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3 HEARING ON ``PRIORITIZING CHEMICALS FOR SAFETY

4 DETERMINATION''

5 TUESDAY, NOVEMBER 17, 2009

6 House of Representatives,

7 Subcommittee on Commerce, Trade, and Consumer Protection

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 11:07 a.m.,
11 in Room 2123 of the Rayburn House Office Building, Hon. Bobby
12 L. Rush [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Rush, Schakowsky,
14 Sarbanes, Sutton, Green, Matheson, Butterfield, Barrow,
15 Castor, Space, DeGette, Dingell, Markey, Radanovich, Pitts,
16 Murphy, Gingrey and Scalise.

17 Staff present: Michelle Ash, Chief Counsel; Rebecca
18 Brown, Fellow; Timothy Robinson, Counsel; Angelle Kwemo,
19 Counsel; Aaron Ampaw, CBC Fellow; Will Cusey, Special

20 Assistant; Lindsay Vidal, Press Assistant; Matt Eisenberg,
21 Special Assistant; Theresa Cederoth, Intern; Shannon
22 Weinberg, Minority Counsel; Will Carty, Minority Professional
23 Staff; Brian McCullough, Minority Senior Professional Staff;
24 Sam Costello, Minority Legislative Assistant; and Jerry
25 Couri, Minority Senior Professional Staff.

|
26 Mr. {Rush.} The subcommittee will come to order.

27 This is the Subcommittee on Commerce, Trade, and
28 Consumer Protection, and the purpose of today's hearing is to
29 hear from various witnesses on the subject of prioritizing
30 chemicals for safety determination, and the Chair wants to
31 acknowledge and welcome everybody, all the participants and
32 the audience, to this very important and timely hearing.

33 The Chair now recognizes himself for 5 minutes for the
34 purposes of an opening statement.

35 The troubling alert that the GAO issued in January 2009
36 regarding the Environmental Protection Agency should still
37 echo through the 111th Congress. Upon adding EPA oversight
38 of toxic chemicals and mixtures to its high-risk series, the
39 GAO stated, and I quote, ``EPA's inadequate progress in
40 assessing toxic chemicals significantly limits the agency's
41 ability to fulfill its mission of protecting human health and
42 the environment.'' Given the long-term and adverse impacts
43 that a poor effort to reform the TSCA would have on our
44 economy, public health and environment, we cannot pretend to
45 have not heard the alarm.

46 There is growing evidence that some of these toxic
47 agents are linked to serious and chronic health problems as
48 well as to environmental pollution and contamination of our

49 food sources, our air quality and our waterways.

50 I stated at our last TSCA subcommittee hearing in
51 February of this year that I intended to conduct and conclude
52 a deliberative process that reverses past Congressional
53 inaction of reauthorizing TSCA and conducting meaningful
54 oversight of the statute's effectiveness. By coming together
55 this morning to review the EPA's prioritization practices, we
56 are approaching another significant milestone in the above-
57 stated process.

58 When TSCA was enacted in 1976, Congress failed to employ
59 adequate authority upon the EPA to restrict or ban the use of
60 unsafe toxics. Before engaging its enforcement authority
61 under Title I, Sections 6 and 9, of TSCA, the EPA would have
62 to meet what now appears to have been an insurmountable
63 burden of proof for meeting the unreasonable risk to public
64 safety standard.

65 Indeed, the courts have construed the EPA's power under
66 TSCA so narrowly that it has not acted effectively to ban not
67 a one, not a single chemical since 1991, nor has the EPA
68 issued testing rules for more than 5 percent of those
69 chemicals that appear on the EPA's current Priority Testing
70 List, many of which currently lack sufficient safety testing
71 information.

72 Even though the EPA has been reluctant to invoke its

73 enforcement authority under TSCA, around 22,000 new chemical
74 substances have been added since 1979 to the EPA's inventory
75 of individual chemicals, which currently totals more than
76 84,000 chemicals. As a result, the safety of the vast
77 majority of chemical substances which have been placed into
78 the stream of commerce has never been adequately reviewed
79 under TSCA.

80 One of our tasks today is to consider options for
81 ranking chemicals from the most unsafe to human health and
82 the environment to the least unsafe to human and to the
83 environment. In listening to and questioning the witnesses,
84 we should also discuss which parties should bear the
85 obligation of providing sufficient data about the properties
86 of chemicals and testing those chemicals, how these chemicals
87 and the products containing them are used, and when the data
88 that is on hand is inadequate and should trigger further
89 testing and assessment.

90 Let me extend my deepest thanks to the witnesses who are
91 present here. They have come unselfishly give their time,
92 expertise and candid viewpoints on this central theme of
93 prioritization as it relates to the comprehensive reform of
94 TSCA, and I look forward to hearing your testimony.

95 And with that, I yield back the balance of my time.

96 [The prepared statement of Mr. Rush follows:]

97 ***** COMMITTEE INSERT *****

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98 Mr. {Rush.} The Chair now recognizes the ranking
99 member, Mr. Radanovich, for the purposes of an opening
100 statement for 5 minutes.

101 Mr. {Radanovich.} Thank you, Mr. Chairman.

102 I want to welcome everybody to the committee. I
103 appreciate you being here with your input and do appreciate
104 the chairman and this deliberative process with a subject
105 that hopefully recognizes the complexity of the law, the
106 persons impacted by it and the overall impact any reform
107 might have on our Nation's manufacturing sector. Based on my
108 experiences with enormous negative ramifications from
109 enactment of some well-meaning provisions in the toy bill and
110 my continuing concerns about the benefits of some of the
111 environmental legislation coming out of my home State of
112 California, I remain quite concerned about the direction any
113 effort on TSCA might take in the name of reform. I am
114 especially concerned that a course of diverse interests might
115 be seen to be calling for TSCA reform when in reality these
116 stakeholders might be only looking for modest or cosmetic
117 changes. We all know that TSCA is a very complex statute and
118 that making radical changes to this law could have drastic
119 effects on Americans' standard of living. Further, we also
120 know that TSCA does not operate in a legal vacuum when it

121 comes to regulating chemicals. There are other federal
122 chemical laws that deal with specific segments of the
123 American economy, be it pharmaceuticals, pesticides,
124 household consumer products and workplace safety. Because
125 these and other authorities, Section 6 of TSCA suggests that
126 its authority should only be used to fill other gaps in the
127 law rather than have it gratuitously pile on duplicative
128 regulations for its own sake.

129 I think our discussion this morning is a helpful one.
130 While EPA's website claims 83,000 chemicals that have been in
131 commerce at some point, there is also broad agreement that
132 the number currently in commerce in the United States is
133 significantly less than the 83,000 figure. In light of the
134 fiscal and resource realities facing the country and the
135 agency, prioritization of the highest-risk chemicals first
136 not only makes sense but I think it is essential. In
137 prioritizing chemicals, though, I think that we should be
138 enormously careful not to create overly expansive lists that
139 will be used to arbitrarily scare the public without full
140 information about actual occurrences, true exposures,
141 possible mitigation strategies and how these chemicals fit
142 into the overall risk management or reduction strategy.

143 While I think prioritization is important, I also want
144 to voice my interest in trying to understand the second half

145 of the hearing title, which calls for safety determination.
146 The Majority's hearing memo calls the existing standard under
147 TSCA Section 6 a safety standard, as does EPA's written
148 testimony. If that is what to consider it, then it is
149 helpful in putting testimony in context since we would be
150 asking questions about the existing regulatory standard in
151 TSCA. If the Majority considers the safety standard to be
152 something else, we should know that too. Without full
153 knowledge of what EPA might be prioritizing to or for, our
154 questions will be mostly conjecture in search of a mythical
155 legal standard which may or may not exist.

156 I want to welcome our witnesses and say how much I
157 appreciate your being here to give us your perspective. I
158 especially want to welcome Mr. Owens from the EPA. I have
159 several questions for him about the size and scope of this
160 issue and want to make sure that the EPA is neither over- nor
161 underestimating the issues at hand as they relate to
162 prioritization. Further, I notice that the current EPA is
163 scraping the programs of the previous Administration, which
164 is something the Bush Administration did not do concerning
165 the high productive volume challenge program and I hope solid
166 reasons and a deliberative process, not simple politics, were
167 at the core of these plans. As President Obama has said
168 before, we have to use good ideas regardless of who the

169 author is.

170 Mr. Chairman, I want to express my support for
171 protecting people from unhealthy exposures to chemicals based
172 on their intended use and based on and with sound objective
173 scientific research. At the same time, we need to be
174 cognizant that a poorly written bill will drive these
175 chemical makers overseas quickly, leaving our high standards
176 for worker safety and environment protection in the rearview
177 mirror and compromising any serious effect to police quality
178 control. With 10.2 percent national unemployment, 11.9
179 percent unemployment in the domestic manufacturing sector and
180 the U.S. Bureau of Labor Statistics projecting a 16 percent
181 decrease in wages and employment in the United States
182 chemical manufacturing sector, we can't be cavalier about
183 what this bill means and what it can do simply because it
184 sounds like a good idea.

185 Thank you again, Mr. Chairman, and I look forward to
186 working on this matter with you.

187 [The prepared statement of Mr. Radanovich follows:]

188 ***** COMMITTEE INSERT *****

189 Mr. {Rush.} The Chair thanks the gentleman.

190 The Chair now recognizes the gentleman from Texas for 2
191 minutes, Mr. Green, for the purposes of opening statement.

192 Mr. {Green.} Thank you, Mr. Chairman, for holding
193 today's hearing to take another look at updating chemical
194 regulations under the Toxic Substance Control Act. I want to
195 welcome today's witnesses as we look at more defined issue in
196 TSCA reform than our previous hearing. I look forward to
197 hearing their thoughts on how to best move forward with
198 prioritizing existing chemicals for review and assessment.

199 I would like to ask unanimous consent to enter into the
200 record this letter, Mr. Chairman, from our former colleague
201 and now president and CEO of the American Chemistry Council,
202 Cal Dooley. Can I have unanimous consent to place this into
203 the record, Mr. Chairman?

204 [The information follows:]

205 ***** COMMITTEE INSERT *****

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206 Mr. {Rush.} So ordered.

207 Mr. {Green.} There is broad consensus expressed in the
208 letter, from testimony today and given in testimony during
209 our previous hearing in February that TSCA needs to be
210 updated to give the EPA necessary authority to oversee and
211 regulate chemicals that are hazardous to human health and the
212 environment. As we are looking specifically at the
213 prioritization process of chemicals currently in commerce
214 today, I look forward to hearing what EPA plans to do under
215 their existing authority to be in the prioritization process.
216 I know EPA Administrator Jackson has made this a priority and
217 I hope to hear how current steps taken under the Chemical
218 Action Plan could be carried over to feed any subsequent
219 prioritization process when there is Congressional action.

220 As we move forward on developing and legislating changes
221 to TSCA to establish a process of prioritizing existing
222 chemicals, we must look to the hazards to human health and
223 the environmental exposure and use of chemicals as well as
224 the impact on sensitive populations, and children
225 specifically. Our chemicals warrant assessment and
226 reevaluation if additional information is discovered, but to
227 begin with, the chemicals that pose the biggest risk should
228 be regulated or banned. If progress is not made in this

229 area, we are going to continue to see attempts to do this
230 piecemeal by Members of Congress, introduce bans to ban
231 specific chemicals. We need an efficient way to protect
232 human health by giving EPA the authority to prioritize and
233 regulate hazardous chemicals.

234 Again, I want to thank the witnesses for being here
235 today and educate our members on this issue and discuss the
236 consequences of action by Congress as well as the potential
237 impacts as we move forward the policy does not take into
238 consideration the significance chemicals play in commerce and
239 our everyday lives, and again, I thank you, Mr. Chairman.
240 This is an important issue and we need to look at all aspects
241 of legislating this area and the effect it will have, and I
242 yield back my time.

243 [The prepared statement of Mr. Green follows:]

244 ***** COMMITTEE INSERT *****

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245 Mr. {Rush.} The gentleman from Pennsylvania, Mr. Pitts,
246 is recognized.

247 Mr. {Pitts.} Thank you, Mr. Chairman. Thank you for
248 holding this important hearing on chemical prioritization and
249 standard setting.

250 As we know, the Toxic Substance Chemicals Act signed by
251 President Ford in 1976 is responsible for identifying and
252 regulating toxic substances in United States commerce. TSCA
253 currently regulates potential risk based on three policies.
254 First, chemical manufacturers are responsible for testing
255 chemicals to determine their potential effects on health and
256 the environment. Second, the EPA should regulate chemicals
257 that present an unreasonable risk to health or the
258 environment, and third, EPA's implementation of the law
259 should not create unnecessary economic barriers to
260 technological innovation.

261 In the event that this committee moves to amend this
262 law, it is prudent to keep in mind that a majority of
263 stakeholders believe that overhauling TSCA will involve
264 prioritizing tens of thousands of chemicals. Most industry
265 supports a method that requires the EPA to update its
266 inventory to include only those chemicals in commerce and
267 focus on the highest-priority chemicals. In addition, it is

268 prudent that we start with existing data rather than
269 requesting new data sets and disregarding the existing data.
270 In addition, if reform moves forward, the issue of safety
271 determination must be carefully evaluated. Currently,
272 Section 6 defines a risk-based approach that requires the EPA
273 to find that an unreasonable risk of injury must exist and
274 that the EPA must use the least burdensome alternative to
275 restrict the chemicals used in such cases. We must carefully
276 evaluate the risk including hazards and exposures and
277 intended uses and let these factors inform and guide any
278 regulatory action. We do not want to jeopardize innovation.

279 I appreciate the witnesses being here today. I look
280 forward to listening to their testimony and I thank you and
281 yield back.

282 [The prepared statement of Mr. Pitts follows:]

283 ***** COMMITTEE INSERT *****

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284 Mr. {Rush.} The Chair now recognizes the gentleman from
285 Georgia, Mr. Barrow, for 2 minutes.

286 Mr. {Barrow.} I thank the chairman. I waive.

287 [The prepared statement of Mr. Barrow follows:]

288 ***** COMMITTEE INSERT *****

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289 Mr. {Rush.} The Chair recognizes the gentle lady from
290 Colorado, Ms. DeGette, for 2 minutes.

291 Ms. {DeGette.} Thank you very much, Mr. Chairman. I
292 want to thank you for holding this hearing, and I also want
293 to greet our witnesses, especially my friend, Assistant
294 Administrator Owens, for being here today.

295 I ran into our former colleague, Secretary Solis,
296 yesterday. She was in my district of Denver with the First
297 Lady and I was thinking about her years of courageous
298 advocacy on the part of TSCA reform when she was a member of
299 this subcommittee, and so we are pleased to carry on her
300 tradition here today.

301 There is general agreement that TSCA needs to be updated
302 to keep pace with modern technology and to increase the EPA's
303 resources and authority. TSCA is over 30 years old now and
304 it is the only major environmental law that has not been
305 reauthorized. In those 30 years, the EPA has inventoried
306 roughly 82,000 chemicals used in commerce in the United
307 States. How to prioritize those chemicals that are most
308 harmful to the public is a daunting challenge, particularly
309 given the lack of solid information that the EPA faces for
310 many of those chemicals. Today I am interested in hearing
311 about how the EPA can expand its knowledge to focus its

312 attention on the most harmful chemicals of those 82,000 and I
313 am also interested in hearing how we can make use of the
314 knowledge base that we currently have to take swift action to
315 protect the public from high-priority chemicals like lead,
316 mercury and PCBs. While prioritization is an important part
317 of assuring that the EPA directs its resources most
318 effectively, it should not be used as an excuse for excessive
319 delay when frankly we have had an ineffective toxic statute
320 for over 30 years.

321 Mr. Chairman, I look forward to working with you and the
322 rest of the committee to strengthen TSCA, and I yield back
323 the balance of my time.

324 [The prepared statement of Ms. DeGette follows:]

325 ***** COMMITTEE INSERT *****

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326 Mr. {Rush.} The Chair recognizes the gentleman from
327 Georgia, Dr. Gingrey, for 2 minutes.

328 Dr. {Gingrey.} Mr. Chairman, I want to thank you for
329 calling this hearing on the prioritization of chemical study
330 under the Toxic Substance Control Act. Even though it has
331 been a number of months since we last held a hearing on TSCA,
332 I am happy that we have once again delved into the complex
333 issue.

334 TSCA directs the Environmental Protection Agency to
335 regulate all phases of the manufacturing of chemicals and to
336 identify unreasonable risk of injury from new or existing
337 chemicals. In regulating these chemicals, TSCA directs the
338 EPA to use the least burdensome option to reduce the risk of
339 harm while balancing the benefits provided by the chemical.
340 As a risk-based law, TSCA relies on the presence of sound
341 science by both chemical producers and the EPA in order to
342 properly implement the law.

343 Mr. Chairman, while there are many laudable elements of
344 TSCA, that does not mean this law is anywhere close to
345 perfect. Since its enactment, chemical manufacturing
346 processes have advanced as has technology. Accordingly, TSCA
347 needs to best reflect the science that is currently being
348 utilized. As we heard during our first hearing on this

349 matter back in February, TSCA reform is needed because we
350 need to ensure the safety of chemicals used in all products.
351 However, while there is that consensus, the way to accomplish
352 that reform is subject to debate and, yes, disagreement.
353 Ultimately, I believe that we should use this hearing to
354 learn what the appropriate safety standards should be on the
355 prioritization of chemical regulations through TSCA. Like a
356 number of my colleagues, I fear that if we use this hearing
357 as a vehicle to fundamentally overhaul TSCA, we will
358 jeopardize the long-term viability of the chemical industry
359 which will have lingering ramifications for other industries
360 and subsequently this stressed economy of ours.

361 Mr. Chairman, I would suggest that as we hear from our
362 distinguished panel of witnesses today, let us keep in mind
363 the underlying risk-based principles that guide the current
364 implementation of TSCA. I certainly look forward to their
365 testimony and I yield back the balance of my time.

366 [The prepared statement of Dr. Gingrey follows:]

367 ***** COMMITTEE INSERT *****

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368 Mr. {Rush.} The Chair now recognizes the chairman
369 emeritus of the full committee, my friend from Michigan, MR.
370 Dingell, for 5 minutes for the purposes of opening statement.

371 Mr. {Dingell.} Mr. Chairman, first, thank you for
372 holding this hearing today, and second of all, I want to
373 commend you for the fine way in which you are chairing this
374 committee. We owe you a debt for that.

375 Since our last hearing back in February, I have heard
376 from various stakeholders about the need for reauthorization
377 and revamping the Toxic Substances Control Act, TSCA. After
378 33 years, it has become quite clear that the law needs a
379 thorough examination and reauthorization. We have heard this
380 from industry, environmental groups and consumer advocacy
381 organizations. Now, EPA has not banned a single chemical
382 under TSCA in nearly 20 years. Despite our best intentions
383 back in 1976, it would appear that TSCA is not working as we
384 hoped it would when it was enacted. We need to address our
385 attention to whether the 84,000 chemicals in EPA's inventory
386 growing by 700 new chemicals introduced each year tells us
387 that something has to be done and it may be that the choice
388 before this committee is going to be between coming to a
389 judgment that the EPA is doing a superb job, that EPA is not
390 doing the job that it should, that all these chemicals or

391 safe or that there is not enough money or enough attention
392 given or that historic bad leadership has made it impossible
393 for the EPA to do the job. So we need to have a careful look
394 at this.

395 Now, the nearly universal agreement that TSCA needs
396 reauthorization is the easy part. The difficulty, as we all
397 know, is in how and what we do. Frankly, the committee does
398 look forward to hearing from our witnesses today, and I
399 expect that we will have some very valuable differing points
400 of view on the matter to look at and to frame our judgments
401 as to how matters are going and what is to be done. Today
402 the EPA has only been able to require testing on 200 of the
403 84,000 chemicals in the inventory. Figuring a way to
404 prioritize how these chemicals are to be addressed in a
405 timely manner based on sound science and the broad public
406 interest in a way that protects the public health promises to
407 be challenging, but indeed, it must be done.

408 Furthermore, I want to thank the witnesses here today
409 for bringing up the important factor that often gets
410 neglected, and that is funding. We need to reauthorize and
411 to revise TSCA. We must work to have adequate and consistent
412 funding for the program. Without this proper funding, we
413 will not get the results that we want and it will lead to a
414 constant source of frustration on the part of everybody

415 including industry, which needs certainty in order to compete
416 in a global marketplace, and we are finding that funding of
417 programs of this kind is a continuing and ongoing problem.
418 Certainly we have a similar situation with regard to
419 Superfund, and I am sure that this committee is going to want
420 to look at that at some early future time.

421 Again, Mr. Chairman, thank you for the deliberate and
422 thoughtful approach that the subcommittee is taking in this
423 matter. It is important that we do this right, not only to
424 get the desirable result of a more workable law that protects
425 human health but we also need to ensure that we do not
426 needlessly inflict financial burdens on industry and
427 producers in a very difficult economic climate. I thank you
428 for your courtesy to me, Mr. Chairman, and I yield back the
429 balance of my time.

430 [The prepared statement of Mr. Dingell follows:]

431 ***** COMMITTEE INSERT *****

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432 Mr. {Rush.} The Chair thanks the gentleman. The Chair
433 now recognizes the gentleman from Pennsylvania, Mr. Murphy,
434 for 2 minutes.

435 Mr. {Murphy.} Thank you, Mr. Chairman, for holding this
436 hearing on the Toxic Substances Control Act. I look forward
437 to hearing all the testimony on this important issue.

438 Two of my top priorities in Congress are to protect the
439 health and safety of our families and to protect and grow
440 American jobs. These are not mutually exclusive and I
441 believe that with proper regulation we can do both.

442 My district is home to chemical companies that directly
443 employ 8,300 people, companies like Bayer, LANXESS, NOVA, PPG
444 and Eastman, just to name a few.

445 As we examine this Act, it is important to realize that
446 chemical manufacturers play a central role in America's
447 manufacturing base and America's safety. We have already
448 lost 120,000 chemical industry jobs this past decade due to
449 volatile natural gas prices. As we deal with chemical
450 regulation legislation, we should be careful not to drive
451 more good jobs overseas but to find ways of preserving them
452 and preserving public health. As America continues in this
453 recession, these are the kind of jobs America needs now more
454 than ever.

455 Just about everything we come into contact with
456 throughout our day can be traced to chemical companies that
457 help improve our lives and make them better. However, we
458 know that there are some chemicals which are harmful to
459 people, others which make life better.

460 As this committee looks at potential reforms to TSCA and
461 how to prioritize chemicals, it is extremely important we
462 focus on those chemicals and their use that are currently in
463 commerce and their effect on potential health risk. We do
464 not need to reinvent the wheel with each chemical as there is
465 plenty of existing data and models in the EU and in Canada
466 that we can look upon as we research new data.

467 I look forward to hearing the testimony on the Toxic
468 Substance Control Act, and I yield back, Mr. Chairman.

469 [The prepared statement of Mr. Murphy follows:]

470 ***** COMMITTEE INSERT *****

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471 Mr. {Rush.} The Chair thanks the gentleman.

472 The gentleman from Ohio, Mr. Space, is recognized for 2
473 minutes.

474 Mr. {Space.} Thank you, Mr. Chairman and Ranking Member
475 Radanovich for convening today's hearing and thank you to our
476 witnesses for taking the time to be here.

477 The overarching consensus seems to me that the Toxic
478 Substances Control Act is badly in need of reform. In this
479 day and age, it would be shocking if something 33 years old
480 did not require updating as technology, industry and science
481 progress. Specifically, we appear to all agree that changes
482 to TSCA should call for the prioritization of certain
483 chemicals for fast-track evaluation. Mr. Chairman, I applaud
484 your efforts to continue this dialog. I truly believe that
485 through bringing all stakeholders together we can develop a
486 legislative product that represents an acceptable roadmap for
487 progress. Such process will sure that the EPA has the
488 authority it needs to protect the public, in many cases young
489 children and other vulnerable populations, and the producers
490 and downstream users are provided with the regulatory
491 framework within each market so that they can properly
492 prepare their goods. Ultimately, consumers have a right to
493 know that the products they purchase and use are safe and

494 those reassurances benefit all involved.

495 I look forward to today's testimony. I look forward to
496 continuing to work on TSCA reform with my colleagues. I
497 yield back. Thank you, Mr. Chairman.

498 [The prepared statement of Mr. Space follows:]

499 ***** COMMITTEE INSERT *****

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500 Mr. {Rush.} The gentlelady from Illinois, the vice
501 chair of the subcommittee, Ms. Schakowsky, is recognized for
502 2 minutes.

503 Ms. {Schakowsky.} Thank you, Mr. Chairman, for yielding
504 and holding this hearing.

505 I want to publicly convey my thanks to EPA Administrator
506 Lisa Jackson, who actually invited all the members of our
507 subcommittee to breakfast. We enjoyed the conversation very
508 much, which did involve TSCA. I want to thank Mr. Murphy for
509 representing his side of the aisle at that breakfast, so I
510 hope you will convey that to her, Mr. Owens.

511 The Toxic Substances Control Act has many deficiencies
512 that endanger the public's health. One of the most striking
513 is that when it was enacted, TSCA grandfathered in without
514 conducting any assessment all chemicals that existed in 1976.
515 This problem was further exacerbated by the fact that the
516 statute never provided adequate authority for EPA to
517 reevaluate existing chemicals as new concerns arose or
518 science was updated. Consequently, in the 3 decades since
519 TSCA became law, EPA has only been able to test 200 of the
520 80,000-plus chemicals produced and used in the United States.
521 There is no question that this has placed every American but
522 especially our Nation's poorest and most vulnerable at risk

523 of being exposed to potentially lethal levels of harmful
524 chemicals that have no place being in our stores and in our
525 homes and in our environment.

526 Today's hearing will provide important insight into how
527 TSCA can be amended so that the EPA does have the authority
528 to immediately restrict or ban the use of chemicals like
529 asbestos that we already know poses substantial risk to the
530 public safety. I think a lot of people are surprised that it
531 isn't banned already. I look forward to hearing from today's
532 witnesses and yield back the balance of my time.

533 [The prepared statement of Ms. Schakowsky follows:]

534 ***** COMMITTEE INSERT *****

|
535 Mr. {Rush.} The gentleman from Maryland, Mr. Sarbanes,
536 for 2 minutes.

537 Mr. {Sarbanes.} Thank you very much, Chairman Rush, for
538 holding this hearing.

539 I have to say I continue to marvel at how ineffectual
540 the Toxic Substances Control Act is, almost really to the
541 point of making a mockery of its name. What it does is, it
542 gives the EPA a front-row seat on chemical use in this
543 country but really just is a kind of toothless observer, not
544 as any kind of enforcer in any kind of active way, and I
545 think most Americans would not believe how unregulated this
546 arena is. They really couldn't fathom it. I confess, I
547 couldn't fathom it when we had the first hearing on the
548 matter. So that is why we have got to reauthorize TSCA in a
549 much more aggressive way going forward, and these hearings
550 are sort of part of the due diligence that we are conducting
551 as we anticipate doing that.

552 Because we are going to have to make up for so much lost
553 time, it is critical that we do have a way of prioritizing
554 the way the safety reviews are done, and that is what the
555 testimony today is going to help us understand better, so I
556 thank you for holding the hearing and I look forward to the
557 witnesses' testimony. I yield back.

558 [The prepared statement of Mr. Sarbanes follows:]

559 ***** COMMITTEE INSERT *****

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560 Mr. {Rush.} The Chair now recognizes the gentlelady
561 from Ohio, Ms. Sutton, for 2 minutes.

562 Ms. {Sutton.} Thank you, Chairman Rush, and thank you
563 for holding this important hearing on prioritizing chemicals
564 for safety determination.

565 At the hearings over the last few months, we have heard
566 about the need for tremendous reform to the U.S. chemical
567 safety laws. Industry and a variety of environmental, animal
568 welfare, health and safety groups share the goal of
569 modernizing the Toxic Substances Control Act and these
570 stakeholders have agreed that prioritizing chemicals should
571 be part of this effort. Currently there are approximately
572 84,000 chemicals in the EPA inventory. This volume with more
573 chemicals being introduced every year poses a daunting task
574 and prioritizing is of course an important first step in
575 tackling the challenge. So as we proceed we must be
576 pragmatic and make decisions based on sound science. It
577 would be irresponsible to set the EPA, the industries or
578 consumers up to fail. Our health, the environment and the
579 public's confidence are all at risk and we need to know that
580 the chemicals we use are safe. We need to know that the
581 chemicals that touch over 96 percent of manufactured goods
582 are safe. We need to know, and until we do know, until we

583 have a framework that allows the public to know, people will
584 not feel safe, and frankly, they may not be safe. So an
585 effective, pragmatic, science-based prioritization system is
586 key to public confidence and ensuring that the chemical
587 industry is producing safe products.

588 In Ohio, the chemical industry directly employs over
589 46,000 people with over 2,000 in my district alone, and these
590 are good-paying jobs that indirectly contribute to an
591 additional 157,000 jobs in Ohio's economy. These jobs are
592 clearly important, and as we move forward, we must forward
593 together to ensure the public's trust, to protect the public
594 and the future generations from the health and environmental
595 harm and to provide industry with a clear direction to ensure
596 that our workers keep working. These are multiple goals and
597 multiple outcomes that we have to achieve, and I am confident
598 that we can achieve.

599 So I am grateful for the panel being here. I look
600 forward to hearing your ideas about how we get there
601 together. I yield back.

602 [The prepared statement of Ms. Sutton follows:]

603 ***** COMMITTEE INSERT *****

|
604 Mr. {Rush.} The gentlelady from Florida is recognized
605 for 2 minutes, Ms. Castor.

606 Ms. {Castor.} Thank you, Chairman Rush, very much, for
607 calling this very important hearing.

608 The oversight of these thousands and thousands of
609 chemicals throughout America is vitally important to American
610 families and to our public health. The Toxic Substances
611 Control Act has had laudable goals but frankly is it broken.
612 It has been very ineffectual. We can do a lot better.

613 I would like to salute EPA Administrator Lisa Jackson
614 for her leadership. She is putting protection back into
615 Environmental Protection Agency where it belongs. She is
616 rightfully focused on the chemicals of concern and the
617 chemicals that have the highest risk to the public health.

618 This is an area where American families and citizens
619 everywhere rely on their government. The average person on
620 the street doesn't have the expertise to determine what
621 chemicals in our environment have the highest risk to our
622 public health and the safety of our kids. So we have got to
623 live up to our responsibility. It is our job to get this
624 done and to ensure that TSCA is working for our families and
625 citizens.

626 Thank you. I yield back.

627 [The prepared statement of Ms. Castor follows:]

628 ***** COMMITTEE INSERT *****

|
629 Mr. {Rush.} The Chair recognizes now the gentleman from
630 North Carolina, Mr. Butterfield, for 2 minutes.

631 Mr. {Butterfield.} Thank you, Mr. Chairman. I am going
632 to submit my statement for the record.

633 [The prepared statement of Mr. Butterfield follows:]

634 ***** COMMITTEE INSERT *****

|

635 Mr. {Rush.} The Chair thanks the gentleman and now the
636 Chair recognizes the gentleman from Utah, Mr. Matheson, for 2
637 minutes.

638 Mr. {Matheson.} Mr. Chair, I will waive my opening
639 statement.

640 [The prepared statement of Mr. Matheson follows:]

641 ***** COMMITTEE INSERT *****

|

642 Mr. {Rush.} Thank you very much.

643 [The prepared statement of Mr. Waxman follows:]

644 ***** INSERT 6 *****

|
645 Mr. {Rush.} Now it comes to the point where we are
646 delighted frankly to hear from our witnesses, but before our
647 witnesses are recognized, it is the practice of this
648 subcommittee to swear in the witnesses. So I would ask that
649 you please stand and raise your right hand.

650 [Witnesses sworn.]

651 Mr. {Rush.} Let the record reflect that the witnesses
652 have responded affirmatively. And now it is my privilege and
653 honor to introduce the witnesses to you. On my left is the
654 Hon. Steve Owens. Mr. Owens is the assistant administrator
655 for the Office of Prevention Pesticides and Toxic Substances
656 for the U.S. Environmental Protection Agency. Sitting next
657 to Mr. Owens is Dr. Eric Sampson. Dr. Sampson is the
658 director of the Division of Laboratory Sciences at the
659 National Center for Environmental Health, the Centers for
660 Disease Control and Prevention at the Department of the
661 Health and Human Services. Next to Dr. Sampson is Dr. Daryl
662 Ditz. He is the senior policy advisor for the Center for
663 International Environmental Law. Next to Dr. Ditz is Mr.
664 Bill Greggs. He is a consultant for the Consumer Specialty
665 Products Association, for the Grocery Manufacturers
666 Association and for the Soap and Detergent Association. And
667 next to Mr. Greggs is Ms. Beth Bosley. She is a consultant

668 also for the Society of Chemical Manufacturing and
669 Affiliates.

670 Again, the Chair welcomes you and the Chair now
671 recognizes the Hon. Steve Owens for 5 minutes for the
672 purposes of an opening statement.

|
673 ^TESTIMONY OF STEVE OWENS, ASSISTANT ADMINISTRATOR, OFFICE OF
674 PREVENTION, PESTICIDES AND TOXIC SUBSTANCES, U.S.
675 ENVIRONMENTAL PROTECTION AGENCY; ERIC SAMPSON, DIRECTOR,
676 DIVISION OF LABORATORY SCIENCES, NATIONAL CENTER FOR
677 ENVIRONMENTAL HEALTH, CENTERS FOR DISEASE CONTROL AND
678 PREVENTION; DARYL DITZ, SENIOR POLICY ADVISOR, CENTER FOR
679 INTERNATIONAL ENVIRONMENTAL LAW; BILL GREGGS, CONSULTANT,
680 CONSUMER SPECIALTY PRODUCTS ASSOCIATION, GROCERY
681 MANUFACTURERS ASSOCIATION AND SOAP AND DETERGENT ASSOCIATION;
682 AND BETH BOSLEY, CONSULTANT, SOCIETY OF CHEMICAL
683 MANUFACTURERS AND AFFILIATES

|
684 ^TESTIMONY OF STEVE OWENS

685 } Mr. {Owens.} Thank you, Mr. Chairman, and good morning
686 to you and good morning to Vice Chair Schakowsky and Ranking
687 Member Radanovich and members of the subcommittee. I thank
688 you for the opportunity to address you today and I thank all
689 of you for your leadership on this very important issue.
690 I have been on the job as the assistant administrator
691 for the Office of Prevention, Pesticides and Toxic Substances
692 for roughly 4 months now, so I am trying to get up to speed
693 and working hard on this and other critical issues that are

694 facing the EPA, but I do want to say at the outset, as many
695 of you know, I was a former Congressional committee staffer.
696 It is a little different being on this side of the microphone
697 than it was back then in those days, but again, I appreciate
698 the opportunity to be here. It is also a privilege to be here
699 with Dr. Eric Sampson, my colleague from the Centers for
700 Disease Control. We work very closely with CDC on
701 biomonitoring and a host of other very important issues.

702 As many of you have noted this morning, EPA has
703 jurisdiction over chemicals pursuant to the 1976 Toxic
704 Substances Control Act, which is called TSCA. TSCA is the
705 only major environmental statute that has not been
706 reauthorized since its passage and there are over 80,000
707 existing chemicals currently on the TSCA inventory, a few of
708 which have actually been studied for their risk to children
709 and families. Unlike the laws applicable to drugs and
710 pesticides, TSCA does not have a mandatory program by which
711 EPA must review the safety of existing chemicals, and in
712 addition, TSCA places legal and procedural requirements on
713 EPA's ability to request the generation and submission of
714 health and environmental data on existing chemicals.

715 TSCA was an important step at the time it was enacted 33
716 years ago but over the years not only has TSCA fallen behind
717 the industry it is supposed to regulate, it has also proven

718 inadequate for providing the protection against chemical risk
719 that the public rightfully expects. As noted by Vice Chair
720 Schakowsky, when TSCA was enacted it grandfathered in without
721 any evaluation more than 60,000 chemicals that were in
722 existence in 1976. And further, TSCA never provided adequate
723 authority for EPA to reevaluate existing chemicals as new
724 concerns arose or as science was updated, and it failed to
725 grant EPA full authority to compel companies to provide
726 toxicity data on those chemicals. As a result, in the 33
727 years since TSCA was enacted, EPA has been able to require
728 testing on only around 200 of the more than 80,000 chemicals
729 now produced and used in the United States.

730 It has also been difficult for EPA to take action to
731 limit or ban chemicals that have actually been found to cause
732 unreasonable risk to human health or the environment. Even
733 if the EPA has substantial data and wants to protect the
734 public against known risk, the law creates obstacles to quick
735 and effective regulatory action. For example, as was noted,
736 after years of study and nearly unanimous scientific opinion,
737 EPA issued a rule phasing out most uses of asbestos in
738 products. Yet a federal court overturned most of this action
739 because the rule failed to comply with the complicated
740 requirements of TSCA. In fact, since 1976, only five
741 chemicals have been successfully regulated under TSCA's

742 authority to ban chemicals.

743 The problems with TSCA are so significant that the GAO
744 has put TSCA on its high-risk list of items needing
745 attention.

746 Today, advances in toxicology and analytical chemistry
747 are revealing new pathways of exposure. There are subtle and
748 troubling effects of many chemicals on hormone systems, human
749 reproduction, intellectual development and cognition,
750 particularly in young children. It is clear that TSCA must
751 be updated and strengthened for EPA to properly do our job of
752 protecting public health and the environment.

753 As noted, Administrator Lisa Jackson recently announced
754 a set of principles on behalf of the Obama Administration to
755 help inform the drafting of a new law to fix TSCA. These
756 principles are: First, chemicals should be reviewed against
757 safety standards that are based on sound science and reflect
758 risk-based criteria protective of human health and the
759 environment. Second, the responsibility for providing
760 adequate health and safety information should rest on
761 industry and EPA should have the necessary tools to quickly
762 and efficiently require testing or obtain other information
763 from manufacturers relevant to determining the safety of
764 chemicals. Third, EPA should have clear authority to take
765 risk management actions when chemicals do not meet the safety

766 standards with the flexibility to take into account a range
767 of considerations including children's health, economic
768 costs, social benefits and equity concerns. Fourth, EPA
769 should have clear authority to set priorities for conducting
770 safety reviews. Fifth, we must encourage innovation in green
771 chemistry and support strategies that will lead to safer and
772 more substantially sustainable chemicals and processes. And
773 finally, implementation of the law should be adequately and
774 consistently funded in order to meet the goal of assuring the
775 safety of chemicals and to maintain public confidence that
776 EPA is meeting that goal. Manufacturers of chemicals should
777 support the cost of agency implementation including the
778 review of information provided by manufacturers.

779 We know that legislative reform may take time.
780 Consequently, Administrator Jackson has directed my office in
781 the interim to utilize our current authority under TSCA to
782 the fullest extent possible to protect the American people
783 from dangerous chemicals. We are currently evaluating an
784 initial set of chemicals based on available hazard, exposure
785 and use information for potential action. The factors we are
786 using to determine this initial set include the use of the
787 chemicals in consumer products, their persistence in human
788 blood, the persist bioaccumulative and toxic characteristics
789 of the chemicals, or otherwise known as the PBT

790 characteristics, the toxicity of the chemicals and the volume
791 of production of the chemicals in commerce. We will produce
792 what we are calling actions plans that will outline the risks
793 that these chemicals may present and establish that we may
794 take to address those concerns. And following the initial
795 list of chemicals that we address and the initial set of
796 action plans that we produce, we will engage with
797 stakeholders on prioritizing additional chemicals for
798 evaluation and we aim to complete a group of action plans
799 every 4 months going forward. EPA intends to engage
800 stakeholders, federal partners and the public in the
801 discussion of prioritizing chemicals for future risk
802 management actions.

803 Mr. Chairman, the time has come to bring TSCA into the
804 21st century, and Administrator Jackson and I very much look
805 forward to working with Congress and you and members of the
806 subcommittee on this very important issue. I appreciate again
807 the opportunity to be here.

808 [The prepared statement of Mr. Owens follows:]

809 ***** INSERT 1 *****

|

810 Mr. {Rush.} Thank you very much.

811 The Chair now recognizes Dr. Sampson for 5 minutes.

|
812 ^TESTIMONY OF ERIC SAMPSON

813 } Mr. {Sampson.} Good morning, Mr. Chairman and members
814 of the subcommittee. My name is Eric Sampson. Thank you for
815 this opportunity to testify concerning our experiences with
816 biomonitoring and setting public health-related priorities
817 for chemical exposures. It has been my pleasure to serve as
818 the director of the Division of Laboratory Sciences at CDC
819 for 25 years during which time our biomonitoring program has
820 grown from a very small activity into a mature scientific
821 discipline.

822 Biomonitoring as we define is the science of directly
823 measuring chemicals and samples from people, typically blood
824 and urine samples. We are aware that biomonitoring data
825 personalizes exposure to chemicals and can lead to a high
826 level of interest and concern. As such, we go to great care
827 to ensure that we are providing the highest quality
828 measurements that can be performed.

829 One thing we do in setting priorities to take a snapshot
830 of chemical exposures in the U.S. population and to identify
831 subgroups with higher levels of exposure. To accomplish
832 that, we perform biomonitoring measurements in samples from
833 participants in the National Health and Nutrition Examination

834 Survey, which is a nationally representative sample of the
835 U.S. population. Survey participants receive a physical
836 examination, complete a detailed questionnaire that collects
837 more than 1,000 pieces of information, and donate blood and
838 urine samples.

839 Our biomonitoring data from this survey are made
840 publicly available by the National Center for Health
841 Statistics. In addition, our staff and other scientists
842 publish the findings in peer-reviewed journals and
843 periodically we publish a National Report on Human Exposure
844 to Environmental Chemicals. Our Fourth Report is due out by
845 the end of this year.

846 A second way we try to establish priorities is to
847 partner with States, other federal agencies, academic
848 institutions and international organizations on 50 to 70
849 studies each year to examine vulnerable populations or
850 populations likely to have higher exposure to chemicals. In
851 that regard, I would like to highlight a recent partnership
852 with NIH's National Children's Study, which will follow
853 100,000 children from before birth to age 21. Our laboratory
854 is collaborating on a pilot study of the first 520 women in
855 which we will be measuring chemicals in pregnant women's
856 blood and urine and then after delivery the newborn's cord
857 blood and mother's breast milk.

858 Finally, we help States set their own priorities by
859 transferring our biomonitoring technology to their State
860 laboratories. In fiscal year 2009 with new Congressional
861 funds, CDC awarded a total of \$5 million to California, New
862 York and Washington for State-based biomonitoring programs.

863 At CDC, we use biomonitoring to establish reference
864 ranges in the U.S. population and to identify groups of
865 people with higher levels of exposure. In addition, by
866 tracking exposures in the U.S. population, we can detect
867 trends in people over time and assess whether a chemical is
868 present in a large number of people or is disproportionately
869 present in vulnerable subgroups such as children. This
870 information is used by scientists and policymakers as one
871 consideration in setting priorities for health impacts of
872 chemicals.

873 In conclusion, biomonitoring offers a strong scientific
874 basis for helping to prioritize chemicals for public health.
875 We are fully committed to working with other federal agencies
876 and partners in expanding the uses and benefits of
877 biomonitoring.

878 Thank you, Chairman Rush, and members of the
879 subcommittee. I look forward to answering any questions.

880 [The prepared statement of Mr. Sampson follows:]

881 ***** INSERT 2 *****

|

882 Mr. {Rush.} Thank you. The Chair now recognizes Dr.

883 Ditz for 5 minutes.

|
884 ^TESTIMONY OF DARYL DITZ

885 } Mr. {Ditz.} Thank you, Chairman Rush, Ranking Member
886 Radanovich and members of the subcommittee for the
887 opportunity to testify today.

888 The public is rightly concerned about the long-term
889 effects of chemicals on health including increasing incidence
890 of asthma, autism, birth defects, infertility and certain
891 types of cancer. It is especially troubling in light of the
892 growing evidence that industrial chemicals are building up in
893 our bodies and in our children's. The Toxic Substances
894 Control Act has failed to assess, let alone guarantee, safety
895 of the overwhelming majority of chemicals on the market.
896 TSCA stymies action by EPA, as you just heard, and other
897 agencies. It perpetuates the reliance on dangerous
898 chemicals. It leaves businesses in the dark and it
899 undermines U.S. competitiveness. So I am grateful for this
900 opportunity to discuss practical improvements to TSCA that
901 can bring it into the 21st century.

902 I strongly agree that the United States must set
903 priorities in order to manage chemicals safely but beware of
904 any proposal that would give thousands of chemicals a free
905 pass. More on that in a second.

906 Today I would like to discuss three critical fixes to
907 TSCA. First, EPA needs authority to promptly regulate the
908 worst of the worst chemicals. Second, EPA should evaluate
909 all chemicals against a health-based standard. Third,
910 Congress should require chemical manufacturers to provide all
911 necessary information. Together, these can result in a
912 stronger, more effective TSCA that restores public confidence
913 while protecting the health of American workers, consumers
914 and communities.

915 Let me briefly elaborate on these three points. First,
916 EPA needs authority to regulate the worst of the worst
917 chemicals. A new, reinvigorated TSCA can pinpoint high
918 chemicals even now despite large data gaps. Chemicals that
919 persist in the environment, that bioaccumulate in our bodies
920 and threaten public health by their toxicity are especially
921 high priorities for action. Such chemicals, called PBTs for
922 short, defy traditional risk assessment techniques. For
923 these substances, a slow, methodical process for evaluating
924 safety is not necessary and it is not appropriate. The
925 United States has already acknowledged the need to act on
926 PBTs but EPA, as you have heard, is severely constrained by
927 the statute. More than a decade ago, the United States and
928 Canada targeted such pollutants for phase-out based on their
929 buildup in the Great Lakes. Frustrated by the slow pace of

930 federal progress, States from Maine to Hawaii are taking
931 decisive action to tackle these chemicals.

932 Eliminating PBTs is also the goal of the Stockholm
933 Convention on Persistent Organic Pollutants. This
934 international treaty signed under President George W. Bush
935 has been ratified by 168 countries but not the United States.
936 Meanwhile, PBT levels are rising in the U.S. population, and
937 sadly, Native Americans in Alaska, quite counterintuitively,
938 are among the highest exposed people in the world.

939 In addition to PBTs, chemicals like formaldehyde,
940 asbestos, phthalates, mercury and bisphenol A also warrant
941 immediate action. The EPA administrator recently announced
942 plans to address these and other notorious substances but the
943 agency's ability to act depends on TSCA's unreasonable-risk
944 standard, which is the Achilles heel that has prevented
945 effective action for more than 2 decades.

946 Second, the EPA should evaluate all chemicals against a
947 health-based standard. Because it will takes years to
948 complete this task, the EPA should prioritize the order in
949 which chemicals are evaluated. The proposed 2008 Kid-Safe
950 Chemicals Act charged the EPA with deciding which substances
951 should be evaluated first based on a set of multiple
952 criteria: high production volume, known hazards, presence in
953 air, water and food, or human exposure. These are all

954 reasonable factors to consider in managing an orderly
955 process. But here is a critical point. Prioritization
956 should be applied to organize the review but not to
957 circumvent a full safety evaluation. It would be a serious
958 mistake if in the guise of priority setting many or most
959 chemicals escape the needed scrutiny. The American Chemistry
960 Council's new principles for modernizing TSCA appear to favor
961 this shortsighted approach.

962 Third, Congress should require chemical manufacturers to
963 provide up-to-date, comprehensive safety information. This
964 is vital if we are going to identify chemicals that pose
965 little or no concern as well as high-risk chemicals. There
966 is a role for prioritization here too. Chemicals that are
967 first in line for the safety determination should be required
968 to submit their data first. It just makes sense. Eventually
969 all chemicals on the market should be required to submit and
970 periodically update this information. That is basically how
971 we regulate pesticides and pharmaceuticals today and it is
972 suitable for industrial chemicals too. Safety data should
973 also be supplemented by the kind of biomonitoring data we
974 just heard about from CDC which provides a good reality check
975 on the actual exposures of people in the real world.

976 Finally, in filling the existing data gaps, a
977 revitalized TSCA can benefit from REACH, which his the

978 European Union's attempt to update their own chemical law.
979 This initiative is already generating valuable information
980 that we can use to protect the health and safety of Americans
981 and bolster our own international competitiveness. Thank
982 you.

983 [The prepared statement of Mr. Ditz follows:]

984 ***** INSERT 3 *****

|
985 Mr. {Rush.} The Chair now recognizes Mr. Greggs for 5
986 minutes.

|
987 ^TESTIMONY OF BILL GREGGS

988 } Mr. {Greggs.} Thank you, Chairman Rush, Ranking Member
989 Radanovich and members of the subcommittee for asking me to
990 testify. I am Bill Greggs, a chemical engineer. My field of
991 expertise is in global chemical management policy supporting
992 the development of safe and sustainable products.

993 I am testifying on behalf of the Consumer Specialty
994 Products Association, the Grocery Manufacturers Association
995 and the Soap and Detergent Association. Now, these groups
996 represent users of chemicals that are formulated into a broad
997 array of consumer and commercial products. Our members are
998 committed to manufacturing safe and innovative products that
999 provide essential benefits to consumers while protecting
1000 public health and the environment.

1001 Now, product safety is the foundation of consumer trust
1002 and confidence and our industry devotes substantial resources
1003 to achieving that goal. We support the modernization of TSCA
1004 and we continue to urge Congress to establish a stakeholder
1005 process to identify and work on the complex issues that are
1006 involved in this legislation. Prioritizing chemicals for
1007 review and assessment is key to TSCA's modernization. It
1008 provides the means to efficiently address important policy

1009 concerns such as children's health and chemical exposures
1010 that are identified through biomonitoring.

1011 Now, you have my written testimony. I really want to
1012 briefly summarize three main points. The first is setting
1013 priorities based on hazard and exposure, the second is a
1014 quick-start concept and the third is stakeholder involvement.

1015 Now, the priority-setting process developed by Congress
1016 must be risk based, that is, it ought to consider both
1017 hazards and potential exposures of a chemical in setting
1018 priorities. Our associations have collaborated with others
1019 in industry to develop an efficient risk-based matrix tool
1020 that EPA can use to set priorities in a timely manner. EPA
1021 can employ this tool to select the highest hazard and the
1022 highest potential exposure chemicals as the highest priority
1023 for further assessment. Chemicals with low hazard and
1024 potential exposure would be the lowest priority.

1025 Now, this tool produces a numerical ranking, which is a
1026 lot better than kind of a yes-no type of approach. The
1027 matrix is illustrated in this illustration on my right. It
1028 shows increasing levels of hazard along the vertical access,
1029 and EPA would consider in this human environmental toxicology
1030 information such as whether a chemical has been identified as
1031 causing cancer, reproductive or developmental toxicity or is
1032 persistent, bioaccumulative and toxic. Indicators of

1033 increasing exposure are shown on the horizontal axis. EPA
1034 would consider in this the use pattern of a chemical such as
1035 its use in closed systems, use in consumer and commercial
1036 products, and products intended for use by children. Also,
1037 EPA should consider CDC's biomonitoring findings as well as
1038 information from industrial releases and from environmental
1039 monitoring.

1040 To reiterate, hazards and potential exposures must both
1041 be considered. A single factor, just hazard or just
1042 exposure, really isn't sufficient. If everything is a
1043 priority, then nothing is a priority. This process is
1044 relatively straightforward and EPA can conduct it in a
1045 reasonable time frame, ranking all chemicals from high to
1046 low. Where information is not available, the agency, we
1047 believe, should have the authority that it doesn't have today
1048 to require timely submission of information after which a
1049 chemical can then be ranked. Additionally, this tool is
1050 dynamic as well. It allows EPA to update priority when new
1051 information does become available.

1052 Now, the second idea that we have for Congress is to
1053 develop an additional mechanism, kind of a quick-start
1054 approach. It has been discussed today about the anxiety and
1055 the interest in moving quickly. We think EPA through this
1056 mechanism can identify the very highest-priority chemicals

1057 for immediate assessment. To do this, EPA would select
1058 chemicals that have the very highest hazards such as known
1059 carcinogens, reproductive or developmental toxicants, or
1060 PBTs, and the highest potential exposure, for instance,
1061 chemicals measured in CDC's biomonitoring program or used in
1062 chemicals intended for children. This would be identified 50
1063 to 100 chemicals that could quickly move into EPA's safety
1064 assessment process while the agency completes priority
1065 setting for the remaining chemicals.

1066 The third point is stakeholder involvement. The
1067 priority-setting process we believe should involve review and
1068 comment by stakeholders to allow them to provide additional
1069 data to EPA and allow more-informed decisions by EPA. CSPA,
1070 GMA and SDA believe this priority-setting approach is
1071 straightforward and efficient. We have discussed it with
1072 many industry and non-governmental groups and with many of
1073 your offices. We think it can provide EPA with a good way to
1074 identify the highest-priority chemicals for further
1075 assessment.

1076 Our associations look forward to working with you to
1077 modernize TSCA. Thank you very much.

1078 [The prepared statement of Mr. Greggs follows:]

1079 ***** INSERT 4 *****

|

1080 Mr. {Rush.} The Chair thanks the gentleman, and now the
1081 Chair recognizes Ms. Bosley for 5 minutes.

|
1082 ^TESTIMONY OF BETH BOSLEY

1083 } Ms. {Bosley.} Good afternoon, Chairman Rush, Ranking
1084 Member Radanovich and members of the subcommittee. I am
1085 pleased to testify before you today on behalf of the Society
1086 of Chemical Manufacturers and Affiliates, or SOCMA. SOCMA
1087 has served the batch and specialty chemical industry since
1088 1921. We have 300 members, usually small- to medium-sized
1089 companies. Our members make a \$60 billion annual impact to
1090 the national economy and we contribute to the chemical
1091 industry's position as one of the Nation's largest exporters.

1092 As we testified before the subcommittee last February,
1093 SOCMA supports EPA's and Congress's fundamental goal of
1094 protecting human health and the environment from hazardous
1095 chemical exposure. SOCMA members are prepared to continue
1096 doing our part in this effort. We are pleased to have this
1097 opportunity to share with you our perspective on revising
1098 TSCA. SOCMA agrees that TSCA can be modernized and that
1099 policy goals can be accomplished in a way that doesn't
1100 devastate a strategic American industry already fighting
1101 recession and foreign competition. As I will discuss, two
1102 principles are essential to sustainable chemical management
1103 law that won't eliminate jobs, economic growth or critical

1104 products. First, TSCA priorities should be established based
1105 on risk, as you have heard from some other witnesses this
1106 morning, and second, proven regulatory mechanisms should be
1107 used as the basis for this modernization.

1108 Prioritization of risk must remain a fundamental
1109 principle of TSCA. This means basing priorities and
1110 regulatory criteria on scientific evaluation of toxicological
1111 response and exposure factors. For instance, if a chemical
1112 is highly toxic but used only in strictly controlled
1113 industrial environments or in small quantities, then the risk
1114 to public health is fairly small.

1115 The second important principle for TSCA reform is
1116 leveraging regulatory mechanisms that already work. We agree
1117 with EPA that the existing regulatory framework is better
1118 suited to American health, environmental and economic
1119 interests than Europe's monolithic regime known as REACH.
1120 Applying an approach like REACH in the United States could
1121 devastate small- and medium-sized companies and do so
1122 unnecessarily since a more practical approach is available.
1123 Industry certainly does not oppose the potential for new
1124 regulation. We acknowledge the success of current
1125 environmental laws and programs and these mechanisms show
1126 promise in being able to achieve new policy objectives
1127 without sacrificing hundreds of businesses and thousands of

1128 jobs. For example, the Canadian approach to chemicals
1129 management has systematically prioritized that nation's
1130 inventory and is therefore much further ahead of EU with
1131 respect to evaluation of chemicals in commerce.

1132 Another mechanism supported by SOCMA was the inventory
1133 reset, which was part of EPA's recently discontinued ChAMP
1134 program. This would have provided an accurate measurement of
1135 the chemicals now in commerce, which we believe is the only
1136 realistic starting point. Of the over 80,000 chemicals now
1137 listed on the inventory, data suggests that only about one-
1138 third of these are presently in commerce. The program also
1139 identified categories of well-characterized chemicals,
1140 prioritized them and systematically targeted them for further
1141 review. Even the TSCA critics did not challenge the
1142 groupings identified by EPA at that time and supported this
1143 notion of prioritization. The program then went into an
1144 evaluation of the risks associated with the exposures to
1145 these chemicals. For these reasons, we believe that ChAMP
1146 should not have been abandoned because it will simply have to
1147 be reinstated under another name.

1148 We should also embrace the TSCA mechanisms that have
1149 worked well like the New Chemicals Program, where EPA has
1150 successfully reviewed roughly 40,000 new chemicals since 1979
1151 without impeding the innovation that is crucial to American

1152 competitiveness. Through this EPA program known as the PMN
1153 process, over 1,000 chemicals undergo a review every year.
1154 This successful model should also be applied to existing
1155 chemicals. We should recognize the massive amount of data
1156 that was generated during HPV, or High Production Volume
1157 program, and leverage that data in making initial
1158 determinations of risk. With reasonable amendments, TSCA
1159 should provide an easier mechanism for EPA to poll
1160 manufacturers and users for data on volume, health effects,
1161 and by health effects, I mean all health effects. Right now
1162 EPA gathers data only on adverse health effects. And we also
1163 need to know exposure characteristics both to the environment
1164 and to human health. Section of Canada's Environmental
1165 Protection Act effectively enables this sort of data
1166 collection.

1167 SOCMA members have a deep commitment to the safe use of
1168 our chemicals and we are proud of our collective track record
1169 in protecting our workers and in our communities. SOCMA
1170 favors a formulation whereby EPA would make a safety
1171 determination and that safety determination should be based
1172 first on risk. We also believe that EPA should not be
1173 burdened with the determination that each chemical is safe
1174 for its intended use. Specific chemicals and specific uses
1175 may be approached this way when dealing with a short list of

1176 chemicals and narrow uses such as pesticides under FIFRA and
1177 drugs under the FDA. But with 55 categories of chemicals, a
1178 requirement that all new uses of any chemical be specifically
1179 approved would be burdensome and delay our transition to a
1180 lower carbon future. Instead, under an improved TSCA, EPA
1181 should provide goals, prioritization and oversight but
1182 implementation should be based on proven and practical
1183 regulatory mechanisms.

1184 Finally, regardless of what approach Congress adopts,
1185 EPA will need to be adequately funded. The biggest
1186 shortcoming of the TSCA program today is a lack of resource
1187 and not the lack of the authority.

1188 I thank you for this opportunity to describe a pragmatic
1189 approach to TSCA reauthorization and I would be happy to any
1190 questions you have.

1191 [The prepared statement of Ms. Bosley follows:]

1192 ***** INSERT 5 *****

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1193 Mr. {Rush.} The Chair thanks all their witnesses for
1194 their testimony. Now it comes to the time where members of
1195 the committee will query the witnesses, and the Chair now
1196 recognizes himself for 5 minutes for the questioning of the
1197 witnesses.

1198 One of the biggest problems that has been stated
1199 previously, one of the biggest problems today with TSCA is a
1200 lack of information on which EPA can base its decisions. A
1201 lack of information does not mean that there is not a
1202 problem. Also without information, it is hard to make
1203 informed decisions on prioritization. It seems to me that
1204 the EPA should require the submission of crucial information
1205 needed to determine how a chemical should be prioritized.
1206 The chemical industry is not currently required under TSCA to
1207 develop data on toxicity or exposure of the chemicals for
1208 chemicals that existed in commerce when TSCA was passed. My
1209 question is focused on the testimony of Mr. Owens. Mr.
1210 Owens, certain voluntary programs that offer a menu for
1211 industry to produce and submit data to EPA, have they been
1212 successful? And I have two related questions. You can
1213 answer all three of them at the same time. Do you believe
1214 there is existing data that has not been provided to EPA
1215 because submission is not mandatory? And the last part of

1216 the question is, if there were a mandatory submission of
1217 existing data to EPA, I would think that this requirement
1218 would be required not only for chemicals currently in
1219 commerce but for any chemical for which data may be
1220 available. Wouldn't a comprehensive data collection process
1221 assist the agency in other areas such as environmental
1222 cleanup, et cetera? Would you care to answer those
1223 questions, please?

1224 Mr. {Owens.} Thank you, Mr. Chairman. I will actually
1225 take them a little bit out of order, if I may, your last
1226 question first. I think absolutely a comprehensive data
1227 collection system would benefit not just the TSCA program but
1228 the agency as a whole. That is one of the biggest challenges
1229 that we face in implementing TSCA as well as some other
1230 programs but especially TSCA, that we don't have the data we
1231 need to make the kinds of safety determinations that we feel
1232 to be making in order to protect the health and safety of the
1233 American people and the children and families in this
1234 country.

1235 With regard to your first question about voluntary
1236 programs, I think you asked whether they were successful. I
1237 would I think overall have to say no but maybe to qualify it
1238 by saying kind of sort of. The so-called ChAMP program that
1239 was started under the previous Administration was only

1240 modestly beneficial at best. It collected some data from
1241 some companies. It was an effort designed to develop
1242 screening-level assessments and to prioritize thousands of
1243 chemicals. It was over 6,000 chemicals that the agency was
1244 looking at at the time and it seems that some folks outside
1245 the agency have a much higher opinion of ChAMP than the
1246 people who are actually implementing it inside the agency.
1247 And a decision was made before I came on board in July by
1248 Administrator Jackson to take a look at ChAMP to see how it
1249 was working, and based on the review that was conducted by
1250 the staff at OPPTS, it was determined that that program,
1251 ChAMP, was too focused on categorizing chemicals and it would
1252 take years and years in order to get around to categorizing
1253 all those chemicals, and those categorizations were having to
1254 be made on the basis of incomplete and inadequate information
1255 because it was a voluntary program. So being a westerner, I
1256 think one way that I have always tried to describe the ChAMP
1257 program since I have been there is, especially folks from
1258 Texas might say but in Arizona we would say as well it was
1259 all hat and no cattle, that is looked good on the outside but
1260 in terms of actually achieving what we needed to have it
1261 achieve and the agency just didn't do the job.

1262 But lastly, you asked the question about is there
1263 existing data that is out there that hasn't yet been

1264 provided. TSCA does require companies if they have data in
1265 their possession of adverse health and environmental effects,
1266 they are required to provide that, and so it was actually a
1267 perverse disincentive in the statute for the generation of
1268 that kind of data because if they have it, they have to turn
1269 it over. There is no requirement now that they actually
1270 provide it up front either, especially for an existing
1271 chemical because of the way that new chemicals are treated
1272 vis-à-vis existing chemicals. But even with a new chemical,
1273 the burden is still on EPA to show that we think that there
1274 may be a problem from a health and environmental perspective
1275 in order to request data from the manufacturers or producers
1276 of those chemicals before it actually has to be provided to
1277 us.

1278 Mr. {Rush.} Thank you.

1279 The Chair now recognizes the ranking member for 5
1280 minutes.

1281 Mr. {Radanovich.} Thank you, Mr. Chairman, and again
1282 welcome everybody to the subcommittee.

1283 Mr. Owens, I would like to ask a few questions.
1284 Although I appreciate the testimony of everybody who is here,
1285 I really kind of want to get into this 80,000 figure because
1286 it was mentioned in some previous testimony but a third of
1287 that is stuff that is not in commerce anymore. There is some

1288 talk of worst-of-worst chemicals but I have not heard an
1289 amount of what is, you know, the numbers that entails. Here
1290 is what concerns me: 10 percent unemployment. I live in a
1291 part of California where the misapplication of the Endangered
1292 Species Act has driven the timber industry out of the State
1293 of California. In my area there used to be a number of them,
1294 now there is none because of overregulation. My concern is
1295 that when you are here talking about 80,000 chemicals without
1296 differentiating between the two of them, you are talking
1297 about canceling ChAMP, which is a cooperative effort, I
1298 think, between the government and the industry to base some
1299 risk assessment on these chemicals and you are looking at
1300 beefing up the Administration to me looks like treating those
1301 80,000 chemicals the same. You are going to be driving the
1302 chemical production industry out of the United States much
1303 the way that the timber industry has been driven out by the
1304 Endangered Species Act. Is that what you want to do at the
1305 Administration, Mr. Owens? Do you want the chemical
1306 production industry to leave the United States?

1307 Mr. {Owens.} Is that a yes-or-no question?

1308 Mr. {Radanovich.} Sure. Please. I don't have a lot of
1309 time.

1310 Mr. {Owens.} Representative Radanovich, I think the
1311 best way to answer that is obviously no, sir.

1312 Mr. {Radanovich.} Is the Administration aware that the
1313 unemployment right now is over 10 percent? It is a fair
1314 question. This is my time and it is a fair question.

1315 Mr. {Owens.} I believe they are, Mr. Radanovich.

1316 Mr. {Radanovich.} Thank you. Can you tell me, what is
1317 the worst of the worst? I will ask you, Mr. Owens or Mr.
1318 Ditz, what is the worst of--how many are there worst-of-worst
1319 chemicals on the list of 80,000?

1320 Mr. {Owens.} Congressman, if I may, I will go back a
1321 little bit to your question about the 80,000 because I think
1322 that was an important point you did make in that regard, that
1323 it isn't clear exactly how many of those 80,000 are still in
1324 commerce. There is a general belief that obviously the
1325 overwhelming majority of those chemicals are still in
1326 commerce. There are some questions out there certainly by
1327 industry and also by our agency that the existing inventory
1328 may not actually reflect what is going on out there. There
1329 is an effort--

1330 Mr. {Radanovich.} Would you agree with the statement
1331 that there was about one-third that is not in commerce now?

1332 Mr. {Owens.} No, sir, I couldn't agree with that now
1333 because we just don't know. That assertion has been made by
1334 some industry groups but we just don't know, and one of the
1335 things that we do intend to move forward with over time is

1336 looking at updating the inventory, what is called the
1337 inventory reset. We would have to move forward with that in
1338 some point in the future after we get the other things in a
1339 row here. That was a long-term goal of the agency as part of
1340 the ChAMP program and some of the other efforts that were
1341 underway, and I think that is a valuable thing that we need
1342 to do in the future. The challenge is that we have to get
1343 that information from the industry groups. You have to have
1344 a mechanism for getting that and we have to have reliable
1345 data on what really is being used out there and what is being
1346 produced in commerce.

1347 Mr. {Radanovich.} Thank you, Mr. Owens.

1348 Mr. Ditz, how many are the worst of worst? How many?

1349 Mr. {Ditz.} Of course, when we have the giant question
1350 marks about what--

1351 Mr. {Radanovich.} Mr. Ditz, if you could just say how
1352 many worst of worst chemicals are out there.

1353 Mr. {Ditz.} Thank you. I will try to give you a
1354 straight answer.

1355 Mr. {Radanovich.} Well, it would be a number. Since
1356 you are the expert, you can tell me how worst-of-worst
1357 chemicals are out there.

1358 Mr. {Ditz.} I can tell you roughly how many chemicals
1359 are known to be in this group. For example, for PBT

1360 chemicals--

1361 Mr. {Radanovich.} Just tell me--

1362 Mr. {Ditz.} -- we are talking about dozens.

1363 Mr. {Radanovich.} Mr. Ditz, if you could--dozens, so
1364 there is 12, 24?

1365 Mr. {Ditz.} No, that would be a dozen, but there are
1366 21, for example, on the international treaty, which the rest
1367 of the world is moving on with. There are--

1368 Mr. {Radanovich.} Okay. So there are 80,000 chemicals
1369 out there and you have got probably say less than 50 that are
1370 on the worst of worst.

1371 Mr. {Ditz.} There is no way to know, and this is
1372 exactly the point that this hearing is so helpful for. We
1373 will never know unless they look at the--

1374 Mr. {Radanovich.} All right. I appreciate the fact. I
1375 am just trying to get things in perspective because I don't
1376 want the chemical production industry to go offshore. Pretty
1377 much that it is. Thank you very much.

1378 Now, Mr. Owens, you mentioned, ChAMP and how there was
1379 careful consideration under my, the information that I have,
1380 it was a rather hasty move. Can you tell me how you went
1381 through the deliberative process? And I would also like to
1382 know how that effects the Montebello Agreement where ChAMP
1383 was a significant part in the cooperation between Mexico and

1384 Canada in getting a handle on these chemicals and regulating
1385 them.

1386 Mr. {Owens.} Congressman, the review that took place,
1387 as I said, did place before I got there but what the staff
1388 did was take a look at the timelines involved for review of
1389 the over 6,000 chemicals that were being looked at under
1390 ChAMP, the types of data, the information that were being
1391 provided and it was fairly spotty, kind of hit-or-miss data
1392 that was coming in, some companies providing a fair amount,
1393 others providing none at all. Some chemicals had what they
1394 were calling sponsors where a particular company or group of
1395 companies would provide data on that. Other chemicals were
1396 completely orphaned and there was no data at all on those
1397 chemicals, so it really was a hit-or-miss, very spotty
1398 process going forward with ChAMP, and with the length of time
1399 it was going to take under the existing regulatory regime to
1400 cajole that data out of the people who had it, if it existed
1401 at all out there among industry groups, then to put it into
1402 these bins, as they were being called, three different
1403 categories that the agency was going to use, and then
1404 somewhere down the line to get around to actually deciding
1405 which were the worst of the worst and to do something about
1406 it, we were looking at years and years and years down the
1407 road.

1408 With the focus of Administrator Jackson on the need to
1409 make chemical management a top priority for our agency and to
1410 do the kinds of things we need to do to protect the health
1411 and safety of children and families in this country, it was
1412 felt that we needed to take a more proactive approach to
1413 trying to identify what might be the worst-of-the-worst
1414 chemicals, in the immediate sense to take action on them, and
1415 that is why we have been developing these action plans, as I
1416 mentioned. We are hoping to unveil some of them in December
1417 and then every 4 months or so thereafter to have another
1418 smallish group of roughly four or so chemicals. You know, it
1419 is a pretty modest approach that we will be undertaking
1420 because of the limitations we have under TSCA and the limited
1421 amount of information but we are taking the data that we
1422 received under ChAMP and that we otherwise have at the
1423 agency, applying it to chemicals as we know we have, looking
1424 at data that CDC and other folks have developed through the
1425 biomonitoring processes that they have and the studies that
1426 have been done out there to do that kind of work.

1427 Mr. {Radanovich.} Thank you, Mr. Owens. I appreciate
1428 your testimony.

1429 Mr. {Rush.} The gentlelady from Illinois is recognized
1430 for 2 minutes.

1431 Ms. {Schakowsky.} Two minutes?

1432 Mr. {Rush.} For 5 minutes.

1433 Ms. {Schakowsky.} Thank you, Mr. Chairman.

1434 Dr. Sampson, you talked about three States getting
1435 additional funds for biomonitoring, and you mentioned--and I
1436 am concerned. I live in Chicago and we are sitting on 20
1437 percent of the world's surface water in the Great Lakes. My
1438 understanding is that every fish that is caught in Illinois
1439 has excessive levels of mercury. I just wanted to know if
1440 there is any opportunity for a Midwestern city on the Great
1441 Lakes could be part of that or if you are doing that in other
1442 ways?

1443 Mr. {Sampson.} In the awards that we mentioned for
1444 California, New York and the State of Washington, there were
1445 actually 33 States that turned in applications. They turned
1446 in very good proposals on how they would use their money
1447 locally and so--

1448 Ms. {Schakowsky.} Well, you know, Dr. Ditz mentioned
1449 the Great Lakes. I just think that is really important that
1450 we look at that as well.

1451 Mr. Owens, you said you are going to release action
1452 plans in December and then every 4 months, but Mr. Gregg
1453 mentioned, what did you call it quick-start approach, of 50
1454 to 100 chemicals. I wonder what you think of that, you know,
1455 that there would be pretty universal agreement--I mean,

1456 correct me if I am wrong--of 50 to 100--I guess I am just
1457 talking about getting started and this quick-start approach
1458 as being one way to go.

1459 Mr. {Owens.} Well, Vice Chair Schakowsky, I think that
1460 that wouldn't necessarily be a bad place to start. I mean,
1461 we have actually been having a lot of conversations with the
1462 groups that Mr. Greggs represents here as well as with the
1463 American Chemistry Council and other industry groups and
1464 there are a lot of industry groups out there that do support
1465 reform of the Toxic Substances Control Act. Without having
1466 had a detailed conversation with them about it, I would say
1467 though that that should be a floor rather than a ceiling. It
1468 should be kind of the jumping-off point, not the be all and
1469 end all because you might have a situation in which you have
1470 low exposure because of a very narrow limited population. I
1471 think Alaska Natives were mentioned, maybe Native Americans,
1472 maybe a subset of children in a certain--

1473 Ms. {Schakowsky.} No, I know. You talked about
1474 criteria. All I'm saying is that December we will have the
1475 action plan and then four months later some chemicals will be
1476 announced. It just seems to me if there is a consensus in
1477 regulators, the scientific community and the industry on some
1478 of the most toxic, the worst of the worst, that that would be
1479 a place to get going right away.

1480 Mr. {Owens.} Congresswoman, the only thing I would say
1481 on that, I don't think there actually has been an agreement
1482 on the actual list. I think that is what we are talking
1483 about with the criteria. But there would be substantial
1484 overlaps I think between what we would think would be the
1485 worst of the worst and what some industry groups would think
1486 and some advocacy groups as well and so that would be a good
1487 place to start, and we have identified six chemical groups
1488 that we are going to be looking at for the first action
1489 plans. We will probably do four of those in December. Then
1490 the other ones will be carried over to early next year. We
1491 will have our public process where we will be getting
1492 information from NGOs and industry groups about what those
1493 worst-of-the-worst chemicals might be, to put them into our
1494 priority for action plans in the future.

1495 Ms. {Schakowsky.} Okay. I guess all I want to say is
1496 that while obviously we have to process, and it is refreshing
1497 to say that science is going to drive this, we also, I think,
1498 you know, need to move as quickly as possible.

1499 Let me ask Mr. Greggs and Ms. Bosley, in terms of
1500 minimum data requirements, do you agree that the industry
1501 needs to be provide the information? Let me ask you that.
1502 But then also ask Mr. Owens if you think it ought to be
1503 mandatory to require that data.

1504 Mr. {Greggs.} Thank you, ma'am. We believe that EPA
1505 should have sufficient data not only just to make priority
1506 decisions but later as they do safety assessments and make
1507 decisions about risk and decisions about risk management, so
1508 we think that that is very important. As I testified today,
1509 the first thing to do is, let us identify the priority
1510 chemicals. We believe that there is substantial information,
1511 especially for this quick start using the criteria that I
1512 described where we could get started quickly. We believe
1513 that industry will have a significant role in that, unlike
1514 the action plan that EPA is starting now. Under our idea,
1515 the belief is that the development and assembly of that data,
1516 really the burden of that would be transferred to industry,
1517 industry putting that together and then providing it to the
1518 EPA to make the safety decision.

1519 Ms. {Bosley.} I might add that industry isn't really
1520 sure what data EPA would like for a priority one, two, three,
1521 four or five chemistry. If there was a base set identified,
1522 industry could certainly provide as much data as it can.

1523 Ms. {Schakowsky.} Mr. Owens, do you need the authority
1524 to require industry to provide the data?

1525 Mr. {Owens.} Congresswoman, yes, we do. That has been
1526 one of the challenges with the ChAMP program, with the
1527 heralding it has received here this morning by Ms. Bosley,

1528 that not all companies participated and not all companies
1529 generated the data and not all companies provided it, and
1530 without a mandatory requirement that the data be produced in
1531 the first place and then be provided to EPA, we will never
1532 get where we need to be in that regard.

1533 Ms. {Schakowsky.} Thank you. I appreciate everyone's
1534 testimony. Dr. Ditz, though I didn't ask you, I appreciate
1535 it.

1536 Mr. {Rush.} The Chair recognizes now Mr. Scalise for 5
1537 minutes.

1538 Mr. {Scalise.} I thank the chairman.

1539 Mr. Sampson, in the CDC Third Report from July 2005, it
1540 stated that for many environmental chemicals we need more
1541 research to assess health risks from different blood or urine
1542 levels. The results shown in the Third Report should help
1543 prioritize and foster research on human health risks that
1544 result from exposure to environmental chemicals but the
1545 presence of a chemical does not imply disease. The levels or
1546 concentrations of the chemical are more important
1547 determinates of the relation to disease when established in
1548 appropriate research studies than the detection or presence
1549 of a chemical. Does CDC still stand behind that statement?

1550 Mr. {Sampson.} Yes, sir, that is a very good question.
1551 We do. Would you like me to just explain?

1552 Mr. {Scalise.} Sure.

1553 Mr. {Sampson.} Typically what we do in our surveys are
1554 that we measure this cross-section of the U.S. population,
1555 several thousand samples, and that is in the Third Report
1556 that you are talking about, and what has happened since the
1557 beginning of these reports, when we identify a chemical in a
1558 large percentage of the population, that typically will spur
1559 a lot of research in that area but we are very careful not to
1560 say that this chemical by its presence is causing harm. In
1561 most cases we just need additional information, and it is
1562 very important to mention that our ability to detect the
1563 chemicals in our surveys and in populations is exceeding the
1564 ability to actually determine whether health effects are
1565 occurring, and we think that is a very big area of research
1566 that is needed.

1567 Mr. {Scalise.} Thank you.

1568 Mr. Greggs, could you comment on the new REACH policy
1569 that is currently being implemented in Europe and if such a
1570 policy was implemented here in the United States, what would
1571 that mean for U.S. industry?

1572 Mr. {Greggs.} Sure. As you I am sure are aware, REACH
1573 is an extremely comprehensive policy that has been recently
1574 put into place in Europe, some would say overwhelming is a
1575 potential concern. I think our thought really is, is that

1576 others as well as those in Europe have looked at chemical
1577 policies as well, Canada, for instance, which was mentioned
1578 in some earlier comments. Our thought really is, is that we
1579 ought to take the best parts from REACH from Canada and look
1580 at what is appropriate in the United States, apply that in
1581 the United States so that we get the gold standard in the
1582 U.S. for the chemical management policy that we put in as
1583 part of TSCA modernization.

1584 Mr. {Scalise.} Thanks. And then some of the advocates
1585 of legislation recommended that we should have in the law
1586 some kind of list, an actual list of chemicals of concern.
1587 Now, some people suggest that rather than inform people, that
1588 list would end up being a blacklist and make it much more
1589 complicated for manufacturers and processors. Do you agree
1590 with having a list and what would be the impacts of that?

1591 Mr. {Greggs.} Thanks for that question. I testified
1592 today that in approaching this prioritization that it ought
1593 to have several key steps. It ought to be science based. It
1594 ought to take a risk kind of approach using hazard and
1595 exposure. The scientists at EPA should be involved in that
1596 and there ought to be public review and comment to make sure
1597 that EPA has all the relevant data to make the right
1598 decisions about what chemicals should go under further
1599 assessment. Our concern about a list of course is, is that,

1600 you know, sort of whose list, what criteria. And our thought
1601 really is, is that by providing EPA with direction on the
1602 criteria for which priorities ought to be selected, that that
1603 will result in the right selection of priorities and the
1604 efforts going into the highest-priority chemicals first.

1605 Mr. {Scalise.} Thanks.

1606 And then Ms. Bosley, if I can get your thoughts on both
1607 questions, on REACH as well as on the list.

1608 Ms. {Bosley.} I think REACH's main problem is, it is a
1609 comprehensive legislation but it does not prioritize. So a
1610 chemical that is being manufactured at 20 metric tons that is
1611 highly toxic will get the same data set and the same priority
1612 as a chemical that is being manufactured at 20 metric tons
1613 that has almost no hazard to it. So there was no risk
1614 prioritization with respect to REACH, and I think the impact
1615 of a worst-of-the-worst list, those chemicals are fairly
1616 small and I think you just have to look at critical,
1617 strategic, national interest uses for those lists. I don't
1618 think it would overburden the industry to come out with a
1619 list.

1620 Mr. {Scalise.} That is all I have. I yield back.

1621 Mr. {Rush.} The Chair now recognizes Mr. Sarbanes for 5
1622 minutes.

1623 Mr. {Sarbanes.} Thank you, Mr. Chairman. On this issue

1624 of the data the industry has provided, Mr. Ditz, I am going
1625 to direct a number of questions to you. On a scale of one to
1626 ten, where would you peg the integrity and usefulness of the
1627 data that industry now is providing, I gather mostly on a
1628 voluntary basis, in terms of what would be useful for
1629 reviewing an agency in making decisions about safety and so
1630 forth?

1631 Mr. {Ditz.} Let me try to make sure I am answering the
1632 right question. You are asking one to ten on the integrity
1633 of the data that industry is providing by voluntary means.
1634 Is that right?

1635 Mr. {Sarbanes.} Yes, and then on the integrity in terms
1636 of whether they are trying to hide the ball, I mean just sort
1637 of how useful it is to the process of being able to get to
1638 the right answer.

1639 Mr. {Ditz.} Well, the voluntary programs have primarily
1640 asked industry for hazard data. That is data on the
1641 intrinsic property of a chemical, and that is part of what is
1642 needed for any kind of risk assessment. There isn't a
1643 corresponding information on the exposure of the chemical, so
1644 basically in terms of risk, it is a zero. We don't have the
1645 adequate information. EPA doesn't have it. Customers of the
1646 chemical industry don't have it. Investors don't have it.
1647 So it is not a fault of industry that they haven't given

1648 that. They didn't offer that. It wasn't asked of them in
1649 the voluntary program. But when I hear the comments in the
1650 hearing today about a risk-based system, I just have to stop
1651 and say we don't have the information. The EPA doesn't have
1652 it, nobody has it, and that is why we are not protecting
1653 Americans and we are not protecting our industry from
1654 countries who have higher standards than our own.

1655 Mr. {Sarbanes.} And I assume that the REACH program is
1656 pulling all of that kind of information as part of its
1657 process, or not?

1658 Mr. {Ditz.} Well, REACH is trying. You know, there are
1659 shortcomings of the European approach, no doubt about it, but
1660 it is asking chemical producers to generate basic information
1661 on the nature of the chemical--does it cause cancer, does it
1662 accumulate in people, et cetera. And it is also asking
1663 companies how is that chemical used, is it put into consumer
1664 products, does it go into things which children are exposed
1665 to, what are the workplace exposures. Those two kinds of
1666 information have to come together before you can do any kind
1667 of a risk prioritization. So hats off to Europe for trying.
1668 The other say I would say about REACH is, no matter if you
1669 think it is, you know, misguided or overreaching or a lot of
1670 other descriptions have been attached to it, it will make our
1671 job in the United States a lot easier because the data on

1672 hazards will be on the Internet and the companies like Dow
1673 and Dupont who operate in the United States will not be
1674 hiding that information. It will be available for EPA and
1675 for CDC and for consumers and others. So frankly, we will
1676 benefit even if we don't lift a finger.

1677 Mr. {Sarbanes.} Let me ask you another question before
1678 my time runs out. First of all, I can see how seductive the
1679 conversation can become around the worst of the worst, which
1680 when you step back and think about it is a heck of a standard
1681 to start using. I mean, if you think of a spectrum, you
1682 would have chemicals that would be okay, you would have ones
1683 that would be bad, you would then have a universe that would
1684 be considered the worst, and then inside of that we seem to
1685 be spend a lot of time talking about the worst of the worst,
1686 but the danger is it will distract us from other parts of the
1687 spectrum that deserve I think an equal amount of attention
1688 for various reasons. Speak for a moment, because, you know,
1689 that matrix as well is quite seductive in advancing this
1690 notion of risk-based perspective and you start thinking,
1691 well, that red ball there, that red fiery ball down there in
1692 the bottom right-hand corner is really what we should be
1693 worrying about, but can you, Mr. Ditz, maybe give an example
1694 of a situation where you might not get to that part of the
1695 matrix but the inherent hazards associated with a particular

1696 chemical without maybe the corresponding high use of it would
1697 still suggest and call for taking steps to restrict its use.

1698 Mr. {Ditz.} Well, as I mentioned, when I refer to the
1699 worst of the worst, you are right, that is kind of the top of
1700 the pyramid of badness and it represents a very small number
1701 of the universe of chemicals but that is the place where we
1702 ought to be able to quickly reach agreement. That is not
1703 going to put workers out of jobs or put businesses to shut
1704 their doors. It does make sense to weed out dangerous things
1705 and that is exactly what a Toxic Substances Control Act
1706 should have been doing all these decades but it hasn't. So I
1707 really think is the kind of thing where there ought to be
1708 broad agreement. An example of a chemical where is it not
1709 broadly used, widely used but still has these properties,
1710 well, the POPs treaty that I mentioned, the Stockholm
1711 Convention on Persistent Organic Pollutants, is an
1712 international scientific process that leads to the
1713 identification and the naming of exactly those chemicals.
1714 They get on that list when more than 100 countries agree to
1715 put them there. So that is the kind of place where it
1716 shouldn't be hard for us to sign on and agree. It includes,
1717 for example, a couple of brominated flame retardants,
1718 chemicals which historically have been added to things like
1719 consumer products, computers, furniture, foam, that kind of

1720 thing, and actually even though TSCA didn't really allow EPA
1721 the legal muscle to do it, they still negotiated an agreement
1722 with the producers to stop making that stuff. So I guess you
1723 could say in some certain cases when the writing is on the
1724 wall, even the manufacturer will surrender and move on to a
1725 different product. Those are the kinds of things where
1726 reasonable people ought to be able to agree, and frankly, we
1727 have to give EPA that power if we are going to ratify the
1728 treaty so eventually we are going to come back to this
1729 question even for the narrow question of those worst-of-the-
1730 worst chemicals.

1731 Mr. {Sarbanes.} Thank you.

1732 Mr. {Owens.} Can I just offer just a quick additional
1733 factor, Congressman Sarbanes? One point that I didn't get a
1734 chance to bring up in my oral testimony is covered in my
1735 written submission is the issue of the confidentiality of
1736 data that is submitted. Under the current law, the burden is
1737 on EPA to dispute a claim of confidential business
1738 information, CBI, as it is called, and on many occasions when
1739 the data submitted to us is claimed as confidential, over the
1740 years in fact taking the 80,000 figure just as a point,
1741 roughly one-fifth, about 16,000 chemicals on that list have
1742 claimed the identity to be confidential. So of the 80,000
1743 chemicals that are on the list, the names of them are claimed

1744 to be confidential, so you could actually see that the
1745 chemical might cause a hazard to people or risk to people or
1746 adverse health effects but you don't know what that chemical
1747 is by looking at the data that we actually might have in our
1748 database at EPA. And Administrator Jackson has directed us
1749 to do what we can do under existing TSCA to try to make more
1750 of that data available but we do need TSCA reform to address
1751 that issue as well so that the data can be made publicly
1752 available when it is provided.

1753 Mr. {Sarbanes.} That is like the opposite of a
1754 blacklist in a sense, right?

1755 Mr. {Rush.} The Chair now recognizes the gentlelady
1756 from Florida for 5 minutes.

1757 Mr. {Castor.} Thank you, Mr. Chairman, and thank you
1758 all very much for your testimony. I would like all of your
1759 opinions. Everyone is fairly united in their opinion that
1760 TSCA adopted originally in 1976, never updated, never
1761 modernized, is in need of reform. Does anyone disagree with
1762 that? So we have industry, we have environmental health
1763 experts, we have agency folks and legal experts, and this is
1764 generally the consensus across all of your fields, correct,
1765 that TSCA just hasn't lived up to what it was supposed to do
1766 to protect the environmental health, that it is in need of
1767 reform. So I find it interesting that there is some

1768 criticism right off the bat that this could harm jobs because
1769 I think you both said representing industry groups that this
1770 could be done, reform could be done without harming jobs and
1771 industry. Is that correct? Did I misstate your testimony?

1772 Ms. {Bosley.} No, that is true.

1773 Ms. {Castor.} And I think we all acknowledge, I have
1774 heard Administrator Jackson state how important it is to have
1775 a stakeholder process, and Mr. Owens, is that what is going
1776 on now? How important are stakeholders to reform efforts?

1777 Mr. {Owens.} Congresswoman, as I mentioned, the
1778 administrator unveiled a set of principles on behalf of the
1779 Obama Administration and those principles were developed in
1780 part based on a lot of conversations that we had at EPA, the
1781 administrator herself had with representatives of industry
1782 and various NGO groups, and as I also mentioned in testimony,
1783 as we go forward and develop these action plans in the
1784 future, we will be having conversations, we will have public
1785 meetings, we will have input from industry and public health
1786 groups as well as States and others that are looking at this
1787 issue and have things to add to the conversation.

1788 Ms. {Castor.} Is there any disagreement that you all
1789 know of over the initial approach to focus on the highest
1790 risk? Does anyone disagree? And Mr. Owens, that is the
1791 EPA's initial approach is to focus on the highest-risk

1792 chemicals in our environment that have the greatest threat to
1793 the health of our families and children and our public? Is
1794 that the--

1795 Mr. {Owens.} That is correct.

1796 Ms. {Castor.} So no one disagrees with that approach?

1797 How do we--

1798 Mr. {Ditz.} Could I add to it, though?

1799 Ms. {Castor.} Yes, sir.

1800 Mr. {Ditz.} It is one question, what should EPA do now
1801 with the law we have got, and they might as well start kind
1802 of where the streetlight is on, you know, where they already
1803 have information about chemicals that are posing risk to
1804 humans, yes. On the legislative side, on fixing TSCA, it is
1805 also necessary that we fix the basic structure of this
1806 approach, which means information shouldn't be hidden under
1807 rocks or in the dark, it should be out in the open and that
1808 should be the responsibility of business. I think that is
1809 also necessary as well as starting with where we know the
1810 problems already lie.

1811 Ms. {Castor.} And then Dr. Sampson, how do we ensure
1812 that all of the great medical research that the taxpayers are
1813 paying for is incorporated into such a legislative process,
1814 for example, the study that you mentioned, the very broad-
1815 based, comprehensive study of pregnant women and children and

1816 following the health data for many years?

1817 Mr. {Sampson.} We actually think it could be used as a
1818 very good mechanism for both setting the priorities but also
1819 looking at priority chemicals in the population over time,
1820 and one of the advantages of seeing it in people, it actually
1821 is how you are exposed from all sources, be it food, water,
1822 air or whatever. So if it is getting into people and we are
1823 detecting it, we can basically look at priority chemicals if
1824 there are regulations that are enacted, we will see those
1825 levels drop, or if new chemicals are introduced, they could
1826 appear through biomonitoring.

1827 Ms. {Castor.} Mr. Owens, you will be actively looking
1828 for ways through the modernization of TSCA to incorporate all
1829 of the terrific medical research that is available?

1830 Mr. {Owens.} Absolutely. As I mentioned, we are
1831 already working closely with CDC as well as other federal
1832 agencies in looking at different substances and making sure
1833 that we are coordinating our activities as well and we have
1834 our own internal research group at our Office of Research and
1835 Development that are working on these issues as well.

1836 Ms. {Castor.} Thank you. I yield back.

1837 Mr. {Rush.} The Chair now recognizes the gentleman from
1838 Utah for 5 minutes.

1839 Mr. {Matheson.} Thank you, Mr. Chairman.

1840 Mr. Greggs and Ms. Bosley, is TSCA is reauthorized and
1841 reformed, how can Congress best balance necessary changes to
1842 the current program while still providing for appropriate
1843 cost-benefit analysis so that various players can make good
1844 decisions regarding which chemicals to use and not use?

1845 Ms. {Bosley.} I can say that a definition of their
1846 safety standard would be a good first place to start, also,
1847 prioritization of high-risk chemicals. I think that
1848 establishing a data set for different priorities of chemicals
1849 is very important and that data set should include that cost-
1850 benefit analysis.

1851 Mr. {Matheson.} Do you have anything to add to that?

1852 Mr. {Greggs.} You are asking me, sir?

1853 Mr. {Matheson.} Do you have anything to add to that?

1854 Mr. {Greggs.} Yes, the one thought I have on this is
1855 that, you know, you asked about risk-benefit. In current
1856 TSCA, I think it has been described in previous hearings
1857 where the safety determination is combined with risk-benefit
1858 analysis, and I think going forward one of the things that we
1859 really think is, is that chemicals ought to be looked at and
1860 determined whether or not they are safe for their intended
1861 uses and then separately risk management decisions made about
1862 how and when those--what kind of actions should be taken to
1863 make sure that those have been shown not to be safe can be

1864 taken.

1865 Mr. {Matheson.} Another question I would ask, and Dr.
1866 Sampson, if you can answer this first but others can chime in
1867 too, CDC currently runs the national biomonitoring program.
1868 It has produced a number of reports. Does the EPA or does
1869 the private sector have access to the data from these
1870 reports?

1871 Mr. {Sampson.} Absolutely. After we have finished our
1872 measurements, it goes back to the National Center for Health
1873 Statistics and they actually put it online so everybody has
1874 access to it, and then our scientists as well as other
1875 scientists can begin working on it. EPA as other agencies
1876 are using it actually incorporate our data very heavily into
1877 their report on the Nation in terms of chemical exposures.
1878 Other programs such as the Office of Smoking and Health use
1879 our data. We look for tobacco products in addition. But it
1880 is used quite extensively now in terms of--

1881 Mr. {Matheson.} Do you have suggestions for
1882 improvements that could take place with the program at the
1883 CDC?

1884 Mr. {Sampson.} In terms of an expansion, from what I
1885 understand today, if there was to be a large expansion of our
1886 present activities, first of all, I think the science of
1887 biomonitoring would have to be improved and increased.

1888 During the last decade instrumentation has come out that has
1889 just revolutionized our ability to measure chemicals in
1890 people and I think that will continue so that more chemicals
1891 can be measured in smaller and smaller amounts of blood. The
1892 amount of sample you get from a person is a very big deal.
1893 Getting more than a Vacutainer tube is a fairly big deal, so
1894 we have to do all of our measurements in very small amounts
1895 of bodily fluids. And then the second area is, if you are
1896 interested in any type of infrastructure outside of the
1897 existing ones, and the best one is the National Health and
1898 Nutrition Examination Survey, that would require an
1899 infrastructure to do that, and since it is human samples you
1900 have to go through institutional review boards and very
1901 detailed approval, so just saying we want to start looking at
1902 a new matrix--cord blood has been proposed--actually will
1903 have some hurdles and challenges associated with that.

1904 I think, as I mentioned a little while ago, our ability
1905 to measure chemicals is ahead of our ability to interpret
1906 those in terms of health effects so more research is needed,
1907 and finally, if it was to be greatly expanded, we have most
1908 of the scientists that are doing this in our current
1909 laboratory, and there will be a very large workforce demand,
1910 I think if you expand it hundreds more and thousands of
1911 chemicals, it would be a challenge just in terms of training

1912 a slightly larger workforce.

1913 Mr. {Matheson.} Thanks, Mr. Chairman. I yield back.

1914 Mr. {Rush.} The Chair now has a request, and without
1915 objection, Mr. Markey, the chairman of the Subcommittee on
1916 Energy and the Environment is recognized for 5 minutes for
1917 the purpose of questioning the panel. Mr. Markey.

1918 Mr. {Markey.} Thank you, Mr. Chairman, very much, and
1919 thank you for giving me this opportunity. Thank you for your
1920 leadership and focusing on these issues of risk posed by
1921 toxic substances in our environment.

1922 I would like to ask Mr. Ditz, Mr. Greggs and Ms. Bosley
1923 this question. Are there chemicals that you would identify
1924 that are already known to be so dangerous that they should be
1925 phased out or subject to other action to reduce human
1926 exposure immediately? Mr. Ditz?

1927 Mr. {Ditz.} Thank you, Congressman. It is possible
1928 that I partially answered this question earlier before you
1929 joined us, but the answer is yes, and the sort of colloquial
1930 phrase I use is the worst-of-the-worst chemicals, those which
1931 are by their very nature inclined to last in the environment
1932 for months or years.

1933 Mr. {Markey.} Could you name some, please?

1934 Mr. {Ditz.} Okay. Well, for example, brominated
1935 diphenol ethers. It doesn't exactly--it is not a household

1936 name but these are constituents that are added to plastic so
1937 they don't burst into flames. That is a very useful property
1938 but there are safer substances out there, and when there are
1939 such safer substances, it makes sense that we would not allow
1940 something which is inherently unsafe.

1941 Mr. {Markey.} Are there others that come to mind?

1942 Mr. {Ditz.} Well, I think there are a family of
1943 fluorinated compounds which are also almost infinitely
1944 persistent that last for a very long time in the environment.
1945 It has been the focus of some Congressional attention
1946 already. There are of course uses, not necessarily the full
1947 ban of a chemical, but uses of a chemical which might deserve
1948 to be phased out. I am thinking, of course, 20 years ago the
1949 attempted and failed restriction on forms of asbestos in
1950 certain products.

1951 Mr. {Markey.} Mr. Greggs, are there any that you would
1952 ban immediately, phase out immediately?

1953 Mr. {Greggs.} Thank you, Mr. Markey. I testified about
1954 prioritization. One of the things I talked about was a quick-
1955 start effort that we believe that EPA could quickly undertake
1956 to identify 50 to 100 chemicals that met certain criteria and
1957 that could quickly be moved into assessment and decisions
1958 where there are safety issues into risk management.

1959 Mr. {Markey.} Are there any that you have already

1960 concluded from previous studies that should be phased out
1961 immediately?

1962 Mr. {Greggs.} Sir, there are a number of chemicals, you
1963 know, that have been phased out out of a lot of uses--

1964 Mr. {Markey.} No, I mean any right now that not have
1965 been phased out. Can you just name a few that you think
1966 should be phased out?

1967 Mr. {Greggs.} No, I don't have any I would name but I
1968 think these are decisions really that should be made by EPA
1969 scientists looking at the data that is supplied by industry
1970 and other stakeholders.

1971 Mr. {Markey.} So you are saying there are not some that
1972 don't need additional study, that they all need additional
1973 study?

1974 Mr. {Greggs.} No, sir. You know, I think that there is
1975 substantial data that is available. We also understand
1976 through REACH, which Mr. Scalise asked about, there will be
1977 substantial additional data, as Dr. Ditz indicated.

1978 Mr. {Markey.} Well, let me go to you, Ms. Bosley. Any
1979 that you would phase out or subject to--

1980 Ms. {Bosley.} No, not at this point, not phase out. I
1981 would point to a chemical's use and its exposure criteria.
1982 For instance, if you were to take a chemical like phosgene,
1983 it is a pretty bad chemical that killed tens of thousands of

1984 people in World War I and II yet you couldn't make Crixivan,
1985 an AIDS drug, today or breast-cancer drugs today or frankly
1986 this tabletop without phosgene, and there has not been a
1987 phosgene death in the United States for 30 years.

1988 Mr. {Markey.} So let me ask the three of you yes or no,
1989 do you believe that the EPA should look at the chemicals that
1990 are known to cause health problems and at the chemicals that
1991 are already known to be found in humans immediately, yes or
1992 no?

1993 Mr. {Greggs.} Yes, sir, I testified to that.

1994 Mr. {Markey.} Ms. Bosley?

1995 Ms. {Bosley.} I think that those chemicals should be
1996 prioritized and EPA should take a closer look at them, yes.

1997 Mr. {Ditz.} Yes.

1998 Mr. {Markey.} And unlike many chemicals where one
1999 studies acute health impacts associated with high-dose
2000 exposure, there are disruptors that impact health after
2001 exposures to low doses over sustained periods of time. Can
2002 these disruptors be categorized using the same risk
2003 assessment as other toxic chemicals even though their
2004 characterizations are very different? Mr. Owens, can you
2005 answer that, please?

2006 Mr. {Owens.} Congressman, let me answer it this way. I
2007 think there are some differences there because of the issue

2008 related to low dosage. I think that is a very important
2009 thing for our agency to be looking at because there will be
2010 some chemicals, there are some chemicals that can have
2011 harmful effects in low dosage either because of the effect
2012 themselves or because they do bioaccumulate and have a
2013 cumulative effect when compared with other chemicals or other
2014 chemicals of the same type of grouping you can see not just
2015 linear but sometimes exponentially increases and effects and
2016 studies based on cumulative exposures, so that is one of the
2017 issues that we really have to take a look at.

2018 Mr. {Markey.} So do you believe that the EPA's
2019 endocrine disruptor screening program does need modernization
2020 like the rest of the EPA's toxic chemical safety authority
2021 does?

2022 Mr. {Owens.} Congressman, as you know, we finally got
2023 the first test orders issued and that program was mandated by
2024 Congress in 1996. Finally a few weeks ago in October we were
2025 able to get the first test orders. The assays were developed
2026 and released earlier this year. The first test orders went
2027 out in October. There is a lot of catching up to be done in
2028 that program and we are going to be working as hard as we
2029 can. Certainly Administrator Jackson has made that a
2030 priority for my office to get the endocrine disruptor
2031 screening program on track and move forward. So we will be

2032 looking very closely at the data that we receive from those
2033 test orders. They are focused right now on pesticides.
2034 There is a list of 67 pesticides that were identified and we
2035 will be investigating and reviewing the data, as I said, that
2036 we get in from the test orders that we have issued and that
2037 we will be issuing going forward to address those 67.

2038 Mr. {Markey.} Thank you very much. What about non-
2039 pesticides?

2040 Mr. {Owens.} Congressman, that is an issue that we are
2041 clearly looking very closely at as well. I know there is
2042 language in the health report from earlier this year talking
2043 about the need for us to look at non-pesticides. That is a
2044 topic of very serious conversation within the agency. We
2045 have to address what is on our screen first, which is the
2046 list of 67 pesticides, but clearly that is--there is a great
2047 deal of concern about the endocrine-disrupting impact of non-
2048 pesticide chemicals and we certainly want to work very
2049 closely with members of this committee and other groups that
2050 have expressed concern about those chemicals and talk about
2051 how we can go forward on it, so we are very much aware of the
2052 interest of the House in that.

2053 Mr. {Markey.} Well, the chairman is moving forward on
2054 the overhaul of TSCA and I think this non-pesticide issue is
2055 something that you should stay close to us on so that we can

2056 assure that we include everything that needs to be--

2057 Mr. {Rush.} The Chair will ask the witnesses if they
2058 could possibly stay for a second round of questioning. We
2059 will give each member 2 minutes for questioning. And the
2060 Chair recognizes himself for 2 minutes.

2061 The CDC has stated that, and I quote, ``The measurement
2062 of an environmental chemical in a person's blood or urine
2063 does not by itself mean the chemical caused the disease.''
2064 Dr. Sampson, the question is, can't biomonitoring evaluations
2065 be used to show a higher likelihood than not that a potential
2066 chemical is the cause of a certain disease? For example, a
2067 recent AMA Journal study tied higher blood BPA levels to
2068 cardiovascular diseases, diabetes and liver enzyme
2069 conditions, so the question again to you is, can't
2070 biomonitoring evaluations be used?

2071 Mr. {Sampson.} Mr. Chairman, that is a very excellent
2072 question. What we do--that publication came out of using our
2073 data which is collected on the HANES participants as well as
2074 medical information. As I explained, when people go through
2075 the survey, they actually do a complete physical. They
2076 collect 1,000 pieces of questionnaire information and then
2077 they donate blood and urine. Some of the other tests have to
2078 do with cardiovascular disease and diabetes and so forth, so
2079 investigators do have the ability to link our exposure data

2080 with disease type of data. Now, our ability to detect
2081 chemicals has exceeded the current ability to interpret it in
2082 those of those health effects so we are trying to work with
2083 other federal agencies like the National Institutes for
2084 Environmental Health Sciences and so forth to look at that
2085 problem more closely. The chemical you're referring to is
2086 bisphenol A and I believe NIEHS has just introduced some
2087 money from the stimulus package to look at more health effect
2088 studies associated with exposure to bisphenol A.

2089 Mr. {Rush.} Thank you. The Chair recognizes the
2090 ranking member.

2091 Mr. {Radanovich.} Thank you, Mr. Chairman.

2092 A question for Mr. Owens, if I may. I want to go back
2093 to the Montebello agreement and how the Administration plans
2094 to carry out the Montebello agreement without ChAMP. If you
2095 could respond rather quickly. I am sorry, I have only got 2
2096 minutes.

2097 Mr. {Owens.} Well, I think certainly if we get TSCA
2098 reform, we will be able to have a lot more data on those
2099 chemicals and to be able to address it, but in the interim we
2100 will be using the data we have. We will be asking
2101 continually for data from industry, but again, our ability to
2102 get that data is based on the willingness of industry to
2103 provide it, and some of them have not.

2104 Mr. {Radanovich.} Thank you.

2105 My last question is for Mr. Greggs and Ms. Bosley. Mr.
2106 Greggs, I appreciated your poster over there that advocated
2107 the risk-based prioritization matrix and having that risk-
2108 based approach in analyzing these 80,000 chemicals that are
2109 out there. Can you tell me--and Mr. Ditz had advocated three
2110 priorities: identifying the worst of the worst, going up
2111 against a specific standard and industry providing a lot of
2112 the research and information, if I got that right. But how
2113 would this type of requirement without making it a risk-based
2114 approach affect your industries, and, you know, specifically
2115 to the cost of the regulations potentially that could be
2116 imposed?

2117 Mr. {Greggs.} I think what I heard Dr. Ditz talk about,
2118 I heard him talk about the need to have hazard and exposure
2119 data and some concerns that he expressed about the
2120 unavailability of some of that data. I think, you know, sort
2121 of two thoughts on this very quickly. One is that under
2122 REACH, over 90 percent of the chemicals reported to EPA just
2123 a couple years ago as being in commerce in the United States
2124 are pre-registered under REACH and most of that data is going
2125 to be submitted next year as part of the REACH deadlines. So
2126 on the hazard data, I think that there is going to be a
2127 resource there and I think EPA and others ought to be looking

2128 for how can we make that data available in the United States.

2129 The second part is on the use and exposure data. Again,
2130 EPA started a system for collecting use and exposure data in
2131 2006. In doing that, they asked the chemical manufacturers
2132 about where were chemicals being used. Of course, some of
2133 that information is known to the manufacturers but not all of
2134 that information and so the information that EPA presently
2135 has is incomplete. What CSPA, GMA and SDA have talked about
2136 is an idea for users providing chemical use information as
2137 part of the periodic inventory update that EPA does. That
2138 way we will have more complete use and exposure data to be
2139 able to both do prioritization but as well to target the
2140 assessments that need to be done on chemicals.

2141 Mr. {Radanovich.} Ms. Bosley?

2142 Ms. {Bosley.} As I mentioned, I think that EPA's
2143 ability to ask for data from industry should be enhanced.
2144 The data that industry has isn't hidden under any rocks. It
2145 informs everything that industry does from their material
2146 safety data sheets to their safety and handling information
2147 to general public knowledge, and for EPA to be able to ask
2148 for that data should be enhanced. I also agree that EPA has
2149 exposure data based on the 2005 inventory update and that
2150 exposure data should be made public. I don't think the IUR
2151 is yet public in 2005.

2152 Mr. {Radanovich.} Thank you, and thank you, Mr.
2153 Chairman.

2154 Mr. {Rush.} By unanimous consent, the gentleman from
2155 Massachusetts is recognized for 2 minutes.

2156 Mr. {Markey.} Thank you, Mr. Chairman, very much.

2157 Ms. Bosley, your testimony stated that we should embrace
2158 TSCA mechanisms that have worked well like the New Chemicals
2159 Program where EPA has successfully reviewed some 35,000 new
2160 chemicals since 1979 without impeding innovation. But
2161 according to EPA, 67 percent of pre-manufacture notices
2162 received by EPA under this program contain no hazard data on
2163 health or the environment and 85 percent contain no health
2164 data at all. If the goal is to determine the health and
2165 environment impacts of a chemical, how can this program
2166 possibly be characterized as successful if the data isn't
2167 even provided to make that determination?

2168 Ms. {Bosley.} I can say that EPA has methods they have
2169 pioneered, the notion of structure activity relationships
2170 such that if data is not provided, they look at the chemical
2171 and take the most conservative approach and they decide their
2172 regulation of that chemical based on that conservative
2173 approach along with the pre-manufacture notice process always
2174 is needed, process information, identification information--

2175 Mr. {Markey.} But how do they make--

2176 Ms. {Bosley.} --exposure and use information.

2177 Mr. {Markey.} How do they make a decision if there is
2178 no health data or environmental data? How do they make a
2179 decision?

2180 Ms. {Bosley.} EPA has a tremendous amount of health and
2181 environmental information and they use that structure
2182 activity relationship--

2183 Mr. {Markey.} But if it is not provided by the
2184 corporation to them, how can they possibly be flying blind?
2185 What is the empirical basis that is used to make a decision
2186 if it is not even part of their process?

2187 Ms. {Bosley.} They look at similar chemicals that have
2188 health and safety data available and that is the structure
2189 activity program that EPA has pioneered.

2190 Mr. {Markey.} But then it sounds like EPA becomes kind
2191 of a chemical Carnac where they hold up the envelope, you
2192 know, without knowing the answer. They are somehow supposed
2193 to know what the answer is inside without ever having
2194 reviewed it, then they give the answer, huh? So that can't
2195 be a process that really can work for the long term.

2196 Ms. {Bosley.} Well, I think it has worked successfully
2197 over the last 30 years.

2198 Mr. {Markey.} Well, I think that is debatable. If they
2199 didn't have the health and environment data, then--Mr. Owens,

2200 would you like to briefly respond to that?

2201 Mr. {Owens.} Yes. Thank you, Congressman. I may have
2202 said this when you were out of the room but one issue we do
2203 have is the issue of confidential business information and
2204 the claiming of certain types of data, not necessarily health
2205 and safety data. So we get data that is claimed as CBI we
2206 have but we can't make public and there is a resource issue
2207 here in terms of our ability to review all the information
2208 that is coming in. We have a 90-day window when data comes
2209 in to EPA to make a determination under the new chemical
2210 program that we have and if the data isn't provided, we have
2211 to go back and show a reason why we think that data needs to
2212 be provided and even then there is no requirement that it
2213 actually be generated or created in the first instance and so
2214 there are a number of handicaps and obstacles that we faced,
2215 and I think while it feels nice sitting over here as a new
2216 person at EPA to hear the agency being praised by someone on
2217 the outside, you know, it just ain't so. That is really not
2218 what reality is in terms of what the agency has been able to
2219 do over the years.

2220 Mr. {Markey.} I thank you, Mr. Owens. I wrote to OMB
2221 to express my concerns that their approval for your endocrine
2222 disruptor rules appear to be limiting your ability to require
2223 the testing needed to determine the health risks of endocrine

2224 disruptors. I just received a response to my letter from OMB
2225 Director Peter Orszag last night which indicated that OMB was
2226 not in any way seeking to limit EPA's ability to get the data
2227 it needed to determine the health effects of potential
2228 endocrine disruptors. Are you confident that EPA will have
2229 the ability to get the data needed in this area?

2230 Mr. {Owens.} Absolutely, Congressman. Administrator
2231 Cass Sunstein, who is the head of the Office of Information
2232 and Regulatory Affairs at OMB, and I have had a lot of
2233 conversations about this and it is certainly my understanding
2234 based on our conversations with Mr. Sunstein that OMB's terms
2235 of clearance for the EDSP information collection request in
2236 no way limits our discretion in any way through the program
2237 so it sounds as though the letter you received is consistent
2238 with that.

2239 Mr. {Markey.} Thank you, Mr. Chairman.

2240 Mr. {Rush.} The Chair thanks the gentleman. The Chair
2241 thanks all of the witnesses for the time that you have so
2242 graciously shared with us and I want to commend you for your
2243 testimony. It has been very enlightening and illuminating
2244 for us, and again, the Chair thanks the witnesses for
2245 participating.

2246 The Chair has a unanimous-consent request with respect
2247 to two items that were submitted to the subcommittee for

2248 entry into the record of today's hearing. One is the
2249 testimony from the Humane Society, the Physicians Committee
2250 for Responsible Medicine, and the People for the Ethical
2251 Treatment of Animals, and the second UC request is written
2252 testimony from the National Petrochemical and Refiners
2253 Association. Hearing no objection, the unanimous consent is
2254 approved.

2255 [The information follows:]

2256 ***** COMMITTEE INSERT *****

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2257 Mr. {Rush.} Now the Chair must bring this hearing to a
2258 conclusion. The Subcommittee is hereby adjourned.
2259 [Whereupon, at 1:15 p.m., the Subcommittee was
2260 adjourned.]