



Testimony
of
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On behalf of the

Society of Chemical Manufacturers & Affiliates

Before the

U.S. House of Representatives

Energy and Commerce Committee
Subcommittee on Commerce, Trade, and Consumer Protection

On

“H.R. 5820, the Toxic Chemicals Safety Act of 2010”

July 29, 2010

Good morning, Chairman Rush, Ranking Member Whitfield, and members of the Subcommittee. My name is Beth Bosley, and I am the President of Boron Specialties in Pittsburgh, Pennsylvania. I am pleased to testify before you today on behalf of the Society of Chemical Manufacturers and Affiliates (SOCMA) regarding H.R. 5820, the Toxic Chemicals Safety Act of 2010.

Since 1921, SOCMA has served as the leading trade association representing the batch and custom chemical industry. SOCMA has roughly 300 member companies, which are typically small to medium-sized businesses, each with up to \$100 million in annual sales. Our members make a \$60 billion annual impact on the U.S. economy and contribute to the chemical industry's position as one of the nation's largest exporters.

SOCMA has testified before this subcommittee numerous times on modernizing the Toxic Substances Control Act (TSCA) and most recently participated in the discussions led by Chairmen Rush and Waxman on major provisions of the draft version of this legislation that was released this past April. We commend you for convening those discussions, and believe they did produce some improvements from the draft bill, such as requiring varied or tiered testing, restoring the articles exemption from the definition of "chemical substance," and slightly improving the treatment of mixtures. On balance, however, we are sorry to say that the bill before us today is still overreaching and unworkable. It would have a substantial negative impact on a strategic American industry that is already fighting recession and foreign competition.

The US chemical industry's competitiveness has continued to decrease substantially in recent years due to competition from countries, like China and India, with lower resource costs, lower wage standards, and a less burdensome regulatory environment. As written, H.R. 5820 poses overwhelming challenges for the industry and substantive loss of high-paying manufacturing jobs will result.

At the moment, the US still leads chemical industry innovation: of the roughly 60,000 patents attributable to chemical sciences issued over the past 5 years, 35,000 of them are authored by US entities. The US industry also leads the world in research and development of new chemical substances, better manufacturing techniques, and process safety advances designed to minimize the impact of chemicals on human health and the environment.

Still, it is more important than ever that we maintain our competitive edge as innovators. We should look to innovation as an enabling technology, that promotes "greener" chemistry and benefits many other US industries – aerospace, advanced materials, agriculture, pharmaceuticals, electronics, and telecommunications (among many others) – making these industries better able to compete in the increasingly global marketplace.

And "it's not enough to do the product innovation in the United States; we need to do the manufacturing, too." Here I'm quoting Matt Miller of the Center for American Progress, from an Op-ed in last week's Washington Post. Miller quotes former Intel CEO Andy Grove, who says manufacturing is "the only way . . . to gain the hands-on experience with products that leads

to all subsequent innovations. Surrender the manufacturing and you lose this virtuous cycle.”¹ I’m gravely concerned that the system that H.R. 2860 would create would indeed drive innovative manufacturing from our shores.

TSCA Should be Modernized in Ways that Do Not Seize Up the Engine of Innovation and Kill Jobs

The following points highlight a few of our major concerns:

- The safety standard in this bill is inappropriate for industrial chemicals. The standards we use to regulate drugs -- which are intended to be bioactive -- and food additives -- which are intended to be eaten -- should not be the model for how we regulate industrial chemicals. Exposures to industrial chemicals outside the workplace are generally many orders of magnitude lower than those to drugs or food, because these chemicals often serve only as intermediates during the production of other chemicals. Narrowly defined uses, like those of food additives and drugs, are inherently easier to regulate. But uses of industrial chemicals are not going to be so readily identifiable, and exposures will be difficult for the manufacturer to measure throughout the supply chain. With this bill, as written, even low risk chemicals would face major roadblocks to market entry.
- New chemicals and new uses would require an unnecessary increase in testing and reporting, and would be subject to a year-long review, discouraging R&D and the continued introduction of new chemicals, or new applications of existing chemicals, into the marketplace. The new chemicals program under the current law -- which involves a 90-day review -- has generally gotten broad support and that support should not be overlooked. Through this EPA program over 1,000 chemicals undergo a review every year. EPA has successfully reviewed some 45,000 new chemicals since 1979 under the PMN program without impeding the innovation that is crucial to American competitiveness. From the experience of reviewing so many molecules, EPA has acquired a vast amount of knowledge that it can build off in reviewing additional molecules. Further, the agency should continue its history of strong support for the creation of models for the evaluation of new and existing chemicals.
- The inclusion of mixtures in the new chemicals program would cause EPA’s workload to skyrocket and burden our industry by requiring a massive increase in paperwork generated for submittal to the EPA for mixtures containing chemical substances that do not have an identified risk. In fact, this expansion will overwhelm EPA and disadvantage US industry. As an example illustrating the difficulty, EPA’s Office of Research and Development has been unable to develop an accepted risk assessment methodology for even a simple two-component pesticide mixture (carbamates and pyrethroids), though it has been a stated goal for quite some time. TSCA reform should emphasize the need for continued research, but should not tie EPA’s hands by requiring something that is not possible using currently available robust scientific methodology.

¹ Matt Miller, “The Great Recession is Just Beginning,” THE WASHINGTON POST (July 21, 2010); available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/21/AR2010072103052.html>.

- H.R. 5820 has no state preemption for chemicals for which EPA has concluded the exhaustive review that the bill envisions. Without some kind of preemption, a serious potential for disruption of interstate commerce will remain from a growing patchwork of state laws.
- Protection of American intellectual property is insufficient. By disclosing chemical identity and components of a mixture in all health and safety studies, we will simply promote foreign undercutting of our industry. We have witnessed China develop many offshoot products using stolen proprietary information, and see no need to facilitate this. As a rule, it would not be necessary for the public to know a chemical identity in order to understand health and safety information about a particular chemical. EPA should remain the agency charged with making safety determinations regarding chemicals, and Congress should not enact a presumption that EPA's review will be inadequate and require second-guessing by NGOs or others.

We understand the complexities associated with modernizing TSCA and believe our chemicals policy goals can be accomplished in a way that does not devastate a strategic American industry, but does enhance public confidence and protection of human health and the environment.

I thank you for this opportunity to share our perspective on this bill and some of its potential consequences, and would be happy to answer your questions.