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MEMORANDUM

March 2, 2010

To: Subcommittee on Commerce, Trade, and Consumer Protection Members and Staff

Fr: Subcommittee on Commerce, Trade, and Consumer Protection Staff

Re: Hearing on “TSCA and Persistent, Bioaccumulative, and Toxic Chemicals: Examining Domestic and International Actions”

On March 4, 2010, at 10:00 a.m. in room 2322 of the Rayburn House Office Building, the Commerce, Trade, and Consumer Protection Subcommittee will hold a hearing entitled, “TSCA and Persistent, Bioaccumulative, and Toxic Chemicals: Examining Domestic and International Actions.” This hearing will examine the efforts taken to protect health and the environment from the subset of chemicals that meet the criteria for being labeled as persistent, bioaccumulative, and toxic (PBT), how the Toxic Substances Control Act (TSCA)¹ is currently being used to manage these chemicals, and how the TSCA process might be improved.

I. BACKGROUND

TSCA was enacted in 1976 to address the public health risk of chemicals used in commerce. TSCA requires the Environmental Protection Agency (EPA) to analyze new chemicals for their safety, and authorizes EPA to restrict or ban the use of new or existing chemicals that pose an “unreasonable risk” to public health or the environment. The Subcommittee held two hearings on TSCA in 2009,² with the latter focusing on prioritizing chemical substances for safety determination.

¹ 15 U.S.C. § 2601 *et seq.*

² Subcommittee on Commerce, Trade, and Consumer Protection, *Hearing on Revisiting the Toxic Substances Control Act of 1976*, 111th Cong. (Feb. 26, 2009); Subcommittee on Commerce, Trade, and Consumer Protection, *Hearing on Prioritizing Chemicals for Safety Determination*, 111th Cong. (Nov. 17, 2009).

Chemicals with certain properties can be particularly problematic for health and the environment. Persistent chemicals are highly resistant to degradation in the environment and can spread across the globe. Bioaccumulative chemicals can build up in the food chain and in the human body. Toxic chemicals cause adverse health effects in exposed individuals. Chemicals with all three characteristics (PBTs) are considered to be particularly harmful. Exposure to PBTs have been associated with cancer, neurotoxicity, reproductive and developmental toxicity, and genetic mutations. Even with controls to restrict or eliminate their use, they can remain unchanged as long-lasting contaminants in the global environment.

A recent study estimated there are 610 persistent and bioaccumulative chemicals currently used in commerce.³ Of these, many are also known to be toxic. Examples of PBTs include: chemicals such as polychlorinated biphenyls (PCBs), certain brominated flame retardants, and certain perfluorinated compounds; metals such as lead, mercury and cadmium; and fragrances such as musk xylene. In addition, many pesticides are PBTs, though pesticides are outside the scope of TSCA because they are regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

II. DOMESTIC ACTIONS

1. Federal Actions

In the late 1990s, the EPA initiated actions to consider PBTs uniquely from other toxic substances. In 1998, EPA published a draft strategy “to further reduce risks to human health and the environment from existing and future exposure to priority persistent, bioaccumulative, and toxic (PBT) pollutants.”⁴ In 1999, EPA lowered the reporting thresholds for specific PBTs⁵ and provided guidance on reporting these chemicals in 2001.⁶ Also in 1999, EPA published a policy statement that created a PBT category for new chemical substances under TSCA Section 5 pre-

³ Howard PH, Muir DCG. *Identifying New Persistent and Bioaccumulative Organics Among Chemicals in Commerce*. Environmental Science and Technology (Jan. 22, 2010).

⁴ Environmental Protection Agency, *Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Chemicals*, 63 Fed. Reg. 63926 (Nov. 17, 1998) (Notice of Availability and Solicitation of Public Comment).

⁵ Certain chemicals are reported in the Toxic Release Inventory as authorized under the Superfund Amendments and Reauthorization Act. Emergency Planning and Community Right-to-Know Act of 1986, Title III of the Superfund Amendments and Reauthorization Act, Pub. L. No. 99-499.

⁶ Environmental Protection Agency, *Emergency Planning and Community Right-To-Know Act – Section 313: Guidance for Reporting Toxic Chemicals: Pesticides and Other Persistent Bioaccumulative Toxic (PBT) Chemicals* (Aug. 2001).

manufacture notice (PMN) provisions.⁷ In 2002, EPA finalized a tool to predict whether a chemical may meet criteria for being labeled as a PBT, even when data is limited.⁸

EPA has begun efforts to set baseline contamination levels to be able to analyze whether actions have been effective in reducing PBTs in the environment. In 2009, EPA published the *National Lake Fish Tissue Study* examining 268 PBTs, demonstrating for the first time that certain PBTs are common water pollutants in the continental U.S.⁹ In particular, mercury and PCBs were detected in all fish samples. PBTs account for 97% of all fish consumption advisories in 2008.¹⁰ Future studies will need to determine trends in contamination levels in U.S. lake fish.

Levels of environmental chemicals including some PBTs are measured in humans and analyzed by the Centers for Disease Control and Prevention.¹¹ In their fourth report released in December 2009, PFCs and PBDEs were measured for the first time, and have been found to be “widespread” in humans. Comparing these levels to that found in other countries, U.S. levels tend to be higher.

In September 2009, EPA Administrator Jackson announced a new plan for improving chemical management under current law,¹² which was followed by a December 2009 announcement of action plans on four groups of chemicals. Three of the four action plans are for PBTs: long-chain perfluorinated chemicals (PFCs) used in stain-resistant or non-stick products, polybromodiphenyl ethers (PBDEs) used as flame retardants, and short-chain chlorinated paraffins (SCCP) and other chlorinated paraffins used in metalwork, as plasticizers, and as flame retardants.¹³

2. State Government Actions

⁷ Environmental Protection Agency, *Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances*, 64 Fed. Reg. 60194 (Nov. 4, 1999) (policy statement).

⁸ Environmental Protection Agency, *PBT Profiler* (online at www.epa.gov/oppt/sf/tools/pbtprofiler.htm) (accessed Feb. 3, 2010).

⁹ Environmental Protection Agency, *National Lake Fish Tissue Study* (Sept. 2009) (online at www.epa.gov/waterscience/fish/study).

¹⁰ Environmental Protection Agency, *2008 Biennial National Listing of Fish Advisories* (Sept. 2009) (online at www.epa.gov/waterscience/fish/advisories/tech2008.pdf).

¹¹ Centers for Disease Control and Prevention, *Fourth National Report on Human Exposure to Environmental Chemicals* (Dec. 2009).

¹² Environmental Protection Agency, *Enhancing Existing Chemical Management Program* (online at www.epa.gov/oppt/existingchemicals/pubs/enhanchems.html) (accessed Nov. 13, 2009).

¹³ Environmental Protection Agency, *Existing Chemicals Action Plans* (online at www.epa.gov/oppt/existingchemicals/pubs/ecactionpln.html) (accessed Jan. 25, 2010).

Washington State is currently the only state in the nation that has a policy to reduce use, releases, and exposure to PBTs within its borders.¹⁴ This PBT Rule, adopted in 2006, establishes criteria to identify and list PBTs, and establishes criteria for selecting PBTs for action to protect health and the environment. Many other States, including Maine, Maryland, Massachusetts, Pennsylvania, South Carolina, and Virginia, have adopted chemical-specific legislation or policies, including on specific PBTs.¹⁵

III. INTERNATIONAL ACTIONS

Due to the long-range transportation of PBTs, there is general acceptance that there must be a collective international effort to manage their use and release into the environment. There are three relevant international conventions regarding PBTs. The 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention) provided a commitment to a shared responsibility for protecting health and the environment in international trade and information exchange of certain hazardous chemicals.¹⁶ In 1998, the Convention on Long-Range Transboundary Air Pollutants (LRTAP)¹⁷ adopted a POPs protocol to provide a reduction or elimination of production and use of certain PBTs.¹⁸ The 2001 Stockholm Convention for Persistent Organic Pollutants (POPs Convention) provided a shared commitment to reduce or eliminate releases of certain PBTs from intentional and nonintentional sources.¹⁹ The LRTAP POPs Protocol entered into force in 2003, and the PIC and POPs Conventions entered into force in 2004. The United States has signed the PIC Convention, the LRTAP POPs Protocol, and the POPs Convention, but Congress has not successfully passed legislation to implement them.²⁰ Recently, a number of organizations have again called on the United States to implement these treaties.²¹

¹⁴ Washington State, *Chapter 173-333 WAC, Persistent Bioaccumulative Toxins* (Jan. 13, 2006) (online at www.ecy.wa.gov/biblio/wac173333.html).

¹⁵ Environmental Council of the States, *State Experiences with Emerging Contaminants: Recommendations for Federal Action* (Jan. 2010) (online at www.ecos.org/files/3959_file_January_2010_ECOS_Green_Report.pdf).

¹⁶ Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Sept. 10, 1998). See www.pic.int.

¹⁷ Geneva Convention on Long-Range Transboundary Air Pollutants (LRTAP) (Nov. 1979).

¹⁸ LRTAP Aarhus Protocol on Persistent Organic Pollutants (June 24, 1998).

¹⁹ Stockholm Convention on Persistent Organic Pollutants (May 22, 2001).

²⁰ S. 519; H.R. 3849, 109th Cong. (2006); H.R. 4591, 109th Cong. (2006); H.R. 4800, 109th Cong. (2006); H.R. 6421, 109th Cong. (2006); S. 2042, 109th Cong. (2005); S. 1486, 108th Cong. (2004); H.R. 4935, 107th Cong. (2002); S. 2118, 107th Cong. (2002); S. 2307, 107th Cong. (2002).

²¹ See Letter from Daryl Ditz, et al. to Secretary Hillary Rodham Clinton and Administrator Lisa P. Jackson (Dec. 16, 2009) (online at www.ciel.org/Publications/TSCA_POps_16Dec09.pdf); The National Congress of American

In addition, a more regional international agreement between the US and Canada is the 1997 Great Lakes Binational Toxics Strategy developed to eliminate PBTs in the Great Lakes region.²² The 2009 *State of the Great Lakes* report describes recent trends for many indicators, including fish concentrations of PBTs.²³ This report shows a decrease in certain contaminants such as PCBs, but no improvement in other contaminants such as mercury. The authors of this report highlight the need to track concentrations for emerging concerns such as PFCs and PBDEs. The Obama Administration recently released a 5-year *Great Lakes Restoration Initiative Action Plan* highlighting a concern for toxic substances, and PBTs in particular, with the goal to virtually eliminate “the release of any or all persistent toxic substances (PTS) in to the Great Lakes basin ecosystem.”²⁴

IV. WITNESSES

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Indians, *Resolution #PSP-09-021: Protection of the Health and Human Rights of Present and Future Generations through Ratification and Implementation by the United States of the Stockholm Convention on Persistent Organic Pollutants* (2009) (online at www.ncai.org/fileadmin/resolutions/PSP-09-021_final.pdf); Letter from Andrea Kidd Taylor, Member, American Public Health Association Executive Board, to Congressman Waxman (Feb. 18, 2010); Letter from Safer Chemicals Health Families to Congressman Bobby Rush (Feb. 23, 2010); Letter from Pesticide Action Network North America to Congressman Bobby Rush (Feb. 24, 2010).

²² Great Lakes Binational Toxics Strategy (online at www.epa.gov/glnpo/bns/index.html) (accessed Feb. 1, 2010).

²³ Environment Canada and United States Environmental Protection Agency, *State of the Great Lakes 2009* (online at binational.net/solec/sogl2009/SOGL_2009_en.pdf).

²⁴ *Great Lakes Restoration Initiative Action Plan, FY 2010–FY 2014* (Feb. 21, 2010).

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