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1 {York Stenographic Services, Inc.}  
2 HIF063.170  
3 HEARING ON ``THE TOXIC SUBSTANCES CONTROL ACT AND PERSISTENT,  
4 BIOACCUMULATIVE, AND TOXIC CHEMICALS: EXAMINING DOMESTIC AND  
5 INTERNATIONAL ACTIONS.``  
6 THURSDAY, MARCH 4, 2010  
7 House of Representatives,  
8 Subcommittee on Commerce, Trade, and Consumer Protection  
9 Committee on Energy and Commerce  
10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 10:16 a.m.,  
12 in Room 2322 of the Rayburn House Office Building, Hon. Bobby  
13 L. Rush [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Rush, Schakowsky,  
15 Sarbanes, Sutton, Green, Barrow, DeGette, Dingell, Whitfield,  
16 Radanovich, Pitts, Gingrey, Scalise, and Barton (ex officio).

17 Staff present: Michelle Ash, Chief Counsel; Rebecca  
18 Brown, EPA Fellow; Will Cusey, Special Assistant; Daniel

19 Hekier, Intern; Angelle Kwemo, Counsel; Timothy Robinson,  
20 Counsel; Lindsay Vidal, Special Assistant; Jerry Couri,  
21 Minority Senior Professional Staff; Sam Costello, Minority  
22 Legislative Analyst; Shannon Weinberg, Minority Counsel;  
23 Brian McCullough, Minority Senior Professional Staff; Robert  
24 Frisby, Minority FTC Detailee; and Will Carty, Minority  
25 Professional Staff.

|

26           Mr. {Rush.} The hearing is called to order. This  
27 hearing is called for the purpose of discussing the matter of  
28 TSCA and the hearing is entitled the Toxic Substances Control  
29 Act and Persistent, Bio-Accumulative, and Toxic Chemicals:  
30 Examining Domestic and International Actions, and the chair  
31 recognizes himself for 5 minutes.

32           I want to welcome all of you who are here this morning  
33 to participate in today's hearing on the Toxic Substances  
34 Control Act and specific efforts that have been, or need to  
35 be, taken to protect public health, and the environment, from  
36 a diverse array of toxic substances.

37           Our focus today is on a special group of chemicals known  
38 as PBTs that pose unique risks to human health and  
39 environment safety. Even at a very low exposure and  
40 concentration levels in our communities, our homes, our  
41 workplaces and the environment, PBTs have been linked to  
42 adverse health effects in humans and in animals. Some of the  
43 effects include cancers, and some include genetic mutations,  
44 and some include the disruption of normal biological,  
45 neurological and hormonal functions of our bodies.

46           Examples of commonly known PBTs include unwanted wastes  
47 like mercury and dioxins. The list also includes pesticides  
48 like DDT and HCB. DDT, as most of you know, is a well-known

49 synthetic pesticide. Also included in this list of potential  
50 toxins is HCB or hexachlorobenzene and other industrial  
51 chemicals, such as PCBs and heavy metal including cadmium,  
52 and mercury and lead.

53 The way I understand PBTs is to think of them in the  
54 following way, and generally speaking the P, or persistence,  
55 relates to environmental safety. Persistent pollutants or  
56 toxins are not biodegradable. That means that these  
57 chemicals do not break down easily in the environment. You  
58 can think of them in the way you think of--I like to think of  
59 them as unwelcome house guests who don't know when it is time  
60 to leave.

61 The B stands for bioaccumulative or bioaccumulation and  
62 it relates to human health and to the environment. Following  
63 their release into the environment, some of these substances  
64 concentrate in rising proportions in soils, sediments, water  
65 and in the air. Over time, these concentration levels rise  
66 continually within, and to the top of, the human food chain.

67 And the T, which stands for toxic or toxins, relates to  
68 human health. Toxic substances lead to adverse health  
69 effects, such as the ones I described earlier.

70 What is also important to remember is that these are not  
71 mutually exclusive categories. While it can be presumed that  
72 a chemical substance which displays all three characteristics

73 is especially harmful, a chemical substance or a mixture can  
74 display just one of the three characteristics, that is, it  
75 can be persistent, bioaccumulative or toxic to human health.  
76 These substances are capable of traveling great distances on  
77 air or in oceanic currents.

78 Last year, I had the honor of receiving a delegation of  
79 indigenous peoples from the Savoonga and Gambell nations.  
80 These representatives were from two member tribes of the  
81 National Congress of American Indians. They told my staff of  
82 serious public health issues they are experiencing as a  
83 result of pollutants, particularly legacy chemicals such as  
84 PBDEs [polybromodiphenyl ethers] and PFCs [perflourinated  
85 compounds], that have blown and crested onto St. John's  
86 Island.

87 At our last hearing on TSCA in November, 2009, we  
88 discussed the need for including a prioritizing scheme in our  
89 soon-to-be-introduced bill, which will make critical reforms  
90 to the existing 33-year-old statute. Under this scheme, the  
91 Environmental Protection Agency's chemical risk and safety  
92 assessment responsibilities would be radically streamlined.  
93 With this new authority, the EPA will be able to take much  
94 swifter action to reduce the volume of especially threatening  
95 substances that are already in the commercial stream, that  
96 are in our bodies, and that are in our food and water

97 sources.

98           I am pleased to welcome all six of our witnesses to this  
99 subcommittee this morning. The common thread through all of  
100 their testimonies is, obviously, PBTs. Today, each one of  
101 them will talk about the PBT problem and how to go about  
102 addressing it from their perspectives as government  
103 regulators, policy makers, public interest and health  
104 advocates, and from the perspective of the industry. Each of  
105 these witnesses is prepared to testify and answer questions  
106 about PTC regulation and remediation by assessing the  
107 regulatory lay of the land, and meaning that the State and  
108 Federal levels are of concern to them and, of course, the  
109 impact of these chemicals on our planet. We have got just  
110 this one planet here and we got to be concerned about it, and  
111 we got to protect it, and we got to make sure that it will be  
112 around for a long, long, long time. It is a gift to us and  
113 we have got our responsibility to be able to pass it on a  
114 healthy path to generations to come.

115           And I want to thank you and I yield back the balance of  
116 my time.

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

118 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
119 [The information follows:]

120 \*\*\*\*\* INSERT 1 \*\*\*\*\*

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121           Mr. {Rush.}   And now I will recognize the ranking member  
122 from this subcommittee, my friend, the gentleman from  
123 Kentucky, Mr. Whitfield, for 5 minutes.

124           Mr. {Whitfield.}   Chairman Rush, thank you very much for  
125 holding this hearing on the Toxic Substances Control Act.

126           Today we will explore what many believe are the most  
127 generous chemicals, PBTs.  These are chemicals and substances  
128 that are long-lasting and can build up in the food chain to  
129 levels that present threats to humans and the environment.  
130 We must take steps, obviously, to ensure Americans and the  
131 environment are as safe from these hazardous chemicals as  
132 possible but I also firmly believe that high-quality science,  
133 that is science that is measurable, reliable, relevant and  
134 that can be reproduced should lead the way for whatever  
135 reforms this Congress makes to current law.

136           Mr. Chairman, I understand that at some point it is your  
137 intention to move legislation to reform TSCA.  I am pleased  
138 that you are going to do that and I hope that we on this side  
139 of the aisle have an opportunity to work with you and your  
140 staff as you write this legislation.

141           With that said, it is my hope that any action we do take  
142 does not have adverse consequences similar to those that the  
143 toy bill has had.  We need to recognize the nuances of the

144 science and give importance to exposure and risk data, not  
145 just hazards.

146         When this committee applied a precautionary ethos to the  
147 Consumer Product Safety Improvement Act, we closed down many  
148 small businesses because they simply cannot meet the  
149 requirements that we insisted upon. And I might also mention  
150 that in an op-ed piece in the Wall Street Journal this past  
151 Christmas season, a former colleague of ours now a  
152 commissioner at the CPSC, Consumer Protection, said that the  
153 new law reduced the Consumer Product Safety Commission's  
154 longstanding discretion to act in response to genuine risks,  
155 substituting instead the rigid broad brush and unscientific  
156 judgment of Congress. As we have seen, good intentions do  
157 not always lead to good results and I will simply urge that  
158 we continue to heed the lessons learned from the particular  
159 law.

160         I do look forward to hearing today from our witnesses,  
161 all of who are experts in their field, as we try to delineate  
162 between organic and inorganic PBTs, as we look at how  
163 widespread and effective are the States that are working in  
164 this area. And then, of course, I think it is imperative  
165 that we also explore our international leadership and the  
166 fact that a number of important treaties that we are  
167 signatories have not been affirmed or confirmed by the U.S.

168 Senate.

169           Mr. Chairman, while it has been over 3 decades since  
170 this law has been reformed, I again would like to stress the  
171 importance that we examine the issues carefully before we  
172 make sweeping changes that could adversely impact commerce,  
173 innovation and, of course, public and environmental health.  
174 We approach this subject with the very best of intentions and  
175 particularly in today's economic downturn I think that it is  
176 particularly important that we be mindful of the impact that  
177 any actions we may take on the job market.

178           And I yield back the balance of my time. Thank you.

179           [The prepared statement of Mr. Whitfield follows:]

180 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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181           Mr. {Rush.} The chair now recognizes my friend, my  
182 colleague from Illinois, the vice chairman of the  
183 subcommittee, Ms. Schakowsky for 2 minutes for the purposes  
184 of opening statements.

185           Ms. {Schakowsky.} Thank you, Mr. Chairman, for holding  
186 this important hearing.

187           This is the third we have held in the 111th Congress on  
188 the Toxic Substances Control Act and I look forward to  
189 working with you and Chairman Waxman on reforming the law so  
190 that it protects our community from harmful products, from  
191 harmful pollutants. When Congress passed TSCA, it's  
192 intention was to give EPA the tools it needed to protect the  
193 public from exposure to toxic chemicals that cause serious  
194 harm, however, more than 30 years later, as has already been  
195 stated, the scientific evidence is overwhelming that  
196 chemicals continue to persist in our environment, are a  
197 significant contributor to the problems of many diseases.  
198 Leukemia, brain cancer, other childhood cancers have  
199 increased by 20 percent since TSCA became law. We know for  
200 certain that exposure to substances like asbestos and mercury  
201 and many others pose lethal or catastrophic results. What  
202 these startling facts tell us is that TSCA in its current  
203 form is completely incapable of protecting the public and

204 that it is imperative for Congress to amend the law so that  
205 it can safeguard the American people from exposure to lethal  
206 chemicals.

207       Today we hear from our witnesses about a specific subset  
208 of chemicals that meet the criteria for being labeled as  
209 persistent, bioaccumulative and toxic, PBTs, and I appreciate  
210 them. I appreciate our witnesses for being here today to  
211 shed light on these especially devastating chemicals and,  
212 again, Mr. Chairman, I thank you for holding the hearing.

213       And I yield back the balance of my time.

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

215 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
216 Mr. {Rush.} The chair now recognizes the ranking member  
217 of the full committee and the gentleman from Texas, Mr.  
218 Barton, for 5 minutes.

219 Mr. {Barton.} We thank you, Chairman Rush.

220 Before I give my opening statement, I want to say some  
221 words about our newest ranking member of this subcommittee,  
222 my good friend from Kentucky, Mr. Whitfield. I specifically  
223 asked him to take over for Congressman Radanovich because of  
224 Mr. Radanovich's situation with the death of his wife and the  
225 requirements that he take care of his young son. He didn't  
226 have the capability or the time to give the ranking  
227 membership his full attention and I understand that.

228 I specifically asked Mr. Whitfield to take on the duties  
229 of this subcommittee's ranking membership because it is my  
230 expectation, Mr. Chairman, that at some point in time you and  
231 Chairman Waxman intend to move legislation reforming TSCA,  
232 and I wanted my very best, senior, experienced person at the  
233 helm and that is Ed Whitfield. He has worked in both the  
234 majority and the minority on this subcommittee and he knows  
235 the issues well. He knows also the personalities well and he  
236 has the confidence of both sides of the aisle so it was not  
237 serendipity that Ed Whitfield got asked to take this ranking  
238 membership and I think it speaks to his capabilities that he

239 has already hit the ground running.

240 I might also say, Mr. Chairman, that this is an  
241 important hearing and I think if you just look out in the  
242 audience you see former general counsels for the committee,  
243 and chiefs of staff for the committee and they don't come  
244 cheap, Mr. Chairman. They are here because this is a big  
245 deal and it is an important deal and it speaks to your  
246 leadership that you are taking this complex subject.

247 On the issue at hand, we understand that PBTs are  
248 extremely toxic and can be hazardous. We understand that  
249 they need to be regulated closely and monitored continuously.

250 We do have a witness from the Pellston Working Group  
251 here that has done some groundbreaking research and if their  
252 research is correct, Mr. Chairman, there is a possibility  
253 that we can adopt a more flexible regulatory approach based  
254 on not only the definition of what is hazardous but what the  
255 risk is of that hazard. So I am looking forward to their  
256 testimony, plus obviously the testimony of the other  
257 witnesses here.

258 Congress does not normally do complex, technical issues  
259 well. As Mr. Whitfield has pointed out, in the Consumer  
260 Protection Act reauthorization last year, I don't think it  
261 was intentional but we adopted a regulatory approach for lead  
262 which is basically zero tolerance and because of that there

263 are many products that are no longer on the marketplace today  
264 that really didn't have any potential harm to the population.  
265 So in this case, I hope that we do listen to our panels and  
266 we do work together in a bipartisan fashion to move a bill if  
267 that is the wish of the chairman and yourself, Mr. Chairman  
268 at the subcommittee level, that encompasses the latest  
269 science, the latest data and so that we get this one right.

270 And with that, Mr. Chairman, I yield back.

271 [The prepared statement of Mr. Barton follows:]

272 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
273 Mr. {Rush.} The chair thanks the ranking member.

274 The chair is proud now to introduce the gentleman from  
275 Michigan, the chairman emeritus for the entire committee, who  
276 has provided leadership for this committee and on this  
277 particular issue for many years, and he should have been  
278 introduced earlier but somehow the chairman did not see him  
279 over there which is attributed to my bad eyesight. And so  
280 now the chair recognizes Mr. Dingell for 5 minutes for  
281 opening statements.

282 Mr. {Dingell.} Thank you, Mr. Chairman.

283 First, I want to express my gratitude to you for your  
284 kind words and second, I would like to observe this meeting  
285 and this hearing as very, very important and useful. And I  
286 know under your leadership, we will begin a process of  
287 reviewing carefully TSCA of what it is doing, what it is not  
288 doing, how the changes of technology and other things over  
289 the past years, some 30 of which have passed since we have  
290 done this legislation in the first place, and how those  
291 things have changed the circumstances. We are also going to  
292 need to know what changes we have to make in the legislation  
293 and it is my hope that these things will be done carefully  
294 under your leadership, and I know that you will do this  
295 wisely and I think that the information to be achieved will

296 be very valuable.

297           Mr. Chairman, with that I ask unanimous consent to  
298 revise and extend my remarks and I thank you for your  
299 courtesy.

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

301 \*\*\*\*\* INSERT 10 \*\*\*\*\*

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302           Mr. {Rush.} The chair now recognizes the gentleman from  
303 Pennsylvania, Mr. Pitts, for 2 minutes.

304           Mr. {Pitts.} Thank you, Mr. Chairman. Thank you for  
305 holding this important hearing on the Toxic Substance Control  
306 Act and the subset of chemicals that meet the criteria for  
307 being labeled as persistent, bioaccumulative and toxic.

308           PBTs are considered to be particularly harmful because  
309 they are long-lasting chemical substances and mixtures that  
310 can build up in the food chain to levels that are harmful to  
311 human and ecosystem health. PBTs can transfer easily and  
312 linger for a long time in people and the environment, and  
313 they are associated with adverse human health effects.

314           We should take this subject very seriously. None of us  
315 want these substances negatively impacting humans or the  
316 environment however we must prudently go about regulating  
317 these chemicals. There are some that argue that the  
318 appearance of a PBT in the environment is not enough to  
319 warrant regulation but rather body or tissue residues showing  
320 a direct causal link to adverse responses are necessary to  
321 justify regulatory management.

322           Additionally, some experts make a case that regulatory  
323 action should be based on complete information in order to  
324 avoid negative, unintended consequences. For example, PBT

325 screening criteria assesses only hazard and not risk.  
326 Something may be hazardous and not pose a risk if its  
327 exposure is controlled and hazard assessment only provides  
328 information on the properties of the substance not the  
329 likelihood of the facts. This is comparable to problems that  
330 have resulted from taking a similar approach to lead contents  
331 limits in the Consumer Product Safety Improvement Act which  
332 has led to the elimination of products that have not  
333 demonstrated a risk of lead poisoning.

334 Our committee should move forward with this example in  
335 mind. Yet I urge us to continue to place safety as the  
336 highest goal.

337 I appreciate the witnesses being here today. I look  
338 forward to listening to your testimony.

339 I thank you and I yield back.

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

341 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
342 Mr. {Rush.} The chair now recognizes the gentleman from  
343 Georgia. He is no longer here.

344 The chair recognizes the gentlelady from Colorado, a  
345 leading voice on these and other matters, Ms. DeGette, for 2  
346 minutes.

347 Ms. {DeGette.} Thank you very much, Mr. Chairman.

348 Mr. Chairman, ever since Rachel Carson's landmark book,  
349 Silent Spring, we have known the dangers of chemicals like  
350 DDT that persist in the environment, bioaccumulate and are  
351 highly toxic. When these chemicals move up the food chain,  
352 they increase in concentration and their effects can linger  
353 for decades. So as the species at the very top of the food  
354 chain, this should worry us. DDT was banned in 1972 but its  
355 effects are felt today. Now, DDT is a pesticide covered  
356 under FIFRA that many harmful PBT chemicals are covered under  
357 the much weaker regime of TSCA.

358 One of those chemicals is mercury. In 2004, my State of  
359 Colorado initiated a 5-year study to assess the levels of  
360 mercury in fish in the State. Two lakes just outside of  
361 Denver were found to have fish with high levels of mercury  
362 and local residents are now advised not to eat fish from  
363 these lakes. Colorado's lakes are not unique, unfortunately  
364 and it just shows why TSCA reform is badly needed. TSCA was

365 enacted over 30 years ago and it is our only major  
366 environmental law that has not been reauthorized.

367         Now, one of the most important considerations in TSCA  
368 reform as some of my colleagues on the other side of the  
369 aisle have mentioned this is how to characterize the risk  
370 posed by various chemicals. Focusing on those chemicals that  
371 persist in the environment and are highly toxic make sense  
372 and I want to point out also, I agree 100 percent with Mr.  
373 Whitfield and others who say that we should use science as  
374 the basis of our consideration as we look towards  
375 reauthorizing this bill. And I will also point out to our  
376 credit in this committee, when we reauthorized the Consumer  
377 Product Safety Act last year, we may have had some issues  
378 with lead and other substances but due to some very good  
379 conversations with me and others on this committee, we worked  
380 out what to do with phthalates in a bipartisan way and also  
381 in a bicameral way that is science-based and that we were all  
382 very pleased with. So, Mr. Chairman, I look forward to  
383 working with you and everyone on this committee to make sure  
384 that not just we are safe from these PBT chemicals but that  
385 our grandchildren are also safe as these chemicals move up  
386 the food chain.

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

388 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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389           Mr. {Rush.} The chair recognizes the gentleman from  
390 Louisiana, Mr. Scalise, for 2 minutes.

391           Mr. {Scalise.} Thank you, Mr. Chairman and Ranking  
392 Member Whitfield, for having this hearing today. I also want  
393 to thank our witnesses for taking the time to be with us.

394           I believe we can all agree that the issue of persistent,  
395 bioaccumulative and toxic chemicals, otherwise known as PBTs,  
396 is an important one that we must continue to examine. I am  
397 pleased that this subcommittee is once again taking up the  
398 issue of toxic substances and the laws governing their use in  
399 commerce.

400           The use and regulation of toxic substances and of  
401 chemicals in general is an issue that we all must take very  
402 seriously. First, because of the effects certain chemicals  
403 can have on our health and the environment. I know from  
404 hearing from the statements of my colleagues made today that  
405 they share these concerns but we also want to make sure that  
406 the chemicals that are produced, used and imported into our  
407 country are safe. But this issue is also important to be  
408 because of the chemical industry's presence in my home State  
409 of Louisiana and because of its importance to our national  
410 economy.

411           According to the American Chemistry Council, over 96

412 percent of all manufactured goods are directly touched by the  
413 business of chemistry, making this industry a vital part of  
414 every aspect of our economy. In Louisiana, the chemical  
415 industry directly employs over 22,000 people and for every  
416 chemistry industry job in Louisiana, an additional 4.5 jobs  
417 are created in our State, and one thing that most be pointed  
418 out is this chemical industry, these jobs are high-paying.  
419 The average wage of a chemistry industry employee in  
420 Louisiana is over \$82,000, which is 53 percent higher than  
421 the average manufacturing wage in the State. During these  
422 tough economic times, these are the kind of jobs we need to  
423 be creating more of.

424       As this committee continues to consider legislation, we  
425 must make our decisions based on real science that is  
426 measurable, reliable and reproducible. We must also consider  
427 the unintended consequences of actions that might well be  
428 well-intentioned but don't fix the problems yet produce  
429 devastating consequences as was the case in the last Congress  
430 when changes to the Consumer Product Safety Improvement Act  
431 shut down small businesses in America.

432       Again, it is clear that there are harmful chemicals like  
433 PBTs out there that can have harmful effects if not used  
434 properly, and the proper safeguards need to be put in place,  
435 and we know that the EPA is currently has been taking steps

436 to ensure that is the case. I think the key finding is the  
437 appropriate balance between protecting our health and  
438 environment, and protecting a vital sector of our economy and  
439 the jobs in this industry. I believe these goals are not  
440 mutually exclusive.

441 I look forward to hearing from our panelists today on  
442 actions that have been taken in other States and other  
443 countries to put protections in place. And I am interested  
444 in our panelists' thoughts on the use of exposure and risk  
445 data, things that in my opinion should be based on sound  
446 science and should be used along with data on the hazards  
447 that chemicals may pose.

448 Thank you, Mr. Chairman, and I yield back.

449 [The prepared statement of Mr. Scalise follows:]

450 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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451 Mr. {Rush.} Mr. Barrow is recognized for 2 minutes.

452 The chair thanks the gentleman.

453 Mr. Green is recognized for 2 minutes.

454 Mr. {Green.} Thank you, Mr. Chairman, for holding this  
455 hearing on continued looking at the modernization of the  
456 Toxic Substance Control Act. I also want to welcome and  
457 congratulate our new ranking member, Congressman Whitfield,  
458 and look forward to working with him as we move forward on  
459 TSCA modernization and other matters before the subcommittee.

460 The issue we are looking at today, persistent,  
461 bioaccumulative and toxic chemicals, or PBTs, are widely  
462 agreed to be a small but potentially dangerous class of  
463 chemicals. Their ability to build up in the food chain and  
464 persist over long periods of time pose a significant danger  
465 to human health and the environment, a fact that the EPA has  
466 recognized as they have taken action to implement more  
467 rigorous screenings for chemicals that display characters of  
468 PBTs. These actions include lower reporting thresholds for  
469 PBTs on the toxic release inventory, the development of  
470 prioritization of tool for the waste streams containing PBTs  
471 and reviewing TSCA pre-manufacturing notices for substances  
472 that meet PBT-related criteria.

473 I look forward to our witnesses today and what further

474 steps we can take to domestically further protect human  
475 health and environment but also the important international  
476 area. Transboundary migration of pollutants is an important  
477 issue and one this committee has worked on for some time  
478 through efforts to implement the Stockholm Convention on  
479 Persistent Organic Pollutants to Long-Range Transboundary Air  
480 Pollution, POPs protocol in the Rotterdam Convention on the  
481 Prior Informed Consent. Passing legislation of these  
482 treaties should be a priority in any TSCA modernization  
483 legislation this committee takes up.

484         Mr. Chairman, I know I am almost through with my time  
485 but I would like to ask unanimous consent to place a letter  
486 into the record from the American Chemistry Council in  
487 today's hearing. ACC has long supported implementing the  
488 international treaties and it sees U.S. leadership in this  
489 area as critical action in the international area, and I  
490 would encourage if we haven't started it to establish a  
491 working group of all the interested parties of such major  
492 legislation and I would hope we could pass it through this  
493 Congress.

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

495 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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496           Mr. {Rush.} The chairman thanks the gentleman and  
497 without hearing no objection, the letter will be included  
498 into the record.

499           [The information follows:]

500           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
501           Mr. {Rush.} We recognize Dr. Gingrey for 2 minutes for  
502 the purposes of opening statements.

503           Dr. {Gingrey.} Mr. Chairman, thank you for calling this  
504 third hearing on the Toxic Substance Control Act of 1976. I  
505 am happy that we have once again delved into this complex  
506 issue and I appreciate the diligence of Commerce, Trade, and  
507 Consumer Protection Subcommittee to continue to examine this  
508 important issue.

509           TSCA directs the Environmental Protection Agency to  
510 regulate all phases of manufacturing of chemicals and to  
511 identify unreasonable risk of injury from new or existing  
512 chemicals. When regulating these chemicals, TSCA directs the  
513 EPA to use the least burdensome option to reduce the risk of  
514 harm while balancing the benefits provided by the chemical.  
515 As a risk-based law, TSCA relies on the presence of sound  
516 science promote the chemical produces and the EPA in order to  
517 properly implement the law.

518           Mr. Chairman, while there are many laudable elements of  
519 TSCA, that does not mean that this law is anywhere close to  
520 perfect. Since its enactment, chemical manufacturers and  
521 processes have advanced and so has technology. Accordingly,  
522 TSCA needs to best reflect the science that is currently  
523 being utilized. As we heard during our previous two hearings

524 on this matter, TSCA reform is needed because we need to  
525 ensure the safety of chemicals used in all products, however,  
526 while there is that consensus, the way to accomplish the  
527 reform is certainly subject to debate and, indeed, some  
528 disagreement.

529         Today's hearing looks at a different aspect of TSCA, and  
530 its domestic and international implications for health and  
531 environmental factors of persistent, bioaccumulative and  
532 toxic chemicals, PBT. Subsequently, today's panel of  
533 witnesses will discuss the efforts taken by TSCA to maintain  
534 the safe use of chemicals both at home and abroad, however, I  
535 hope that we do not use this hearing as a vehicle to  
536 fundamentally overhaul TSCA because if we do, my fear is that  
537 we will jeopardize the long term viability of the chemical  
538 industry which will have lingering ramifications for other  
539 industries and subsequently, of course, our economy.

540         Mr. Chairman, I would suggest that as we hear from our  
541 distinguished panel of witnesses today we keep in mind the  
542 underlying risk-based principles that guide the current  
543 implementation of TSCA for health and environment. I look  
544 forward to their testimonies.

545         And I yield back.

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

547 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
548 Mr. {Rush.} The chair recognizes the gentle lady from  
549 Ohio, Ms. Sutton, for 2 minutes.

550 Ms. {Sutton.} Thank you, Chairman Rush, for holding  
551 today's important hearing on TSCA and the persistent,  
552 bioaccumulative and toxic chemicals also known as PBTs.

553 This is a very serious issue. Our health, the  
554 environment and the public's confidence are at issue and  
555 chemicals that are considered to be persistent,  
556 bioaccumulative and toxic have been associated with severe  
557 health risks and results, and these types of chemicals have  
558 been found in human bodies and that they can build up in our  
559 food chain and last for long periods of time in our  
560 environment. In fact, PBTs accounted for 97 percent of all  
561 fish consumption advisories in 2008, and my congressional  
562 district includes part of Lake Erie's shoreline.

563 In 1997, the U.S. and Canada launched the Great Lakes  
564 Bi-National Toxics Strategy to eliminate PBTs and according  
565 to the state of the Great Lakes 2009 report produced jointly  
566 by the U.S. EPA and Environment Canada, releases of targeted  
567 bioaccumulative toxic chemicals have declined significantly  
568 from their peak period in past decades. The report continues  
569 to state that ``For the most part, bioaccumulative toxic  
570 chemicals no longer limit the reproduction of fish, birds and

571 mammals.'' And while this sounds like good news, there is  
572 still much work to be done. With funding from the Great  
573 Lakes Restoration Initiative, Ohio is investing \$4.21 million  
574 in five projects to address toxic substances and reduce  
575 contamination.

576 I have met with health care professionals in my  
577 congressional district who have expressed concern about  
578 health consequences that they have seen from chemical  
579 exposure in patients, as well. And I am interested to hear  
580 from today's witnesses how the Toxic Substances Control Act  
581 can be modernized to more effectively address these very real  
582 health concerns. Industry and a variety of environmental,  
583 animal welfare, and health and safety groups have all stated  
584 that they support modernizing TSCA, and as we move forward,  
585 we need to ensure the public's trust, and protect the public  
586 and future generations from health and environmental harm  
587 while providing industry with a clear direction to ensure  
588 that our workers keep working. It must not be a question of  
589 jobs versus the environment. We can and we must effectively  
590 tend to both.

591 And I yield back.

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

593 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
594           Mr. {Rush.} The chair now recognizes the gentleman from  
595 Maryland, Mr. Sarbanes, for 2 minutes.

596           Mr. {Sarbanes.} Thank you, Mr. Chairman. I appreciate  
597 your holding this third hearing on the Toxic Substances  
598 Control Act.

599           My continuing perspective on this is that few Americans  
600 would imagine how thin the protections are when it comes to  
601 some of these chemicals and so it is really incumbent on us  
602 to try to modernize this oversight. I am going to be  
603 particularly interested to hear about how we can sort of get  
604 a head start based on the fact that it has been 30-plus years  
605 since this was modernized and science has certainly advanced  
606 significantly. So even if we are now going to come armed  
607 with a stronger set of standards for how we judge the  
608 toxicity of these various chemicals, I imagine there is a  
609 whole set of them that we already know are sinister enough  
610 that they ought to be put in a category right at the outset  
611 so that we can sort of start on the 30-yardline or the 40-  
612 yardline instead of on the 10-yardline, and I am looking  
613 forward to the testimony of the panel in that respect and  
614 otherwise on this important issue.

615           And I yield back my time. Thanks.

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

617 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
618           Mr. {Rush.} The chair thanks all of the members for  
619 their opening statements.

620           And it is now my pleasure and honor to introduce our  
621 witnesses. We have nine esteemed witnesses from both far and  
622 near and I want to really express to each and every one of  
623 you how grateful we are that you would take you will take the  
624 time out from your busy schedules to appear before this  
625 subcommittee and to give us your best in helping us and  
626 direct us as we travel down this path to modernizing and  
627 reauthorizing TSCA.

628           I want to introduce now Mr. James Jones who serves as  
629 the deputy assistant administrator for the Office of  
630 Prevention, Pesticides and Toxic Substances for the  
631 Environmental Protection Agency. And seated next to Mr.  
632 Jones is Dr. John Thompson and he is the division director  
633 for the Office of Environmental Policy, Bureau of Oceans,  
634 Environment and Science at the Department of State and next  
635 to Dr. Thompson is Mr. Ted Sturdevant. Mr. Sturdevant is the  
636 director of the Department of Ecology for the great State of  
637 Washington. And seated to next to Mr. Sturdevant is Dr.  
638 Linda Greer who is the director of Health and Environmental  
639 Program for the Natural Resources Defense Council. And to  
640 her left, is Dr. Christina Cowan-Ellsberry and she is from

641 CE2 Consulting, former principal scientist of the  
642 Environmental Sciences Department at Procter and Gamble. And  
643 lastly, we have with us this morning is Dr. William J. Adams  
644 who is the chairman of the North American Metals Council.

645 And I again want to welcome each and every one of you to  
646 this hearing. And it is the practice of this subcommittee to  
647 swear-in all of our witnesses, and so I want to ask that each  
648 one of you stand and raise your right hand and respond to  
649 this question. Do you solemnly swear to tell the truth, the  
650 whole truth and nothing but the truth? Let the record  
651 reflect that the witnesses have all answered in the  
652 affirmative.

653 And before we hear the opening statements of the  
654 witnesses, I must inform each and every one of you who are  
655 present that there are votes occurring. I don't know how  
656 much time we have left on the votes right now. Less than 10  
657 minutes so we will try to get to two or three and then we  
658 will have to see how many votes are there? Three? We have  
659 three votes so it will take us about a half-an-hour to get  
660 over there and get back so we ask that you just be patient  
661 with us while we go and vote.

662 Dr. Sturdevant, we are going to try to finish you up  
663 before we have to go over there. Is that okay? Yes, thank  
664 you very much.

665            Now, the chair recognizes Mr. Jones for 5 minutes.

|  
666 ^STATEMENTS OF JIM JONES, DEPUTY ASSISTANT ADMINISTRATOR,  
667 OFFICE OF PREVENTION, PESTICIDES AND TOXIC SUBSTANCES,  
668 ENVIRONMENTAL PROTECTION AGENCY; JOHN THOMPSON, DIVISION  
669 DIRECTOR, OFFICE OF ENVIRONMENTAL POLICY, BUREAU OF OCEANS,  
670 ENVIRONMENT AND SCIENCE, DEPARTMENT OF STATE; TED STURDEVANT,  
671 DIRECTOR, DEPARTMENT OF ECOLOGY, STATE OF WASHINGTON; LINDA  
672 GREER, DIRECTOR, HEALTH AND ENVIRONMENT PROGRAM, NATURAL  
673 RESOURCES DEFENSE COUNCIL; CHRISTINA COWAN-ELLSBERRY, CE2  
674 CONSULTING, FORMER PRINCIPAL SCIENTIST, ENVIRONMENTAL  
675 SCIENCES DEPARTMENT, PROCTER AND GAMBLE; AND WILLIAM J.  
676 ADAMS, CHAIRMAN, NORTH AMERICAN METALS COUNCIL

|  
677 ^STATEMENT OF JAMES J. JONES

678 } Mr. {Jones.} Good morning, Chairman Rush and members of  
679 the subcommittee.

680 I am Jim Jones, Deputy Assistant Administrator for  
681 Prevention, Pesticides and Toxic Substances at EPA. I am  
682 here today to talk about chemicals that are persistent,  
683 bioaccumulative and toxic, otherwise known as PBTs, and EPA's  
684 domestic and international actions related to such chemicals.  
685 I appreciate the opportunity to be here today.

686 As this committee knows, EPA's mission is to protect

687 public health and the environment. Ensuring that our  
688 citizens, and especially our children, are protected from  
689 exposure to unsafe levels of toxic chemicals and pollution by  
690 continually strengthening our chemical management regime is  
691 not only central to EPA's work but it is an area that EPA  
692 Administrator Jackson identified as one of her priorities for  
693 the agency.

694         You have asked me here today to talk about PBTs in  
695 particular. PBTs are long-lasting substances that build up  
696 in the food chain and at certain exposure levels may be  
697 harmful to human health and the environment. Their  
698 persistent property means that when they are released into  
699 the environment they remain essentially unaltered for months  
700 or years. With continued use and release, they build up in  
701 sediments and soil and their concentrations increase as they  
702 go up the food chain. It is this concentration in the food  
703 chain which, under certain circumstances, can cause adverse  
704 effects in humans or wildlife. Some PBTs are also  
705 susceptible to long range transport such that adverse effects  
706 can be found far removed from their site of production or  
707 use. Combined, these properties are what make EPA concerned  
708 not only with historical PBT chemicals, such as DDT and PCBs,  
709 but also with chemicals with similar properties entering  
710 commerce today or in the future. And so I would like to take

711 a few minutes to just touch on a few of the relevant domestic  
712 and international actions we have taken with respect to PBTs.

713         On September 29 of 2009, EPA Administrator Jackson  
714 announced that EPA is putting in place a comprehensive  
715 approach to enhance the agency's current chemicals management  
716 program under TSCA. On December 30 of 2009, EPA posted  
717 action plans on phthalates, perflourinated chemicals,  
718 polybrominated diphenyl ethers and products, and short-  
719 chained chlorinated paraffins. The latter three are PBTs.  
720 These actions plans summarize available hazard exposure and  
721 use information, outline the risks that each chemical may  
722 present and identify the specific steps the agency has taken  
723 to address those concerns.

724         The initial chemicals selected for action plan  
725 development were chosen on the basis of multiple factors  
726 including chemicals identified as persistent, bioaccumulative  
727 and toxic as well as other factors. But while we are moving  
728 forward to implement the actions in those plans, we know that  
729 the very nature of PBTs means that stand-alone action by any  
730 one country is not enough.

731         The global nature of many of these substances is why the  
732 Obama Administration identified the Stockholm Convention on  
733 Persistent Organic Pollutants, known as the POPs Convention,  
734 along with the Rotterdam Convention on Prior Informed

735 Consent, known as the PIC Convention, as a priority treaty  
736 for U.S. ratification and why joining the POPs Protocol to  
737 the Convention on Long Range Transboundary Air Pollution,  
738 known as the LRTAP POPs Protocol, is in our interests. By  
739 joining with the rest of the world to phase out or reduce the  
740 use and release of these PBTs, we protect both human health  
741 and the environment, and not only for ourselves but for the  
742 rest of the world.

743         At EPA we take the risks posed by these substances to  
744 our environment and public health very seriously but we are  
745 hampered by our lack of implementing legislation. As your  
746 committee considers the issue of PBTs, I would stress the  
747 importance of implementing legislation that would allow the  
748 United States to join the Stockholm Convention, the Rotterdam  
749 Convention and the LRTAP POPs Protocol. The Obama  
750 Administration thinks it is time to become parties to these  
751 agreements.

752         Among our efforts to strengthen the agency's chemical  
753 management regime, we have released a set of administration  
754 principles to help guide legislative reform and outline a  
755 series of activities to enhance our programs. Much of that  
756 work will encompass PBT substances and could provide an  
757 opportunity for the consideration of implementing legislation  
758 for the POPs Convention, the PIC Convention and the LRTAP

759 POPs Protocol. We look forward to working with Congress, our  
760 domestic stakeholders and the international community to  
761 strengthen both our domestic and international actions with  
762 respect to PBT substances.

763 Thank you for having me here today and I will be happy  
764 to respond to any questions that you may have.

765 [The prepared statement of Mr. Jones follows:]

766 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
767           Mr. {Rush.} The chair now recognizes Dr. Thompson for 5  
768 minutes.

|  
769 ^STATEMENT OF JOHN E. THOMPSON

770 } Mr. {Thompson.} Thank you, Mr. Chairman, and my thanks  
771 to the members of the subcommittee for holding this hearing  
772 on domestic and international actions on PBTs.

773 I have a written statement I would like to submit for  
774 the record with your permission.

775 Mr. {Rush.} Hearing no objection.

776 Mr. {Thompson.} Thank you.

777 The advances in the discovery and application of  
778 chemicals have led to many benefits enjoyed by society. At  
779 the same time, certain chemicals impose significant risks to  
780 human health and the environment. Production and use of such  
781 chemicals is increasing outside of the United States. That  
782 is important because of the potential for local harm and also  
783 because some chemicals are capable of having impacts far from  
784 where they are used and released.

785 Indigenous people in Alaska and elsewhere in the United  
786 States, though often remote from such sources, may be  
787 particularly at risk to exposure because of their reliance on  
788 a subsistence diet. Of particular interest, are those PBTs  
789 which are organic and capable of transporting over long  
790 distances, these chemicals are referred to persistent,

791 organic pollutants or POPs. We focus on these chemicals  
792 internationally because they can pose risks far from their  
793 source of release. The role of the State Department is to  
794 facilitate international cooperation aimed at mitigating  
795 these risks and we do so working closely with our colleagues  
796 from the Environmental Protection Agency. In that regard, I  
797 would like to describe three key international agreements  
798 aimed at controlling these types of chemicals, the Stockholm  
799 Convention on POPs, the Protocol on POPs on the Convention on  
800 Long Range Transboundary Air Pollution and the Rotterdam  
801 Convention on the Prior Informed Consent Procedure for  
802 Certain Hazardous Chemicals and Pesticides in International  
803 Trade.

804         The Stockholm Convention aims to protect human health  
805 and the environment from exposure to POPs. It has been  
806 ratified by 169 countries including nearly all of our major  
807 trading partners and allies. The Convention calls upon  
808 parties to prohibit or restrict production in use of POPs  
809 such as PCBs, and to reduce byproduct emissions of substances  
810 such as dioxins and furans. It includes a science-based  
811 procedure to govern the addition of chemicals and allows a  
812 party to decide whether to join amendments adding a substance  
813 to the Convention.

814         The second agreement I would like to mention is the POPs

815 Protocol to the Convention on Long Range Transboundary Air  
816 Pollution. This agreement is broadly similar to the global  
817 Stockholm Convention, but it is regional in nature,  
818 encompassing the United States, Canada, Europe and the former  
819 Soviet Republics.

820 A third important agreement is the Rotterdam Convention  
821 which promotes shared responsibility between exporting and  
822 importing countries in the trade of certain chemicals. For  
823 international shipments of such chemicals, it stipulates that  
824 consent of the importing country must be obtained before the  
825 chemical can be exported. The Convention helps to ensure  
826 countries have information to make decisions on sound  
827 chemicals management which means less likelihood of health  
828 and environmental risks in those countries and in the United  
829 States.

830 These agreements have the support of this Administration  
831 and the business and environmental communities but we are a  
832 nonparty because we need legislation to fully implement their  
833 provisions. We are therefore unable as a nonparty to  
834 participate fully in their proceedings. Only by joining  
835 these agreements, can we use them effectively to pursue  
836 public health protection in the United States. What is of  
837 paramount interest to the Department of State is enabling  
838 full U.S. participation in the deliberation of these

839 agreements as soon as possible so we can pursue U.S.  
840 interests, especially protecting public health and the  
841 environment.

842 I also note that EPA recently announced the development  
843 of action plans to address certain classes of chemicals as  
844 potential priorities. Some of these chemicals are under  
845 consideration or are already included in the agreements that  
846 I have described. The best way for the United States to lead  
847 internationally is to do so based on a strong domestic  
848 approach that is consistent with our international  
849 obligations. By taking action at home, we can use these  
850 agreements to ensure chemicals are managed more responsibly  
851 abroad.

852 In summary, Mr. Chairman, there are some chemicals whose  
853 use anywhere in the world may present a public health and  
854 environmental threat to the United States because they are  
855 persistent, bioaccumulative, toxic and are transported over  
856 long distances. We are most effective leading abroad when we  
857 have been diligent and effective in addressing chemicals  
858 management at home. We have the tools to promote better  
859 management of these chemicals on a global basis through these  
860 agreements but we need to join them to do that most  
861 effectively.

862 Thank you for having me here today and I would be

863 pleased to answer any questions.

864 [The prepared statement of Mr. Thompson follows:]

865 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
866 Mr. {Rush.} Thank you, Dr. Thompson.

867 Mr. Sturdevant, will you please hold your testimony  
868 until we return? The committee stands in recess until 11:30.

869 [Recess]

870 Mr. {Rush.} Dr. Greer, are you prepared with your  
871 opening statement?

872 Ms. {Greer.} Yes, sir.

873 Mr. {Rush.} All right, well, the chair recognizes Dr.  
874 Greer for 5 minutes for the purposes of an opening statement.

|  
875 ^STATEMENT OF LINDA E. GREER

876 } Ms. {Greer.} Thank you for the opportunity to testify  
877 today.

878 I am Linda Greer and I am the director of the Health  
879 Program at NRDC, the Natural Resources Defense Council. I  
880 have a Ph.D. in environmental toxicology and a masters degree  
881 in public health. Since 1981, I have worked on a wide range  
882 of environmental health issues, and have focused on numerous  
883 persistent, bioaccumulative and toxic chemicals including  
884 mercury, dioxin and PCBs, among others.

885 Commonsense tells us that chemicals with a PBT profile  
886 are bad actors and that laws designed to protect people from  
887 dangerous environmental contaminants should prioritize the  
888 phase-out of chemicals with this alarming profile. Society  
889 should rely upon safer chemicals that will degrade and be  
890 metabolized easily in the body back into harmless chemicals  
891 after use, not those that will take shelter in our bones, in  
892 our blood and in our fat for the rest of eternity.

893 Remarkably, however, PBTs are not a thing of the past.  
894 Despite the notoriety of this class and all that scientists  
895 have learned about them over the past 30 years, there are  
896 still many such chemicals that continue to be used in

897 commerce today and sometimes in very large quantities. Three  
898 of EPA's four recently announced chemical action plans, for  
899 example, are from the PBT class.

900         The polybrominated diphenyl ethers, the PBDEs, are still  
901 used today as flame-retardants in plastics, polyurethane  
902 foams and textiles, even though safer alternatives are  
903 available. They remain in products in millions of homes.  
904 This, despite the evidence that their chemical structure is  
905 extraordinarily similar to the PCBs banned decades ago that  
906 they share structural characteristics of the dioxins.

907         Despite the toxicological evidence that shows that PBDEs  
908 are thyroid hormone disrupters, that they are neurotoxic to  
909 the developing brain, and that they have immunotoxic  
910 properties similar to PCBs; despite the doubling of their  
911 concentration milk samples every 5 years; despite their  
912 detection globally, including in the arctic where they have  
913 never been used, PBDEs are still in use in 2010. And other  
914 PBDEs are similarly still in the market and used in high  
915 volume despite all that we know about the hazards they pose,  
916 defying commonsense.

917         So how can this be? It is truly a tribute to the utter  
918 impotence of TSCA that chemicals with such notorious profiles  
919 remain on the market allowing the public to be endlessly  
920 exposed while analysis after analysis lumbers on. TSCA

921 constraints make it very difficult for EPA to fully assess  
922 new chemicals or require the testing of chemicals in use, and  
923 the hurdles for EPA to actually restrict use of an existing  
924 chemical are even higher. It is almost impossible for EPA to  
925 take regulatory action against PBTs and other dangerous  
926 chemicals, even those like asbestos that are well-known to  
927 cause cancer or other serious health effects. And although  
928 some in industry see the problems and agree that we need  
929 reform, many others are comfortable with the culture of study  
930 and delay that have kept EPA from taking action on chemicals  
931 they have marketed without safety data for more than a  
932 generation.

933         This head-in-the-sand mentality is not good for business  
934 in the long run. Europe is far ahead of us and will prohibit  
935 the export of these chemicals to their markets. Safety  
936 problems will plague these companies eventually as the latest  
937 story from Toyota shows us.

938         The consequence of such delay in getting PBTs and other  
939 dangerous chemicals off the market may well have had a  
940 personal impact on me. Three years ago as I continued my  
941 career to reduce toxic chemical pollution, I got a call from  
942 my doctor about an abnormality in my mammogram. Soon  
943 afterwards, I was struggling to come to terms with the  
944 diagnosis every woman dreads, breast cancer. Despite my

945 Ph.D., I found myself thinking what everyone thinks in a  
946 situation like this, why did this happen to me, and not just  
947 why me but why so many colleagues and friends. The president  
948 of NRDC, Frances Beinecke, was diagnosed with breast cancer  
949 about 8 years ago. So was the executive assistant of John  
950 Adams, our former president. She died of that disease before  
951 the age of 45, a woman in our finance department, another in  
952 communications, one of our senior analysts, an office  
953 manager, a young temporary secretary, my sister-in-law. Most  
954 or all of these women did not have known risk factors and all  
955 of them contracted this disease when they were very young.

956 I suspect many of the members of this committee, and  
957 their staff, have had similar experiences. Friends, family  
958 and colleagues who have been diagnosed with cancer, or who  
959 have children with infertility issues, or grandchildren with  
960 development or learning disabilities, or elderly parents with  
961 Alzheimer's or Parkinson's disease.

962 I tell my story to inspire you, this committee, this  
963 Congress and this Administration to seriously consider what  
964 it will take to get action on hazardous chemicals still being  
965 used in commerce today, known PBTs and others. Not just  
966 testing. Not just information. Not more analysis, action.  
967 Well known PBTs, such as dioxin, DDT and PCBs have been  
968 associated with the risks of breast cancer for many, many

969 years. A survey of peer review literature found more than  
970 200 chemicals has been associated with mammary tumors in  
971 animals. Chlorinated solvents, polynuclear aromatics and  
972 others, yet EPA has taken action on only four of 80,000  
973 chemicals in commerce in the 35 years of TSCA.

974 The public is rightfully alarmed and wants to see action  
975 and results not just more years of studies that lead nowhere.  
976 Many retailers have themselves taken action to remove  
977 products from shelves where they fear harm to their customers  
978 in light of government stagnation. Even certain segments of  
979 industry itself, the personal products manufacturers, for  
980 example, who manufacture our lotions and shampoos, have begun  
981 to speak out for the need for reform fearing problems in the  
982 ingredients that they buy for their formulation.

983 For this reason, we recommend Congress and this  
984 committee, mandate the phase-out of at least the handful of  
985 best known PBTs and bad actors in a reauthorized TSCA and put  
986 our country on a path forward for the use of safer chemicals.  
987 We have spent literally decades quantifying the risks of  
988 these chemicals and exposed an entire generation in the  
989 meantime, unable to turn to the more practical questions of  
990 how these PBTs are used, how they can be reduced, how they  
991 can be phased out. It is time for EPA to parse the uses,  
992 identify the critical uses, identify the unnecessary uses,

993 and move forward on these chemicals.

994 I was one of the lucky ones. My breast cancer has been  
995 caught early and I am doing well but as I do my work every  
996 day, I think of my daughter who was dosed with every  
997 contaminant in my breast milk four or more times a day for  
998 the first year of her life and of her generation. My efforts  
999 here today and back at the desk to reduce or eliminate toxic  
1000 chemicals are for her, and you too should take action to  
1001 protect your children and grandchildren.

1002 Thank you very much for this opportunity to testify.

1003 [The prepared statement of Ms. Greer follows:]

1004 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1005           Mr. {Rush.} The chair now recognizes Dr. Cowan-  
1006 Ellsberry.

|  
1007 ^STATEMENT OF CHRISTINA COWAN-ELLSBERRY

1008 } Ms. {Cowan-Ellsberry.} First, I would like to thank the  
1009 chairman and the ranking member and the members of the  
1010 subcommittee for inviting me to testify before you today.

1011 My name is Christina Cowan-Ellsberry and I have worked  
1012 in the field of environmental and human safety and risk  
1013 assessment of chemicals for over 30 years. I am here of my  
1014 own volition and represent only myself. My testimony is  
1015 based on my scientific training and expertise and my  
1016 experience with the PBT issue. There are two reasons I  
1017 decided to come on my own. First, as a consumer and citizen  
1018 of the United States, I am as concerned as you are about  
1019 chemicals that may be in commerce and that could cause  
1020 adverse impacts on me, my family and the environment.

1021 Secondly, I have worked since the 1990s, and actually  
1022 earlier, on the development of the PBT criteria and methods  
1023 for identifying and evaluating the safety of organic PBTs in  
1024 several national and international fora, including the United  
1025 States, Canada, Europe and the United Nations. I have seen  
1026 how using the established criteria, and science and risk-  
1027 based assessment process has resulted in effective PBT  
1028 identification and assessment programs, and has resulted in

1029 prioritization of resources toward PBT management on national  
1030 and global scales. As successful as these initiatives have  
1031 been in illustrating it is possible to identify, assess and  
1032 manage PBTs, these initiatives have also illustrated that the  
1033 process can be scientifically challenging, and require the  
1034 active involvement of the best scientists and the use of the  
1035 most reliable and relevant data.

1036         At the recent SETAC Pellston Workshop, one common  
1037 frustration voiced by participants was that many of the  
1038 current national and international regulations accept only a  
1039 limited set of test data. While this may be appropriate for  
1040 screening and prioritization, it fails to recognize the  
1041 incredible evolution of the science which has produced new  
1042 insights into PBT chemical and an array of new methods to  
1043 identify and assess PBT chemicals. As a result, the  
1044 scientists are frustrated when they bring forward these new  
1045 data and insights only to find that they are rejected, not  
1046 because of scientific reasons but rather because the  
1047 regulatory framework does not allow for its consideration.  
1048 Given the rapid improvement in these test methods and  
1049 guidance, it is critically important for U.S. EPA scientists  
1050 to contribute to and incorporate the most current science and  
1051 scientific understanding into their assessments.

1052         Through all my years of work on PBTs, I have greatly

1053 valued the scientific expertise and interaction with my  
1054 colleagues in the U.S. EPA, and commend them for their role  
1055 in promoting the risk-based and science-based underpinnings  
1056 of the PBT identification and assessment process. My concern  
1057 is, and as voiced by several here, is that although the U.S.  
1058 publicly committed in the 1990s to working within the  
1059 international community to address chemicals of international  
1060 concern, the U.S. has not become a full party to either the  
1061 LRTAP POPs Protocol or the Stockholm POPs Protocol.  
1062 Unfortunately, the risk-based and science-based underpinning  
1063 of these two conventions, which the United States promoted  
1064 are being eroded without this active U.S. involvement. I  
1065 strongly urge you to make sure that the U.S. becomes a full  
1066 party to these conventions so that the U.S. government  
1067 scientists can once again bring their knowledge and expertise  
1068 forward in leadership internationally.

1069 Finally, I believe it is also important that EPA develop  
1070 a stronger Federal PBT program so that the States do not have  
1071 to take separate, and potentially conflicting, actions to  
1072 identify and manage these substances. Many States don't have  
1073 the depth in scientific expertise nor the number of staff to  
1074 effectively conduct these scientifically challenging  
1075 assessments on their own. To ensure a technically strong and  
1076 coordinated process for identification, assessment and

1077 management of PBTs, this program should include a scientific,  
1078 multi-stakeholder fora, that includes representatives from  
1079 these States, as well as potentially other scientific  
1080 advisory panel members. Ultimately, I believe that a reform  
1081 of TSCA that contains a strong commitment to and adequate  
1082 funding for this Federal program of PBT identification,  
1083 assessment and management, and U.S. leadership  
1084 internationally in PBT conventions, will benefit U.S.  
1085 citizens as it will contribute to improving global public  
1086 health and the environment through managing existing PBT  
1087 chemicals, and provide assurance that new chemicals that have  
1088 PBT properties will not enter commerce.

1089           And once again, I thank you for this opportunity to  
1090 testify today and I look forward to answering your questions.

1091           [The prepared statement of Ms. Cowan-Ellsberry follows:]

1092 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
1093           Mr. {Rush.}   The chair now recognizes Mr. Sturdevant for  
1094 5 minutes.

|  
1095 ^STATEMENT OF TED STURDEVANT

1096 } Mr. {Sturdevant.} Thank you, Mr. Chair, members of the  
1097 subcommittee for holding this hearing and for having me.

1098 My name is Ted Sturdevant. I am the director of the  
1099 Washington State Department of Ecology.

1100 Citizens in Washington State, like elsewhere, I imagine,  
1101 expect from government basic health protections from things  
1102 like toxic exposures. In recent years, we in Washington were  
1103 seeing rising levels of concern around toxic chemicals and so  
1104 a few years ago we made an agency priority the reduction of  
1105 toxic threats in our State, and we started with starting the  
1106 nation's first PBT program. That seemed like a very logical  
1107 place to start for reasons that you have heard. It is very  
1108 clear that we should be very careful with PBTs and it is also  
1109 very clear that we are not very careful with PBTs.

1110 I had a real ah-ha moment when we were writing our PBT  
1111 regulation. I was at home one morning, shaving, and I looked  
1112 at the ingredients in the shaving cream and Nonylphenol was  
1113 on there and the only reason that I knew what the heck that  
1114 was is that we were considering inclusion of that chemical in  
1115 our PBT list. It was right on the bubble and, you know,  
1116 nothing on the can indicated it was anything I should be

1117 worried about and it just and, you know, I was rubbing this  
1118 stuff on my face every day, and it just left me with this  
1119 sense that no one was really watching and certainly not  
1120 watching as closely as we should be.

1121 I think that only prevention works with PBTs. Once you  
1122 let the PBT genie out of the bottle, you can't get it back  
1123 in. PCBs are a great example of that. They were banned 34  
1124 years ago but today PCBs are flowing into Puget Sound all the  
1125 time. We are spending millions of dollars on cleanup and we  
1126 are still seeing fish and wildlife impacts from PCBs.

1127 A good and more recent example of both the challenge and  
1128 I think the solution is found in the PBDE flame retardants  
1129 you have heard about. They have been around since the '70s.  
1130 In 2003, we were seeing rising levels of PBDEs in  
1131 Washington's environment and citizens. We didn't really know  
1132 much about them. They were appearing in women's breast milk,  
1133 in house dust that babies crawl around in, in polar bears in  
1134 the artic. So we decided to take a look at them as part of  
1135 our PBT program. We spent 3 years working on a chemical  
1136 action plan for those flame retardants and the more we  
1137 looked, the more concerned we grew. Levels kept rising.  
1138 Studies kept showing more health concerns.

1139 In the meanwhile, industry was applying pressure saying  
1140 they are safe, that we need to protect fire safety standards.

1141 We need to keep studying them and basically that everything  
1142 was fine but we reached a very different conclusion. We  
1143 decided that if there were better ways, if there were safer  
1144 ways to flame-retard products in our homes, like TVs,  
1145 computers, mattresses, furniture, then we should stop using  
1146 PBDEs and use those safer alternatives, and we found  
1147 ourselves in the middle of quite a fight. Some very  
1148 sophisticated folks showed up in Olympia and fought us pretty  
1149 hard on that and it took awhile but we did finally get there  
1150 and we passed the nation's first ban on the deca-form of  
1151 PBDEs but that was only one State. The other States, several  
1152 other States had to then go through the same fight, take  
1153 different approaches and the good news is that enough States  
1154 did that, that there was a recent announcement of a voluntary  
1155 phase-out of deca production in the United States.

1156         The bad news is that is not a very good system. It  
1157 takes too long. It costs too much. It creates this  
1158 patchwork of regulatory approaches across the country and it  
1159 lets far too much unnecessary toxic contamination happen in  
1160 the meantime.

1161         I don't think at the root of this that the problem or  
1162 the solution is terribly complicated. We need a Federal  
1163 system that works based on a few commonsense principles.  
1164 First, before allowing a substance to be put out there into

1165 widespread commerce, we should make every reasonable effort  
1166 to make sure that it is safe. I think that it is fair that  
1167 that burden rest on industry rather than on EPA and the  
1168 taxpayers. Second, if we know that there are chemicals out  
1169 there that are causing environmental or human health  
1170 problems, government should be able to step in, protect  
1171 citizens and ban those chemicals. Third, if we know with  
1172 reasonable certainty that a substance poses problems and  
1173 there are safer alternatives, we should stop using that and  
1174 switch to the safer alternative.

1175         With PBTs I think we already know enough that we should  
1176 be very careful and make every effort to phase-out those uses  
1177 that we can do without and prevent new uses. These seem to  
1178 me to be sound, fair principles for a reasonable chemicals  
1179 policy but it is not the one we have today. I would urge you  
1180 to fashion such a policy. This isn't about being anti-  
1181 chemical. It is about being pro-safer-chemical whenever you  
1182 can and should.

1183         As you look at TSCA, I would ask you to keep in mind the  
1184 role that the States have played in advancing protections  
1185 from PBTs and other toxic chemicals. Even with TSCA reform,  
1186 if another 30 years go by before we revisit it, we are going  
1187 to need the States to fill in the gaps and be the  
1188 laboratories of reform, and I would ask you to preserve our

1189 ability to do that. And because we at the State level need a  
1190 strong Federal system, Washington and 12 other States in  
1191 December issued our principles for reform of TSCA and those  
1192 were provided to you with my written testimony.

1193 Finally, one other priority that we have in the State of  
1194 Washington is restoring our Puget Sound to health by 2020.  
1195 That problem with the Sound is not just about toxic pollution  
1196 but toxic chemicals are entering the Sound everyday. Now,  
1197 fixing TSCA won't fix Puget Sound but if we don't fix TSCA,  
1198 and prevent a lot of that toxic contamination that could be  
1199 prevented, we are not going to fix Puget Sound, and I don't  
1200 think we are going to fix a lot of our other waterways,  
1201 either, and we will continue to experience toxic exposures  
1202 that just don't need to happen.

1203 So with that, I would like to express my very sincere  
1204 gratitude for your looking at this issue and I respectfully  
1205 urge you to craft a strong chemicals management policy that  
1206 this country very much needs and deserves. Thank you.

1207 [The prepared statement of Mr. Sturdevant follows:]

1208 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|

1209 Mr. {Rush.} Thank you very much.

1210 Now, the chair recognizes Dr. Adams for 5 minutes.

|  
1211 ^STATEMENT OF WILLIAM ADAMS

1212 } Mr. {Adams.} Thank you, Mr. Chairman. It is my  
1213 pleasure this morning to testify and talk about Toxic  
1214 Substance Control Act and PBT particularly as it applies to  
1215 metals.

1216 I am the chairman of the North American Metals Council.  
1217 I am also a scientist and I have worked in the area of PBTs  
1218 since the late '70s, and specifically, in the 1990s, and more  
1219 recently on the REACH legislation in Europe. And over the  
1220 course of time, I have published some hundred papers and I  
1221 have published a book on PBT, so let me begin.

1222 I would like to give you some details about why PBT,  
1223 some of the criteria of PBT are not applicable to metals. I  
1224 would also like to give you some information as to how I  
1225 think the hazard of metals and inorganic substances should be  
1226 determined.

1227 Regarding persistence, persistence is problematic for  
1228 metals because all metals and elements on the Periodic Table  
1229 are conserved, and hence, they are persistent. The form and  
1230 availability of the metal can change depending on the  
1231 environmental conditions. They are also different for each  
1232 metal element on the Periodic Table and this should be

1233 considered. Thus, setting a criterion say of example of  
1234 removal of 70 percent in 28 days in the water automatically  
1235 includes all the metals, and this includes the ones that are  
1236 essential such as copper, zinc and iron, which are essential  
1237 for life. As a result, applying criteria that were designed  
1238 for organic substances to the metals then creates problems  
1239 that are not necessarily needed.

1240       Regarding bioaccumulation, unlike organic substances,  
1241 bioaccumulation potential of metals cannot be estimated using  
1242 octanol-water partition coefficients. This is a common  
1243 approach to estimate the amount of substance will accumulate  
1244 in the fat of an organism. Bioconcentration and  
1245 bioaccumulation factors are inversely related to exposure for  
1246 metals. This is not the case for organics. The consequence  
1247 of this is that in the most cleanest environments we have,  
1248 let's take Lake Superior. What we find in that situation is  
1249 that we have the biggest bioaccumulation factors. PBT  
1250 criteria used, for example, use a bioaccumulation factor of  
1251 1,000 to decide whether a substance is bioaccumulative. All  
1252 the metals pass that criteria for Lake Superior so, in fact,  
1253 the whole approach is counterintuitive. The cleanest  
1254 environments give you the biggest bioconcentration factors.  
1255 In short, that B does not work for inorganic substances.

1256       Regarding toxicity, metals are generally not soluble.

1257 Toxicity results are almost always based on soluble metal  
1258 salt that has been used in some toxicity tests for some  
1259 organism. However, those are not the products that are put  
1260 in the marketplace. By and large, the massive metals, the  
1261 powders, the oxides, the sulfites are insoluble substances.  
1262 I would like to point out in our recent discussions with the  
1263 European Commission, we had this same discussion and after a  
1264 long period of time and many testimonies the REACH  
1265 regulations now acknowledge that PBT criteria do not apply to  
1266 metals, and you can find this in the text of the Annex XIII  
1267 of the REACH regulation.

1268         Now, I would like to take a moment or two then to  
1269 propose an alternative. If we argue that P and B are not  
1270 applicable to metals then let's look at what I think might  
1271 work.

1272         In 2003, I chaired a SETAC, environmental toxicology and  
1273 chemistry, sorry, Society of Environmental Toxicology and  
1274 Chemistry workshop. We invited some 40 scientists from  
1275 around the world to participate in this and the specific  
1276 issue at hand was, how do we assess the hazard of metals. At  
1277 this workshop PBT issues were discussed at length and  
1278 reported out in a book which I edited.

1279         Consensus was reached at the workshop that the  
1280 individual criteria, P, B and T, are limited in their ability

1281 to assess hazard or to prioritize metal substances. The  
1282 criteria are not linked or integrated, and they attempt to  
1283 identify or predict hazards using bioaccumulation and  
1284 persistence as modifiers of toxicity but without fully  
1285 incorporating other important fate characteristics, which for  
1286 metals can include speciation, complexation, precipitation,  
1287 dissolution, transformation, and sedimentation, and the  
1288 approach does not consider exposure or release rate so we are  
1289 essentially assessing hazard but no effort to assess risk.

1290         The science community recommended that a more  
1291 comprehensive approach be taken for both metals and organics  
1292 in which a generic hazard ranking could be determined using a  
1293 model which simulates natural receiving water such as a lake.  
1294 The model is termed a Unit World Model. The aim is to  
1295 incorporate partitioning, transport, reactivity,  
1296 bioavailability, and exposure route to give a single,  
1297 transparent metric of hazard. It is essentially a critical  
1298 load approach in which an estimate is made at the rate of  
1299 which a chemical must be introduced into a common defined  
1300 environment to achieve a concentration that becomes toxic,  
1301 and the output of this model then is a calculation of the  
1302 rate and the amount that has to be released to cause a  
1303 problem. This allows then a ranking of both metals and  
1304 organic substances so that you now not only just have

1305 criteria that says yes, it is PBT, but you have a ranking of  
1306 the substances. Following the workshop, efforts have been  
1307 ongoing to develop and validate this model and we worked on  
1308 this now for 6 years. This model is now available and it can  
1309 be downloaded and you can find it at [www.unitworldmodel.net](http://www.unitworldmodel.net).

1310 In conclusion, attempts to universally and  
1311 indiscriminately apply PBT criteria to all chemical  
1312 substances and, for example, including metals, would be of  
1313 concern, and would not necessarily reflect good science.  
1314 Similarly, PBT information, by itself, cannot determine risk  
1315 and such criteria should not be used in isolation as a basis  
1316 for requiring regulatory action. It is important, and I  
1317 summarize, to understand that persistence and bioaccumulation  
1318 factors are not particularly useful for assessing metals. I  
1319 believe the state of the science has moved beyond PBT and we  
1320 have an opportunity to use more integrated, and a more  
1321 reliable approach that not only considers the hazard but also  
1322 considers release rates and processes that occur in nature,  
1323 and this approach is now available.

1324 I thank you for this opportunity and I would be pleased  
1325 to take any questions.

1326 [The prepared statement of Mr. Adams follows:]

1327 \*\*\*\*\* INSERTS 7, 8 \*\*\*\*\*

1328 Mr. {Rush.} The chair thanks the witnesses again.

1329 And the chair recognizes himself now for 5 minutes of  
1330 questioning of the witnesses.

1331 And, Dr. Greer, it is my understanding that if we know a  
1332 given chemical is toxic and there is exposure and then we can  
1333 determine the risk as defined by the national academics in  
1334 their 1983 so-called Red Book they laid out the Federal risk  
1335 assessment process. Risk assessment is ``the  
1336 characterization of the potential adverse health effects of  
1337 human exposure to environmental hazards.'' From that, Dr.  
1338 Greer, can we assume that if a chemical is persistent,  
1339 bioaccumulative and toxic that it is a PBT and there are  
1340 known exposures so therefore there is a high risk? I have a  
1341 couple of other questions that go along with that. When we  
1342 know that there are PBTs and evidence of exposure, I  
1343 understand that exposure can be important based on the  
1344 geographic areas of specific populations, how should we  
1345 address this concern? Can you answer both of those  
1346 questions?

1347 Ms. {Greer.} Sure, let me clarify that it is not my  
1348 position that risk assessment is not a valuable tool or that  
1349 it is not important to look at both hazard and exposure, not  
1350 at all but there are certain are certain chemicals out there

1351 that meet the PBT criteria for which we already have evidence  
1352 of exposure through biomonitoring of human blood or through  
1353 looking at animals at the top of the food chain. And that  
1354 combination, in my mind, is definitely sufficient to identify  
1355 those chemicals for fast action so that the agency does not  
1356 spend years and years deciding what level is dangerous but  
1357 start asking questions about use reduction instead. What are  
1358 do we have critical uses that we have to keep on the market?  
1359 Do we have, you know, really the opposite, stupid uses that  
1360 we could get rid of quickly and to start asking reduction  
1361 questions rather than risk question. So I think that the  
1362 real problem here is not so much the debate about risk  
1363 assessment and exposure but really how to get, how to change  
1364 TSCA so that it is not just about study, study, study but is  
1365 about taking action instead. Asking the set of use  
1366 production questions and exposure reduction questions instead  
1367 of the questions just about hazard which is what the agency  
1368 has, unfortunately, spent most of its 35 years doing.

1369         And when we look at the uses of these chemicals, we have  
1370 to look at the patterns of exposure and the patterns of use.  
1371 We know from experience that there are many communities with  
1372 hotspots of exposure where certain chemicals have been used  
1373 in large quantities and have accumulated. Certain patterns  
1374 in diets that have hotspots of human exposure, et cetera. It

1375 is very hard to make a general safety determination that it  
1376 is going to be okay here and not okay there because we  
1377 usually lack the information about the widespread and spotty  
1378 uses of these chemicals combines. I hope that answers your  
1379 two questions.

1380 Mr. {Rush.} Dr. Jones, I have about another minute and  
1381 a half. Do you generally have a response to the questions?

1382 Mr. {Jones.} The same questions?

1383 Mr. {Rush.} Yes.

1384 Mr. {Jones.} The agency believes that ultimately we  
1385 need to evaluate chemicals based on their hazard, their  
1386 exposure and their risk, and that the reason for that is that  
1387 by addressing chemicals and uses that have the highest risk,  
1388 we are going to get the best protection for the country, and  
1389 not spending our energies on exposure routes that may pose  
1390 little or not risk but instead on those exposure routes that  
1391 are going to present the highest risk.

1392 Mr. {Rush.} Okay. The chair recognizes now Mr.  
1393 Whitfield.

1394 Mr. {Whitfield.} Thank you, Mr. Chairman, and thank you  
1395 all for your testimony. We appreciate it very much.

1396 Mr. Jones, back in 1991, there was a lawsuit, Corrosion  
1397 Proof Fittings v. EPA, which evidently in the TSCA Act when  
1398 you came up with the measure to correct the problem you use

1399 the least burdensome standard and evidently in that  
1400 particular case, the EPA did not use the least burdensome  
1401 standard. What is the difference in the standards in this in  
1402 TSCA and in say the Clean Air Act?

1403 Mr. {Jones.} Unfortunately, I am not particularly  
1404 expert at the Clean Air Act but I have a high degree of  
1405 expertise in the pesticide regulatory framework, FIFRA.

1406 Mr. {Whitfield.} FIFRA, okay, let's say FIFRA.

1407 Mr. {Jones.} Well, I am sorry. My expertise is in  
1408 pesticides and in TSCA.

1409 Mr. {Whitfield.} Oh, okay.

1410 Mr. {Jones.} The pesticides program which is sort of  
1411 similar, it is chemicals.

1412 Mr. {Whitfield.} Yeah.

1413 Mr. {Jones.} Thus the regular standard is a reasonable  
1414 certainty of no harm for chemicals used on food and it is a  
1415 basic risk benefit standard for chemicals that are not used  
1416 on food. There isn't a least burdensome requirement in those  
1417 statutes.

1418 Mr. {Whitfield.} Okay, well, under TSCA when we talk  
1419 about unreasonable risk, how do you define unreasonable risk?  
1420 How do you determine something has unreasonable risk?

1421 Mr. {Jones.} Unreasonable risk under TSCA as it exists  
1422 right now has been interpreted to be a risk benefit standard

1423 and that so if the risk of the use outweighs the benefits, it  
1424 is determined to be an unreasonable risk.

1425 Mr. {Whitfield.} Okay, so it is a risk versus benefit.  
1426 Now, and that is not always the standard in some other  
1427 environmental laws, is it?

1428 Mr. {Jones.} That is correct.

1429 Mr. {Whitfield.} Okay and I would assume that Dr. Greer  
1430 and Mr. Sturdevant and maybe Dr. Thompson would agree that  
1431 the more stringent standard would be the best standard and  
1432 would I be correct in that?

1433 Ms. {Greer.} I would agree that the track record shows  
1434 that this standard has not been good for us. For example, in  
1435 the case that you cite, it kept the agency from taking action  
1436 against asbestos which I think is widely regarded as a, you  
1437 know, a dangerous carcinogen.

1438 Mr. {Whitfield.} Yeah.

1439 Ms. {Greer.} It is not to say though that we don't  
1440 think that there are critical uses of toxic chemicals that  
1441 will need to remain on the market.

1442 Mr. {Whitfield.} Right.

1443 Ms. {Greer.} And so, you know, there needs to be an  
1444 exit ramp for those uses so that we don't jam ourselves into  
1445 something unreasonable, in the common language, not in the  
1446 legal language.

1447 Mr. {Whitfield.} Okay, all right, and I think we all  
1448 agree on that, I mean, hopefully, that there are chemicals  
1449 that are quite valuable and yet there is some dangers to most  
1450 chemicals and, hopefully, we could when we rewrite this Act  
1451 can come up with a balanced approach that would benefit  
1452 everyone.

1453 Another question I had for you, maybe, Mr. Jones, or  
1454 anyone else who wants to talk about it. The Toxic Release  
1455 Inventory Program which I guess came about because of the  
1456 Community Right To Know Act, and it is my understanding that  
1457 EPA in the Toxic Release Inventory Program right now has  
1458 something like 600 and some chemicals that are on that list.  
1459 How are those chemicals selected?

1460 Mr. {Jones.} Largely, based on their toxicity, although  
1461 there is a special way in which PBTs can be identified and  
1462 actually have a lower reporting threshold than chemicals that  
1463 are not PBTs.

1464 Mr. {Whitfield.} Yeah and who actually makes that  
1465 decision?

1466 Mr. {Jones.} They are made by the administrator of the  
1467 Environmental Protection Agency, and over the last 15 years  
1468 multiple, at multiple points in time different administrators  
1469 have made that determination.

1470 Mr. {Whitfield.} Yeah but you do have some lab

1471 somewhere doing some testing on animals to decide, is that  
1472 correct?

1473         Mr. {Jones.} There is a wide range of toxicity  
1474 information and sources of information. Some of it is  
1475 generated by manufacturers. Some of it is generated by  
1476 universities and some of it is generated at EPA laboratories.

1477         Mr. {Whitfield.} Yeah, well, you know, I am no expert  
1478 in this but last night I was sitting around and I was looking  
1479 at this inventory list, and I just looked down this list of  
1480 600 chemicals and I came across one called metiran, m-e-t-i-  
1481 r-a-n, which maybe you call are familiar with but I wasn't.  
1482 And it is on the list of Communities Right to Know and yet  
1483 when I read that toxicity part of the study, it says when  
1484 rats were fed a thousand milligrams diet of metiran for 2  
1485 weeks, 5 days per week, no symptoms of illness were produced.  
1486 No ill effect was observed in dogs that received 45  
1487 milligrams daily of this fungicide for 90 days, or 7.5  
1488 milligrams daily for almost 2 years. There were no negative  
1489 effects. So I was just curious, how is it determined that  
1490 this will be on the list of something that communities need  
1491 to know about?

1492         Mr. {Jones.} I would need to go back and get some more  
1493 information around that. I know metiran is a registered  
1494 pesticide active ingredient so there would be a wide number

1495 of toxicity studies that have been generated to support its  
1496 registration so I should be able to answer that question.

1497 Mr. {Whitfield.} Yeah, well, then do any--Dr. Greer, do  
1498 you have any comment about that or you, Mr. Sturdevant? I  
1499 mean, like I said, I am not a scientist and but it seems to  
1500 me that if you give this particular substance--most of the  
1501 decisions are made based on the animal studies is my  
1502 understanding, and if you give animals that much and yet you  
1503 decide to put it on there, I just wonder what is the real  
1504 standard for deciding? What is the precise standard to make  
1505 that decision?

1506 Ms. {Greer.} I also don't happen to know about that  
1507 chemical but like Mr. Jones, I mean I know the criteria that  
1508 the agency uses to get those chemicals on the list so there  
1509 is something here that doesn't meet the eye, and I would have  
1510 to go back and then submit for the record what I think is the  
1511 rationale for having that chemical on the Toxic Release  
1512 Inventory.

1513 Mr. {Whitfield.} Yeah, well, is there--if you were at a  
1514 Rotary Club in your hometown and you were explaining the  
1515 criteria for placing a chemical on this inventory list, how  
1516 would you in layman's term explain it to them?

1517 Ms. {Greer.} Would you like me to?

1518 Mr. {Whitfield.} Yes.

1519 Ms. {Greer.} I would--in layman's terms I would say  
1520 they are chemicals that can harm human health or the  
1521 environment.

1522 Mr. {Whitfield.} They can. Now, that is pretty vague  
1523 it would seem but that is what you would say, is that  
1524 correct?

1525 Okay, I am sorry.

1526 Mr. {Rush.} I am going to recognize the gentleman from  
1527 Maryland, Mr. Sarbanes, for 5 minutes.

1528 Mr. {Sarbanes.} Thank you, Mr. Chairman.

1529 And thank you, Dr. Greer, for your answer just then  
1530 because I am actually speaking to a Rotary Club this evening.  
1531 If I get any questions like that, I will know what to say.

1532 Ms. {Greer.} I will come up with a second verb for you.

1533 Mr. {Sarbanes.} I wanted to go right to this discussion  
1534 you have been having about sort of rapid action versus study  
1535 because I imagine that will be an important part of our  
1536 discussion on the reauthorization and will probably lead to  
1537 some tension of perspectives, as well. What do you have in  
1538 mind when you talk about rapid action, and maybe you could  
1539 speak to a category of chemicals that we could view as  
1540 already having been sort of research tested and understood ad  
1541 nauseam in terms of the toxic impact they have, using  
1542 whatever combination of standards is appropriate, that we

1543 could really just get moving on in terms of this rapid  
1544 action? So talk about the category and even some of the  
1545 particular chemicals that you would identify for that rapid  
1546 action and then what the rapid action would be that you  
1547 envision?

1548 Ms. {Greer.} Well, in our opinion, there are several  
1549 dozen chemicals, maybe two or three dozen chemicals, not  
1550 hundreds or thousands or chemicals, but a relatively speaking  
1551 handful of chemicals that have been extremely well-studied.  
1552 They have been studied, many of these chemicals, literally  
1553 for decades. In the case of a chemical like dioxin, you  
1554 know, there are file cabinet rooms full of studies on these  
1555 chemicals. It is not most chemicals, Mr. Sarbanes, I mean  
1556 most chemicals we don't have that amount of study, and so  
1557 there are really two categories in my mind. The ones that  
1558 have been extremely well studied, I would put a chemical like  
1559 TCE on that, a chemical like formaldehyde on that, you know,  
1560 that we have quite a bit of information. And then the second  
1561 category would be some of the PBTs, some of the chemicals  
1562 that we have known for years are, as one of the other  
1563 testifiers said, you know, the genie is out of the bottle and  
1564 they have come out and we are now in a legacy mode of trying  
1565 to do the cleanup. And for those two categories of  
1566 chemicals, I would submit that we really don't need more

1567 study. What we really need is an action plan to look at what  
1568 the uses are and to phase-out or reduce the uses and  
1569 exposures to those chemicals because one more study is not  
1570 going to make the difference and we already have enough  
1571 evidence to know that at certain concentrations they will  
1572 cause problems. So would be the relative minority of  
1573 chemicals relatively short list but ones that I think are  
1574 very ripe for action given how long they have been already  
1575 studied.

1576 Mr. {Sarbanes.} Would you imagine identifying those  
1577 explicitly in a reauthorized statute?

1578 Ms. {Greer.} Based on my experience of watching EPA  
1579 over the years, we learned in other statutes then when that  
1580 we made lists of chemicals it led to much faster action  
1581 because the agency took a much, much longer time left to  
1582 their own devices to do it. So based on experience with  
1583 implementation really, I would strongly recommend that we put  
1584 the list into the statute, yes.

1585 Mr. {Sarbanes.} When you look internationally at some  
1586 of these other conventions and protocols and regulatory  
1587 regimes that exist, do you see that approach in place?

1588 Ms. {Greer.} Yes, that is right. When you look, for  
1589 example, at the Stockholm Treaty, at the POPs Treaty, those  
1590 chemicals were named and continue to be named in an ongoing

1591 process of adding more chemicals to the list.

1592           Mr. {Sarbanes.} And then, Mr. Sturdevant, I was just  
1593 intrigued by the approach you took. What was the pushback  
1594 you were getting? Who, you know, you described various  
1595 parties showing up in the State capitol. Describe a little  
1596 bit why they were so resistant and where they are now in that  
1597 you have taken steps. I mean it doesn't appear that the  
1598 economy of Washington State has collapsed due to the measures  
1599 you have taken so maybe you could just talk about that a  
1600 little bit.

1601           Mr. {Sturdevant.} Yeah, well, the, you know, in fact,  
1602 the when we identified an alternative to this flame retardant  
1603 and some of the same companies that made the PBDE flame  
1604 retardants also made the alternatives so there wasn't  
1605 anything really in terms of an economic impact in terms of  
1606 jobs. There wasn't any impact in terms of flame retardants.  
1607 It was very interesting and, you know, it felt a little bit  
1608 like a David and Goliath fight really with the resources that  
1609 came to bear, very sophisticated resources there. And, you  
1610 know, as the evidence continued to sort of go our way, the  
1611 arguments changed and, you know, in the end it there was an  
1612 attempt to put a deal together where okay, so if we are going  
1613 to go ahead and take action on PBDEs, let us exchange that  
1614 for greater fire safety standards in the State on other

1615 products basically sort of driving a new market. So, you  
1616 know, I think that it was so about money, and it was about  
1617 also I think setting a precedent, you know, that the first,  
1618 this. It was a hard fight because it was the first ban on  
1619 that product in the country and others followed and it was  
1620 all about whether that first domino was going to topple or  
1621 not.

1622 Mr. {Sarbanes.} Thank you.

1623 Mr. {Rush.} I would like to ask before you respond we  
1624 are going to take an additional 3 minutes for additional  
1625 questions.

1626 As you can see, we know that the great gulf that we are  
1627 going to have to cross for TSCA reauthorization is the bulk  
1628 of chemicals on that, you know, either abandon or come up  
1629 with another process of identifying that would include a ban  
1630 in the legislation.

1631 And I would like to get your response, first of all, do  
1632 you think that these chemicals should be banned in the next,  
1633 chemicals specifically banned in the next and if you would  
1634 take a moment or two to support your answer, your rationale  
1635 and we will start with Mr. Jones.

1636 Mr. {Jones.} Well, the agency and the Administration  
1637 has articulated a number of principles. There are five  
1638 principles in all. The first principle is the chemical

1639 should be reviewed against the safety standard that are based  
1640 on sound science and reflect risk-based criteria protection  
1641 of human health and the environment. That is probably the  
1642 principle that most is relevant to the question of should the  
1643 statute itself ban chemicals. If it is done in a risk-based  
1644 manner I think that might be consistent with the principle.  
1645 If it is just a it just names them and bans them with any  
1646 risk-based criteria related to that it would seem to be  
1647 inconsistent with that principle.

1648 Mr. {Rush.} Dr. Thompson, same question.

1649 Mr. {Thompson.} I think I would just echo those  
1650 comments and just I would note that internationally under the  
1651 Stockholm Convention, we do have a scientific review  
1652 committee that really looks, you know, at these issues very  
1653 closely, analyzes it, looks at the risks associated with the  
1654 chemicals and they come forward with recommendations to the  
1655 countries that participate in the agreements in terms of  
1656 whether a chemical should, in fact, be banned or should it be  
1657 restricted in some way, and whether exemptions should exist.  
1658 So just to echo the comments from my colleague from EPA and  
1659 note that I do think a very, there is sort of a very similar  
1660 type of a procedure that we have internationally to actualize  
1661 quite a similar outcome, I think. Thank you.

1662 Mr. {Rush.} Mr. Sturdevant.

1663 Mr. {Sturdevant.} I certainly don't have the expertise  
1664 to say what chemicals should be on that early action list but  
1665 I would say that you need to look at a couple things. One is  
1666 so how bad is it and if it is bad enough then I think bans  
1667 are justified. The other question is are there alternatives  
1668 and as Dr. Greer said is that use really important or  
1669 necessary. So I think it is you have to look at both what it  
1670 is providing and are there alternatives and if there are  
1671 alternatives that are easily available, and I think it makes  
1672 that decision a lot easier to make.

1673 Mr. {Rush.} Dr. Greer.

1674 Ms. {Greer.} And I will be quick since I have sort of  
1675 already answered this question.

1676 Mr. {Rush.} Right.

1677 Ms. {Greer.} I do think that there are a number of  
1678 chemicals that have a mature docket, so to speak, a Texas new  
1679 docket that is quite complete and that statutory list would  
1680 be helpful to get fast action on those chemicals as we  
1681 reauthorize TSCA.

1682 Mr. {Rush.} Dr. Cowan-Ellsberry.

1683 Ms. {Cowan-Ellsberry.} When I worked within the UN on  
1684 the protocol, that was one of the things that we did  
1685 emphasize is that it needed to be risk-based, and I think I  
1686 would also emphasize that any alternatives also need to be

1687 assessed because we don't want to move in precipitously to  
1688 something that could be worse. And having multiple  
1689 management options and phasing them in as Dr. Greer said,  
1690 getting rid of alternatives where they are maybe not  
1691 necessary, would probably be an easy way to go.

1692 Mr. {Rush.} Dr. Adams.

1693 Mr. {Adams.} Yes, thank you.

1694 Let me draw upon the experiences currently in progress  
1695 in Europe at the moment under the REACH legislation. Under  
1696 that process, chemicals such as Dr. Greer has mentioned and  
1697 ones that are well-known have been identified and put on a  
1698 list for further review, not further study. The point being  
1699 is that the studies are done. They have looked at the  
1700 toxicology. They have determined them to be hazardous and  
1701 potentially causing risk but there is then a careful review  
1702 of the use of the substance, its release to the environment  
1703 and the cost benefit. So I would favor rather that kind of  
1704 approach rather than just prescriptively writing substances  
1705 into the legislation.

1706 Mr. {Rush.} Thank you.

1707 The chair now recognizes Mr. Whitfield for 3 minutes.

1708 Mr. {Whitfield.} Yeah, I would ask Dr. Greer what do  
1709 you say to what Dr. Adams just said there? Do you agree with  
1710 him or not?

1711 Ms. {Greer.} I think, well, you know, it is  
1712 interesting. I think that what the question really comes  
1713 down to who is in the best position to make some of those  
1714 evaluations and decisions? Are there some chemicals that the  
1715 Congress can take a look at and in discussion with effected  
1716 parties and with EPA say, you know, okay this is a list.  
1717 This is the chemicals. I think that we can do that and that  
1718 given how long it has taken the agency which I might add  
1719 really every time they can tentative decision, you know, is  
1720 plagued by comments and delay, et cetera, et cetera, I think  
1721 we could make faster work for them by looking at some of  
1722 those chemicals so I don't think I have a disagreement at all  
1723 in concept. I think the question on the table for us as we  
1724 move forward for TSCA reauthorization is where are those  
1725 conversations taking place and lets keep an eye on how can we  
1726 really make this system work. What would be the best  
1727 solution to make the system work?

1728 Mr. {Whitfield.} Now, Dr. Adams, I know in your  
1729 testimony you said that a hard and fast PBT criteria would  
1730 ignore scientific nuances like how a chemical or metal reacts  
1731 in a particular environment or based upon climate or  
1732 hydrology and other factors. So you would not want to just  
1733 see a list to be banned by Congress, I am assuming?

1734 Mr. {Adams.} Well, I think there are a few chemicals.

1735 If you consider the POPs Treaty or the POPs Convention, for  
1736 example, you will see some substances in there that are  
1737 identified as being extremely hazardous and not to be traded  
1738 in commerce.

1739 Mr. {Whitfield.} So there are some things we could  
1740 easily mention.

1741 Mr. {Adams.} There are a few things out there that are  
1742 kind of no-brainers, if you will, okay and why not. I mean  
1743 and many of them are PCBs that are not manufactured anymore  
1744 so it is an easy one.

1745 Mr. {Whitfield.} Right.

1746 Mr. {Adams.} But there are some others that could be an  
1747 easy choice but by and large, I think we want to consider the  
1748 uses and we want to consider the risk of substances.

1749 Mr. {Whitfield.} Right, now, could you give me a couple  
1750 of examples that there would be universal agreement on?

1751 Mr. {Adams.} Well, if you look at many of the  
1752 chlorinated pesticides that were used in the '60s and '70s,  
1753 so that is Lindane, Aldrin, Methoxychlor, DDT, DDE, so a  
1754 number of those kinds of compounds are recognized  
1755 internationally as being unacceptable.

1756 Mr. {Whitfield.} Now, let me just ask one other  
1757 question that maybe someone could respond to. We have heard  
1758 a lot of discussion today about implementation legislation in

1759 order to abide by some of these treaties. Can someone just  
1760 give me a quick synopsis of what we are talking about there?  
1761 Mr. Jones, do you want to do that or Dr. Thompson?

1762 Mr. {Thompson.} I could give you maybe some brief  
1763 highlights I think of what is needed. I think in particular  
1764 there are a number of provisions in the agreements that call  
1765 for parties to do specific things. Under the Stockholm  
1766 Convention, for example, we would have difficulties  
1767 preventing the manufacture or production of chemicals for  
1768 export and use in other countries. There are a number of  
1769 other provisions that are related to both export controls and  
1770 import controls for the different agreements that current  
1771 domestic authorities don't really cover. And finally, there  
1772 are some waste-related provisions to prevent the reuse and  
1773 recycle of persistent, organic pollutants that we would need  
1774 some tidying up domestically to implement those obligations.

1775 Mr. {Whitfield.} Okay and how many PBTs have actually  
1776 been banned under TSCA since its inception? Have any?

1777 Mr. {Jones.} The most notable one is the PCBs were  
1778 banned by statute.

1779 Mr. {Whitfield.} By statute, yeah.

1780 Mr. {Jones.} The agency has only taken five other sort  
1781 of major regulatory bans since the statute was implemented  
1782 and I am not sure if any of them are PBTs.

1783 Mr. {Whitfield.} Okay, thank you.

1784 Thank you.

1785 Mr. {Rush.} The Chair recognizes Mr. Sarbanes for an  
1786 additional 3 minutes.

1787 Mr. {Sarbanes.} Thank you, Mr. Chairman.

1788 I am just thinking about the different standards by  
1789 which one could judge our efforts to limit some of these  
1790 toxic chemicals and their use and our exposure to them and so  
1791 forth, and there are all kinds of standards. I mean there is  
1792 the legal standard that would be used in a tort case, for  
1793 example. There is the standard that the agency sets which  
1794 can sometimes interfere with or enhance the legal standard  
1795 where we use to protect or create a higher legal standard.  
1796 And I guess there is an industry burden standard that  
1797 operates in our thinking but the one that I am thinking about  
1798 the most is what I would just call the kind of member of  
1799 public consumer commonsense standard.

1800 There are a lot of situations in which these other  
1801 standards I mentioned from the standpoint of the consumer, if  
1802 they are more aggressive, they are seen as unreasonable, in  
1803 other words consumers will say well, you know, that is going  
1804 a little bit too far. But in this context, it is hard for me  
1805 to imagine that a member of the public understanding some of  
1806 the risks that are involved here would not want to adopt the

1807 most aggressive standard relative to all these others that  
1808 was available. And, you know, I imagine people looking back  
1809 on a hearing like this, we are on a reauthorization of TSCA  
1810 that doesn't take this step of identifying obviously  
1811 dangerous chemicals out of the gate, and putting in place a  
1812 rapid action strategy. I imagine the reaction of the public  
1813 would be to say, you know, excuse me, what didn't you  
1814 understand? What more did you need to know to take  
1815 aggressive steps to address this problem? So going forward,  
1816 I am going to be pretty strong on the notion that we need to  
1817 get out of the gate quickly with respect to those chemicals,  
1818 that category of chemicals where we have a lot of knowledge  
1819 at our fingertips.

1820 My question was this, describe what you think will  
1821 happen and it sounds like it may already have begun when our  
1822 standards fall further and further behind the standards that  
1823 are being imposed other places. Do we become a dumping  
1824 ground? I mean, what that gap has got to produce some  
1825 significant and harmful consequences to it and if anybody  
1826 would like to speak to that, I would welcome it.

1827 Yes, Dr. Greer.

1828 Ms. {Greer.} Yeah, I think there are three things that  
1829 you see and we have actually already seen all three of them.  
1830 The first is that we could become a dumping ground. We used

1831 to worry about when the United States took action on a  
1832 chemical that was unsafe that maybe that chemical would end  
1833 up in the Third World, in the developing world and that that  
1834 would be, you know, something that we would feel morally  
1835 responsible for because we had decided it wasn't safe enough  
1836 for us but it could go to Africa or some place where that  
1837 government was not up-to-speed on that. Well, now we face  
1838 the real prospect that Europe will ban certain things from  
1839 products and they will be okay here in the United States  
1840 because Europe is ahead of our system and that we, the United  
1841 States of America could become a dumping ground for things  
1842 that are not safe enough for Europe.

1843         The other two things that you will see, I think and have  
1844 already seen is that States will start to take action where  
1845 they have problems, either because they have hotspots or  
1846 problems in certain rivers or in certain communities, or  
1847 because their citizens are particularly upset and sensitized  
1848 to this. And we will get the sort of patchwork regulation  
1849 that is not really good for industry because different States  
1850 have different systems and it all gets very confusing.

1851         And the third that you will see, which I think we are  
1852 already seeing, is what we call retail regulation which is  
1853 that some in the private sector will say we don't want to  
1854 sell this. This is what happened with BPA and plastic

1855 bottles in baby bottles where they didn't want to wait for  
1856 the government to take action because their market was being  
1857 threatened by the fact that customers didn't want BPA in  
1858 their baby bottles, and so they took action without the  
1859 government for their own purposes, for their own business  
1860 purposes so that they could say to their customers, we have  
1861 our own systems in place to make things safe for you, and you  
1862 can feel happy to come shop here and buy those things, and  
1863 that is sort of random. It is a chemical of the weak system  
1864 that we think if we had a well-functioning government system  
1865 it could be more orderly, more systematic, et cetera, et  
1866 cetera. So I think those are the three consequences that  
1867 jump to my mind immediately and I actually think we are  
1868 seeing all three of them already because, of course, the  
1869 system has been broken for some time now.

1870 Mr. {Sarbanes.} Thank you.

1871 Mr. {Rush.} The chair thanks the gentleman.

1872 The chair wants to make sure that you care about our  
1873 purposes and our continuing work, and the focus of our  
1874 continuing work, and this will be on reforming TSCA, and not  
1875 necessarily reauthorizing TSCA. We want to make sure we are  
1876 clear about that. We want to reform TSCA and it means a lot,  
1877 you know, and we don't have the right idea of how we are  
1878 working on it and we might wind up someplace else and we

1879 certainly can't afford to wind up someplace else. We need to  
1880 reform TSCA.

1881           With that said, I want to again thank the witnesses for  
1882 sacrificing your invaluable time with us. You have been very  
1883 informative and very enlightening toward this committee,  
1884 subcommittee, and I for one, feel much more empowered and  
1885 enlightened because of your comments and your answers to the  
1886 questions. I want to thank you again for being here with us.

1887           And that said, without objection, I would like to submit  
1888 into the record some supporting action on PBTs from the Safer  
1889 Chemicals Healthy Families, they sent letters. The  
1890 Environmental Working Group has sent letters. The National  
1891 Council of Churches has sent letters. The Pesticide Action  
1892 Network of North America, we heard from them in the form of  
1893 letters and other communications, and the American Public  
1894 Health Association. It has already been ordered that the  
1895 American Chemistry Council letter be included, and we have a  
1896 letter also from the National Petrochemical and Refiners  
1897 Association. And lastly the chairman of the full committee,  
1898 Chairman Waxman, has an opening statement that we would also  
1899 enter into the record without objection. And so without  
1900 objection, so ordered and these and other associated matters  
1901 be entered into the record.

1902           [The information follows:]

1903 \*\*\*\*\* INSERTS 9, 11-17 \*\*\*\*\*

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1904           Mr. {Rush.} The chairman would also like to keep the  
1905 record open for another 2 weeks and would ask the witnesses  
1906 if there are any members of the subcommittee who want to ask  
1907 questions in writing, if you would get to you and if you  
1908 would in a timely manner as promptly as you can, respond to  
1909 those questions in writing. It would certainly be an  
1910 enormous help to this subcommittee. Thank you very much.

1911           And the subcommittee now stands adjourned.

1912           [Whereupon, at 12:54 p.m., the Subcommittee was  
1913 adjourned.]