



November 16, 2009

The Honorable Bobby L. Rush  
Chairman, Subcommittee on Commerce, Trade, and Consumer Protection  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable George P. Radanovich  
Ranking Member, Subcommittee on Commerce, Trade, and Consumer Protection  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Rush and Ranking Member Radanovich:

The House Subcommittee on Commerce, Trade, and Consumer Protection is scheduled to hear testimony on November 17, 2009 concerning prioritization tools that support a robust federal chemical regulatory management system. The American Chemistry Council, a national trade association representing 140 member companies and 800,000 workers wants to take this opportunity to share our thoughts in advance of the Subcommittee's hearing.

As I testified before the Subcommittee in February 2009, ACC and its members welcome the Subcommittee's inquiry into revisiting the Toxic Substances Control Act (TSCA). In our view, Congress should have several objectives in modernizing TSCA:

- Protecting the public's health as the top priority;
- Restoring the public's confidence in the current federal chemical regulatory system and ensuring the safe beneficial use of chemicals;
- Reflecting the scientific and technological advances that have been made since TSCA was enacted; and
- Assuring continued innovation from the U.S. chemical industry – so we can keep making the products that save lives, make our economy more energy efficient, and reduce greenhouse gas emissions.



An effective prioritization system is the linchpin to a TSCA program that achieves these objectives. There are currently some 7,000 chemicals in U.S. commerce in volumes greater than 25,000 pounds. Without a prioritization system, the capacity of both the Environmental Protection Agency (EPA) and the private sector to identify and address those substances deserving additional product stewardship and regulatory control will be compromised.

ACC and its members believe that EPA should prioritize existing chemicals in commerce to guide subsequent safety reviews of high priority chemicals. The Agency also needs a range of regulatory tools to assure the safety of the chemicals for their intended use. Today, TSCA does not require this. It should. Prioritization is not just a matter of “which chemical goes first,” but rather focuses the government’s and the private sector’s resources on those chemicals and chemical uses of greatest potential concern.

Prioritization is neither a theoretical exercise nor is it the end game. It is the first critical step in a process aimed at providing for the safe beneficial use of chemicals and enhancing the public’s confidence in the system. To prioritize all chemicals in commerce, EPA needs adequate information about those chemicals. In ACC’s view, EPA could normally prioritize chemicals based on available hazard, use and exposure information that manufacturers, processors and users would provide the Agency. In the majority of cases, we anticipate that existing information should be adequate to reach a screening level prioritization decision. As much as possible, EPA should leverage data from other regulatory programs, e.g. REACH. In those cases where the existing information is not adequate, EPA should be authorized to quickly solicit additional information from companies.

Congress should include in legislation hazard, use and exposure based criteria that would form the basis for EPA’s prioritization. To get the safety review process moving quickly, Congress should also include criteria that EPA can use to create an initial “jump start” list of chemicals to be reviewed for safety.

Prioritization should be an iterative process that incorporates new information about a chemical’s hazards, uses and exposures as it is developed. We think that such a process should also allow for the re-examination of priorities as new information becomes available and as new chemicals are approved for manufacturing. For example, chemicals initially identified as low priority could be moved to higher priority, or vice versa, depending on new information the Agency receives. Chemicals that lack adequate hazard and exposure information should be bumped higher up in prioritization (until relevant information is provided that suggests otherwise). While ACC envisions a prioritization process that focuses initially on existing chemicals, the process should be dynamic enough to allow EPA to revisit even new chemicals approved for manufacturing.



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EPA clearly has existing authority under TSCA to implement a prioritization process even today. In fact, EPA had begun to do so under the recently halted Chemical Management and Assessment Program (ChAMP), which focused on high and medium production volume chemicals. ACC believes EPA should institute a prioritization process within EPA's recently announced Enhanced Chemical Management Program, as this new program does not contain an explicit prioritization step and includes no process by which industry could share existing information with EPA relevant to a prioritization decision. Indeed, EPA's new Chemical Action Plan (CAP) process appears to be focused on approximately 12 chemicals a year, and it is not clear how EPA is determining that the identified chemicals are those that should receive Agency attention. In short, a prioritization process can work hand-in-hand with CAP to determine which chemicals require action plans, and would inform EPA's subsequent implementation of a prioritization system under a modernized TSCA law.

Some have suggested that ACC's position on prioritization would have the Agency making a prioritization decision solely on the basis of exposure information. Those statements mischaracterize ACC's position. My February testimony to the Subcommittee clearly addressed ACC's interest in a prioritization process that relies on appropriate hazard, use and exposure information. More to the point: ACC believes that a prioritization system is an appropriate means to assure that a higher priority is given to substances that have highly hazardous traits (e.g. adverse effects on reproductive and developmental endpoints), and an indication of significant potential for exposure (e.g. found in human biomonitoring).

In short, the American Chemistry Council and its members believe that prioritization of chemicals in commerce is the critical first step in a systematic process by which EPA can determine the safety of chemicals for their intended uses. We think such a systematic process should be a centerpiece of a modernized Toxic Substances Control Act.

ACC looks forward to continuing to work with the Subcommittee to modernize TSCA. If we can provide any additional information, please contact me.

Sincerely,



Cal Dooley  
President and CEO

cc: Subcommittee on Commerce, Trade, and Consumer Protection

