Testimony before the House Energy & Commerce Subcommittee on Environment hearing on "America's Chemical Safety Law"

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Subcommittee Chairman Guthrie, Ranking Member Palmer, and members of the House Energy & Commerce Subcommittee on Environment, thank you for the opportunity to testify. I am Dr. Tracey Woodruff, a professor and scientist from the University of California, San Francisco, director of the Program on Reproductive Health and the Environment, and a member of the National Academy of Medicine. I have spent my career researching how industrial chemicals and environmental pollutants affect people's health.

PROPOSED CHANGES TO TSCA SIGNIFICANTLY WEAKEN THE LAW

The purpose of the Toxic Substances Control Act (TSCA) is to protect people and the environment from harmful chemicals. The proposed changes to this law are alarming to anyone who is concerned about people's health: they remove public health guardrails, undermine the EPA's ability to protect people from harmful chemicals, and will lead to more death and disease. In fact, these changes are a wholesale destruction of the law.

It is no secret that the chemical lobby has spent billions – a reported $77 million last year alone – to undermine TSCA. This draft bill gives them their money's worth, as these changes weaken EPA's ability to act on toxic chemicals. And it sets up a scenario where the chemical industry can delay or avoid chemical regulation entirely.

In a nutshell, these draft amendments blindfold EPA from chemical harms and tie the Agency's hands from addressing serious health risks. Why does that matter?

TOXIC CHEMICALS TAKE A MEASURABLE TOLL ON PEOPLE'S HEALTH

Toxic chemicals are widespread in our air, water, food, homes, and workplaces, and human exposure begins before birth and continues throughout the lifespan. We know these exposures take a measurable toll on the health of children and adults and can result in cancer, infertility, neurological and cardiovascular disease, Parkinson's Disease, low birth weight, birth defects, autism, and ADHD.[i,ii,iii,iv,v,vi,vii] These conditions are increasing in the US as documented in the recent Make America Healthy Again Report.[viii]

The Toxic Substances Control Act, America's main law regulating new and existing chemicals, was first established because the health harms from widespread toxic chemical exposures

could no longer be ignored. We could not – and cannot – rely on the chemical companies to police themselves, so the federal government needed to step in to protect people's health.

TSCA HELPS TO PROTECT AMERICANS' HEALTH

By 2016, it was widely recognized that the original TSCA failed to protect Americans against known harmful chemicals, as EPA could not even ban asbestos, a well-known human carcinogen that has caused hundreds of thousands of deaths. TSCA's failures led Congress to update the law to ensure EPA could better protect people from harmful chemicals. The 2016 amendments mandated prioritizing health, eliminating unreasonable risks, and providing stronger protections for highly exposed and susceptible populations like pregnant women, children, workers, and people who live in areas where polluting facilities have been sited.

And we are seeing the benefits from those improvements. Over the last two years, five TSCA risk management rules have been finalized, and three others have been proposed; now, dangerous substances like TCE and asbestos – chemicals that have already taken a health toll on millions of Americans - will finally be banned.

UNDER TSCA, EPA HAS APPROVED THOUSANDS OF NEW CHEMICALS

The chemical industry is pushing back against TSCA's success under the guise of "modernization" and "innovation" and complaining that EPA is slow to approve new chemicals.

But let's look at the numbers: EPA has been approving new chemicals at a rapid pace. The Agency has approved the overwhelming majority of new chemicals submitted, with over 4000 new chemicals approved since 2016.[ix] And in almost half the cases where new chemicals are being held up it is because EPA is waiting for the submitter – the chemical manufacturer - to take action. The Agency's chemical approvals include granting low-volume exemptions for over 600 PFAS, chemicals are so persistent that they have been detected in nearly all people tested[x] and can increase the risk of health problems including lower birthweight, kidney and testicular cancer, and impacts on the immune system.

Widespread PFAS contamination is a perfect example of why Congress amended TSCA in 2016. The chemical industry wants to take us back to a time when they can do whatever they want with little oversight and no ramifications for making people sick.

HOW THE PROPOSED CHANGES TO TSCA UNDERMINE EPA AND JEOPARDIZE HEALTH

Every proposed change to this law will make it harder for the EPA to get the data it needs to identify exposures and harms, harder to consider that information to identify unreasonable risks, or harder to take meaningful action to prevent those unreasonable risks. The draft

essentially puts the chemical industry in charge and reverses the important bipartisan goal of the 2016 TSCA amendments that prioritize safety and health and eliminate unreasonable risks to the public.

While there are many ways this draft undermines the goal of TSCA, in the interest of time, I will highlight just five. The draft bill:

1. **Seriously undermines EPA's ability to protect people's health from harmful chemicals**
2. **Reverses all improvements in reviewing new chemicals for safety**
3. **Makes it more difficult for EPA to regulate existing toxic exposures**
4. **Undermines EPA's ability to gather evidence**
5. **Leaves everyone at greater risk of chemical health harms, leading to more people getting sick and dying.**

The bill reverses almost all improvements since 2016 in reviewing new chemicals to determine if they are safe.

The draft TSCA bill reverses nearly all improvements in the new chemicals program and makes it more difficult for EPA to regulate future toxics. Multiple changes to the statute rollback science, create more hoops for EPA to jump through unnecessarily, and put a bigger burden on obtaining data on health harms. In other words, all things that are the opposite of what is needed.

Currently, EPA must consider all reasonably foreseen exposures and risks for a proposed new chemical, but this bill changes that to only those uses/exposures that are "identified by the submitter of the notice" (the industry). This creates a giant loophole for the chemical industry that puts us all at risk. For example, the industry could submit an application for a new PFAS with the narrowest use of the chemical, such as claiming it will be used by one person in one factory for one industrial process.

Under this bill, EPA could only consider that and not the fact that millions of pounds of new PFAS could be released into products and the environment with little to no oversight. And even if EPA identified the potential for unreasonable risk for that one factory in one place, the language now says that the regulation to stop health risks would be optional (changes 'shall' to 'may'). Once approved, the chemical companies can produce it and sell it anywhere they want.

The law currently requires EPA action when the Agency finds that a new chemical "may present" unreasonable risk (section 5(e)). The bill would instead require EPA to establish that unreasonable risk is "more likely than not to occur" to regulate the new chemical. This would

prevent EPA from addressing severe health risks where it lacks the information needed to quantify the precise probability of such risks.

It makes it more difficult for EPA to regulate existing harmful exposures

The law currently requires EPA to consider all of an existing chemical's hazards and exposures when evaluating whether the chemical presents unreasonable risk, including risk that may arise from combinations of exposures from different sources. The bill would require EPA to prejudge existing chemicals' risks before conducting that evaluation by considering only those hazards and exposures that it deems "more likely than not to result in an unreasonable risk." This is an enormous change that gives EPA discretion to narrow the scope of a risk evaluation by excluding uses from assessment without an evidence-based justification.

The language has also been changed from requiring EPA to eliminate all unreasonable risks to only minimizing unreasonable risks "to extent reasonably feasible." This means that cost will be a deciding factor in whether to reduce harmful exposures leaving the public exposed to unsafe levels of chemicals like asbestos and vinyl chloride.

The bill makes it harder for EPA to require chemical testing and fill data gaps for new and existing chemicals and lets industry control the evidence.

Currently, EPA can require testing of an existing chemical if it "enters … the environment in substantial quantities" or "there … may be significant or substantial human exposure." The bill would require EPA to prove that there are **both** substantial environmental releases **and** substantial human exposure, preventing EPA from issuing test orders based, for example, on significant workplace exposures alone, if those exposures do not also demonstrate significant environmental releases. This will severely limit EPA's ability to act.

In addition, the bill significantly hampers EPA's ability to get necessary data for new chemical decisions. One of the biggest problems in the new chemicals program under the current law is that industry does not provide sufficient health and environmental information on their proposed new chemicals. Where the information before the agency "is insufficient to permit a reasoned evaluation of the health and environmental effects," the law currently allows EPA to issue an order that requires additional testing. This bill would require EPA to both identify that there is insufficient data to make a determination **and** that it is more likely than not that unreasonable risk may occur. Under this draft bill's standard, how could EPA ever meet the unreasonable risk test when it doesn't have the data? Yet this would tie EPA's hands when the data are insufficient. A classic catch-22.

The draft leaves everyone at greater risk of chemical health harms and increases the likelihood that people will get sick and die

This bill will allow the chemical industry to rewrite the rules on how toxic chemicals are regulated. For example, in the new chemicals review it would apply a "more likely than not" standard for actions to remove unreasonable risks. This demands more than 50% probability of unreasonable risk, which means regulators can't act even when there is substantial evidence of serious harm, say a 40% chance that the chemical poses a significant risk of cancer or birth defects. This essentially gives the benefit of the doubt to potentially dangerous chemicals rather than public health. It also creates a perverse incentive structure: the less a chemical is studied, the harder it is to meet the threshold. Companies are rewarded for not generating safety data on their new chemicals.

This approach takes us back to a system when asbestos, lead, and tobacco caused harm for years as the industry sowed doubt about health risks claiming "uncertain" evidence. This approach literally lets people die while regulators wring their hands. We don't hold airline safety, food contamination, or financial regulation to the >50% certainty standard. Why would we do this for toxic chemicals?

Further the bill codifies bad science, including that EPA now has to justify using aggregate exposures which reflect real life, and assumes PPE is fully used, which could underestimate real-world exposures and risks for America's workers who manufacture, process, distribute, or dispose of toxic chemicals.[xi]

Finally, the bill creates opportunity for EPA to release weak chemical regulations that will then preempt states from acting on serious chemical risks.

The cost of getting it wrong

The ramifications if Congress gets this wrong are enormous. The amendments to the new chemical program will make it almost impossible to stop harmful chemicals from entering the marketplace. We have seen what happened with PFAS, which have contaminated drinking water, food, ecosystems, and our bodies. Once a toxic chemical is out there, you can't take it back, and the result is that people get sick and die.

Ensure TSCA can protect people from toxic chemicals

EPA was established to protect the health of people and the environment – not to increase chemical industry profits. Industry has shown that they will lie about the health harms of their

products, such as we saw with PFAS.[xii] These companies have a vested interest in minimizing EPA's regulations at the expense of public health. EPA is funded by taxpayers and should function to protect the public. I urge you to act in the best interest of the American people and preserve and strengthen TSCA's mission to protect the public's health.

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