbara Boxer
Chair, Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable David Vitter
Ranking Member, Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Re: Support for S.1009 – The Chemical Safety Improvement Act (CSIA)

Dear Chairwoman Boxer, Ranking Member Vitter, and Senate Environment and Public Works Committee Members:

We, the undersigned Attorneys General, are writing in support of swift consideration and passage of the Chemical Safety Improvement Act (S.1009, CSIA). The CSIA will make long-overdue improvements to the Toxic Substances Control Act (TSCA) to improve its effectiveness in protecting the public from unsafe chemicals. The CSIA has strong bipartisan support in the Senate, where it was introduced by the late Senator Frank Lautenberg (D-NJ) and Senator David Vitter (R-LA), and has been the subject of hearings in both the Senate and House in 2013.

The CSIA addresses universally recognized flaws in TSCA and will result in a more reliable and workable system of evaluating the safety of chemicals. As the Chief Legal Officers in the States, we are involved in the daily effort to protect our citizens and our environment from harm, and we see the critical need for reform. We agree that the CSIA is both important and timely, and we support its swift enactment.

The CSIA first addresses some of the structural problems with TSCA and creates a more consistent framework for evaluating chemical safety. For the first time, the law will require the U.S. Environmental Protection Agency (EPA) to evaluate all active chemicals, with a focus on high-priority chemicals in most need of study. The CSIA also addresses overly burdensome requirements in the current TSCA that have prevented the EPA from obtaining testing when needed and from taking swift regulatory action when justified. EPA will conduct risk-based safety assessments of high-priority chemicals using sound science, and will have new authority to obtain testing through rules, consent agreements, or orders if additional data is needed for safety assessments or safety determinations. Also for
the first time, new chemicals must be determined “likely safe” before entering the market. These augmented authorities will enable EPA to provide industry and consumers alike a more comprehensive and predictable evaluation process with sound and well-supported decisions.

Another groundbreaking improvement in the CSIA is the ability of States and health professionals to obtain critically needed information about chemicals in commerce. The CSIA maintains protections for intellectual property, but limits some of the existing confidential business information protections to allow EPA to share data under confidentiality agreements.

Finally, in an issue of great importance to the signatories of this letter, the CSIA balances States’ needs to protect the health of their citizens and resources with the need to create a coherent and cohesive regulatory framework for chemical manufacturers. There has been a great deal of discussion about the CSIA’s provisions that give precedence to some EPA decisions over state regulations, but in truth, the CSIA builds on the preemption provisions already in TSCA, and only applies to narrow circumstances.

Chemical production and use is a highly complex and highly-regulated sector in which States’ cooperative efforts to avoid duplicative or conflicting regulatory hurdles is worth the payoff of consistent and reliable safety controls. And, the CSIA’s limitations on state regulation are both measured and appropriately limited to achieving those goals. The CSIA does not preempt any state laws or regulations that implement state water quality control programs, waste treatment, handling, and disposal, pollution control and remediation, or other traditional state police power authorities. The preemption provisions in CSIA only impact State chemical regulations that regulate specific chemicals and that directly relate to chemical manufacturing, processing, or use.

Furthermore, the CSIA gives States direct routes to participate in the process of identifying and evaluating chemical safety, including requests to prioritize specific chemicals and to re-prioritize a chemical based on new information. In the event that a State has reason to pursue regulation of a specific chemical even after EPA has made an assessment or determination, the CSIA allows States to apply for a waiver of the preemptive effect of an EPA decision to address compelling local conditions, or when EPA’s decision is unreasonably delayed.

Given the importance of a nationally-reliable chemical regulatory program and the CSIA’s provisions that permit States to address unique and pressing State concerns with EPA, we support the inclusion of the preemption provisions in the CSIA as written. The comprehensive reforms in the CSIA present an opportunity to improve the programs that protect the health of American families. This kind of reform should not wait. We fully support S. 1009 as currently written and
encourage the Congress to move expeditiously to implement these badly-needed amendments to our nation’s chemical safety laws.

Sincerely,

Dustin McDaniel
Attorney General of Arkansas

Luther Strange
Attorney General of Alabama

Thomas C. Horne
Attorney General of Arizona

Wayne Stenehjem
Attorney General of North Dakota

Alan Wilson
Attorney General of South Carolina

Bill Schuette
Attorney General of Michigan

Mike Geraghty
Attorney General of Alaska

Sam Olens
Attorney General of Georgia

Mike DeWine
Attorney General of Ohio

Sean D. Reyes
Attorney General of Utah

cc: Members, Committee on Environment and Public Works