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3 HEARING ON H.R. 5820, THE TOXIC CHEMICALS SAFETY ACT OF 2010

4 THURSDAY, JULY 29, 2010

5 House of Representatives,

6 Subcommittee on Commerce, Trade and Consumer Protection

7 Committee on Energy and Commerce

8 Washington, D.C.

9 The Subcommittee met, pursuant to call, at 10:08 a.m.,
10 in Room 2123 of the Rayburn House Office Building, Hon. Bobby
11 Rush [Chairman of the Subcommittee] presiding.

12 Members present: Representatives Rush, Schakowsky,
13 Sarbanes, Sutton, Pallone, Green, Gonzalez, Barrow, Castor,
14 Space, DeGette, Dingell, Waxman (ex officio), Murphy of
15 Connecticut, Whitfield, Pitts, Murphy of Pennsylvania,
16 Gingrey, Scalise, Latta, and Barton (ex officio).

17 Staff present: Bruce Wolpe, Senior Adviser; Michelle
18 Ash, Chief Counsel; Tim Robinson, Counsel; Robin Appleberry,

19 Counsel; Tracy Sheppard, Counsel; Jacqueline Cohen, Counsel;
20 Melissa Bez Cheatham, Professional Staff; Rebecca Brown,
21 Fellow; Peter Ketcham-Colwill, Special Assistant; William
22 Wallace, Special Assistant; Elizabeth Letter, Press
23 Assistant; Billie McGrane, Press Intern; Monica La, Energy
24 and Environment Intern; Jerry Couri, Senior Professional
25 Staff; Brian McCullough, Senior Professional Staff; Shannon
26 Weinberg, Counsel; and Sam Costello, Legislative Analyst.

|
27 Mr. {Rush.} The Subcommittee on Commerce, Trade and
28 Consumer Protection will now come to order. The Chair wants
29 to recognize all who are gathered here. The Chair would like
30 to extend his welcome to the witnesses who are here, and the
31 Chair recognizes himself for 5 minutes for the purposes of an
32 opening statement.

33 Today we are pleased to welcome all of our seven
34 witnesses who represent a wide range of views on the state of
35 chemical regulation in the U.S. I know that each and every
36 one of you are very concerned about the proper role of the
37 EPA in assessing chemical risk, hazards, exposure, and safety
38 as they relate to subject of human health, public safety, and
39 the environment. And I look forward to listening to the
40 testimony of the witnesses and their reactions to H.R. 5820,
41 The Toxic Chemicals and Safety Act of 2010, which I proudly
42 co-authored and introduced in the House of Representatives
43 along with our Full Committee Chairman, Chairman Waxman, one
44 week ago last Thursday.

45 Because we anticipated that we would introduce a major
46 chemical reform bill before the August recess, Mr. Waxman and
47 I invited critical stakeholders beginning in early May 2010
48 to comment and participate in, in person I might add, at a
49 number of stakeholder sessions on a draft discussion that

50 serves as a precursor to the bill that is the subject of
51 today's hearing.

52 My own role in all of this was to put forth a bill that
53 all sides would not necessarily fall in love with, but a bill
54 that they can actually live with. Just like the hundreds of
55 millions of Americans must live with chemical substances,
56 mixtures, and articles that they put on their bodies and
57 found in containers where they store their food and water,
58 and then they put onto their breakfast, lunch, and/or dinner
59 tables of their families, their loved ones before putting it
60 into their precious, precious bodies.

61 One thing that is absolutely clear to me is that
62 Americans want, need, and demand to know much more than they
63 have ever known in the past. They want to know what
64 chemicals are in their consumer products, what chemicals are
65 in their food and drink, what chemicals are in their homes,
66 their surrounding communities, and throughout their
67 environment. Americans are also demanding to know what are
68 the associating use, hazard and exposure risk and harms. Are
69 they from these chemicals to their own health, and to the
70 health of their families and to the environment?

71 This hearing and this bill will open this important
72 discussions about these important issues and regulatory
73 dysfunction beyond just the players inside the Washington

74 Beltway by meaningfully shifting the burdens to industry all
75 along this consumer and industrial goods supply chains to
76 provide much to this missing scientific and health and
77 information to the EPA. The American people who have far too
78 long been left out of the loop on these matters will be far
79 better off tomorrow than they are today.

80 With that I again want to thank the witness and I yield
81 back the balance of my time, and I recognize now the Ranking
82 Member, Mr. Whitfield for 5 minutes.

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

84 ***** COMMITTEE INSERT *****

|
85 Mr. {Whitfield.} Thank you, Mr. Chairman. Thank you
86 Mr. Chairman and is my microphone on?

87 Mr. {Rush.} Is his microphone on?

88 Mr. {Whitfield.} Okay, thank you. Not that you all
89 would miss anything by not hearing what I would say, but
90 first of all I want to welcome all the witnesses. We look
91 forward to your testimony on a very important subject. It is
92 my understanding in 90 percent; six percent of all
93 manufactured goods in America are involved in some way with
94 chemicals. And yesterday on the House Floor we passed a bill
95 setting up a National Strategy Board to encourage more
96 manufacturing jobs in America. And Majority Leader Hoyer and
97 Speaker Pelosi have adopted just recently a theme, Make It in
98 America, and all of us certainly support that.

99 But when you look at this legislation, not trying to be
100 an obstructionist, not trying to just create problems to be
101 creating problems, but when you analyze this bill we have
102 serious concerns with this bill. And many of us genuinely
103 believe that if this legislation is passed as written and as
104 amended then instead of helping us create more jobs in
105 America, it will help us lose more jobs in America. I am not
106 going to go over all my concerns. I am just going to list a
107 few.

108 Under this legislation a company trying to make a new
109 product will need to run an assessment not only of the
110 product as they intend to use it, but for also any other area
111 in Commerce where a consumer may come in contact with that
112 product. This could be especially problematic for automobile
113 makers and many other manufacturers. The approval process
114 through the EPA is impossible. Hundreds of toxicologist and
115 risk assessors will need to be hired even with the extra
116 staffing it will be long, cumbersome and time consuming if
117 Reach is an example, their offices have been overwhelmed with
118 paper just on the study portions. The so called Safe
119 Standard is so complex and involved with its conditions and
120 caveats I am not sure what chemical would be able to meet it.
121 The bill compromises confidential business information by
122 requiring that businesses file all the data on their product
123 and make some of the information through public databases.
124 And finally this bill creates a user fee to fund the entire
125 operation of the bill, yet the user fee is not directed to go
126 to the agency or its chemicals program.

127 I would also just like to read from the testimony some
128 experts on this subject. H.R. 5820 as currently drafted
129 promotes unworkable approaches to chemicals management. As
130 a--on the Safety Standard this comment was made. The Safety
131 Standard established in this bill sets such an impossible

132 high hurdle for all chemicals in Commerce that would provide-
133 -that it would produce technical, bureaucratic, and
134 commercial barriers so significant that that law would be
135 ineffective and unworkable. On the new chemicals portion,
136 H.R. 5820 is so overly broad that there would be adverse
137 effects in the amount of upfront data required before a new
138 chemical could be put on the market; was so complex that the
139 result will be that this innovation moves to other countries
140 to produce chemicals with more manageable regulatory regimes
141 and the production of these new chemistries would move there
142 as well. We would be exporting innovation and jobs instead
143 of products.

144 H.R. 5820 puts the burden of compliance on the retailer
145 and other importers in a manner that is unworkable,
146 unenforceable, and not compliant with International Trade
147 Laws. H.R. 5820 does include some improvements over the
148 discussion draft, but its foundation is still unworkable. So
149 we have genuine concerns about this legislation. We think it
150 is vitally important that TCSA be reformed and we do look
151 forward to working with the witnesses, with the majority, and
152 everyone to adopt a plan that is workable, that uses, basic
153 common sense, and provides a balance. Thank you.

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

155 ***** COMMITTEE INSERT *****

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156 Mr. {Rush.} The Chair now recognizes the Chairman of
157 the Floor Committee, my friend from California, Mr. Waxman,
158 for 5 minutes.

159 The {Chairman.} Thank you very much, Mr. Chairman. The
160 Toxic Substances Control Act was enacted in 1976 to protect
161 the American People from exposures to toxic chemicals and to
162 steer our chemical industry toward safety and innovation.
163 These were laudable goals and one's we still can agree on.
164 But 34 years later those goals have not been met. TSCA has
165 been tested and found severely deficient. This statute has
166 been fundamentally unchanged for 34 years where it has been
167 amended it is with new titles that address discreet issues
168 and bypass the unworkable structure of the current law. TSCA
169 has become a patchwork, but not a framework. Today Americans
170 are exposed to a staggering number and variety of chemicals
171 even before birth. Yet consumers lack basic information
172 about these chemical exposures and the Federal government is
173 no less in the dark.

174 EPA lacks critical information about chemical hazards
175 and exposures even though it needs to make decisions about
176 them and they lack the authority to take action even where
177 the risk is clear. The result is that the U.S. is not
178 leading the global move toward safer chemicals, American's

179 public health is not being protected, and American businesses
180 are behind the curve when they should be leading the world in
181 innovative and safe chemical development. We can do better
182 and the legislation Chairman Rush and I and several of our
183 colleagues have introduced will modernize this law.

184 This bill will address the failures of TSCA and set up a
185 flexible, responsive, and workable system for protecting
186 health and the environment while promoting American jobs and
187 innovation. Under this legislation all chemicals will be
188 subject to a safety review and the burden of proof will be
189 rightly shifted from EPA to chemical manufacturers. Basic
190 safety data will be generated and made public, commercial
191 users of chemicals will get the information they need to make
192 better business decisions. New policies will encourage the
193 development of safer chemicals and created the green jobs of
194 tomorrow. These are major steps forward.

195 This Subcommittee has held three hearings this Congress
196 on this important issue. Draft language was circulated in
197 April, followed by a robust and comprehensive stakeholder
198 process. This dialogue was requested by industry and welcomed
199 by environmentalists to move legislation forward and it has
200 resulted in the text we are considering today. There is work
201 still to be done and I look forward to further constructive
202 conversations with my colleagues, all of them, about how best

203 to achieve our common goals.

204 This bill is the right starting point for this
205 conversation. It is ambitious but also workable, and I
206 believe it is the right thing to do for American consumers
207 and businesses alike. I want to thank Chairman Rush for his
208 leadership on this issue and the Minority for their
209 involvement in the stakeholder process. Just like Chairman
210 Rush, I am hopeful that TSCA reform can proceed on a
211 bipartisan basis and with continued input from the
212 stakeholders. We all want legislation that improves
213 protection for public health and the environment, as well as
214 continued innovation and job production. I thank all of our
215 witnesses for being here today and I look forward to their
216 testimony. Thank you, Mr. Chairman.

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

218 ***** COMMITTEE INSERT *****

|
219 Mr. {Rush.} The Chair thanks the Chairman of the Full
220 Committee. The Chair now recognizes Mr. Pitts for 2 minutes.

221 Mr. {Pitts.} Thank you, Mr. Chairman. Thank you for
222 holding this hearing on H.R. 5820, The Toxic Chemicals Safety
223 Act of 2010. Let me begin by saying that none of us wants
224 harmful and dangerous chemicals to endanger public health and
225 the environment. I have children and grandchildren and
226 grandchildren and their safety and wellbeing is of the utmost
227 importance to me. However, this bill before us today creates
228 such a burdensome framework for chemicals to be approved that
229 I am concerned that it will not actually achieve its intended
230 purpose.

231 The existing law, The Toxic Substance Control Act is
232 responsible for identifying and regulating toxic substances
233 in the United States Commerce. It is a risk base statute
234 that requires the EPA to regulate against unreasonable risk
235 and to do so in a--in the least burdensome way. The existing
236 law also contains preemption provisions that do not allow
237 states to establish testing and other requirements that
238 conflict with existing federal laws. Yet H.R. 5820
239 completely revamps TSCA and mandates unrealistic testing
240 which essentially calls for the complete absence of any risk
241 associated with a chemical.

242 According to the National Association of Manufacturers
243 this is ``an impossible goal that will hamper lower risk
244 beneficial products from coming to the market.'' In addition
245 NAM calls the new safety standard ``an unworkable risk
246 assessment methodology for every chemical substance and for
247 all EPA prioritized mixtures.'' Additionally Section 18 of
248 H.R. 5820 eliminates federal preemption by permitting that
249 each state or locality to enact any law regulation on
250 chemicals under the purview of TSCA as long as compliance
251 with both federal and state law is not impossible. Mr.
252 Chairman, if this bill becomes law severely hamper our
253 economy, it will hamper innovation, it will encourage
254 chemical companies to go offshore and unemployment will
255 increase, and our nation will suffer.

256 I urge a thoughtful reconsideration of this bill while
257 carefully evaluating risk including hazards, exposures,
258 intended uses, and the impact to the economy and let those--
259 these factors inform and guide our any regulatory action. I
260 appreciate the witnesses being here today, look forward to
261 listening to their testimony, thank you, and I yield back.

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

263 ***** COMMITTEE INSERT *****

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264 Mr. {Rush.} The Chair recognizes the gentleman from New
265 Jersey, Mr. Pallone for 2 minutes.

266 Mr. {Pallone.} Thank you, Mr. Chairman. I do have to
267 start out by responding to Mr. Whitfield's comments. I like
268 Mr. Whitfield a lot but I have to that on the one hand I was
269 happy that he recognized the Democratic agenda of Make It in
270 America. And he also indicated that he supports it. I was a
271 little surprised because I think that many times Republican
272 support of free trade bills, which we had a proliferation
273 under President Bush, you know don't seem to do much to
274 protect American jobs, and I am often really not sure if the
275 Republican leadership really cares about preserving jobs here
276 anymore with all their free trade advocacy. But I know now
277 that at least Mr. Whitfield at least supports our Make It in
278 America agenda and I do appreciate that.

279 I also wanted to thank you, Mr. Chairman for holding the
280 hearing today on a very important subject and that is TSCA.
281 The original TSCA law was enacted in '76, and it is clear
282 that this law had failed to sufficiently--failed to protect
283 public health and our environment. It was supposed to allow
284 the federal government to keep harmful chemicals out of
285 Commerce, but provisions in the law have kept EPA from being
286 able to collect the data necessary to even determine what

287 chemicals are harmful. With over 80,000 chemicals in
288 Commerce in the U.S., and roughly 700 new chemicals
289 introduced every year, EPA has only been successful in
290 regulating limited use of five chemicals under the TSCA
291 statute. And the provisions in this will place so much
292 burden on the EPA they even run into trouble banning asbestos
293 which we know is extremely hazardous to human beings.

294 The problem stems from the burden being placed on the
295 EPA to approve a chemical is unsafe when the agency does not
296 have access to the data required to make that case. Reform
297 is necessary and I commend the committee and the EPA for
298 taking this issue seriously. I think that the legislation
299 before us would make a big difference. And I also wanted to
300 mention that the EPA Administrator Lisa Jackson invited
301 members of this Subcommittee to her office to personally
302 discuss this issue last year. And it was nice to have the
303 opportunity to sit down with her and talk about TSCA, because
304 I know she is very concerned about it. Thank you, Mr.
305 Chairman.

306 [The prepared statement of Mr. Pallone follows:]

307 ***** COMMITTEE INSERT *****

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308 Mr. {Rush.} The chair thanks the gentleman. The Chair
309 now recognizes Mr. Latta for 2 minutes.

310 Mr. {Latta.} Thank you, Mr. Chairman, Ranking Member
311 Whitfield, thank you for conducting this hearing on The Toxic
312 Chemicals Safety Act of 2010 which will have a significant
313 impact on the Midwest. I represent the fifth District of
314 Ohio which is the State's largest agricultural and
315 manufacturing district. As we are all too painfully aware,
316 America's manufacturing sector has been hard hit. In my
317 district many farmers are dependent on these outside
318 manufacturing jobs to supplement their agricultural incomes.
319 I strongly feel that we cannot pass the proposed legislation
320 in its current form since manufacturing and agriculture would
321 be put at a great disadvantage against our overseas
322 competitors.

323 Congress needs to help businesses by encouraging job
324 growth, helping to spur innovation, and retaining jobs in the
325 United States. I have grave concerns that the EPA under its
326 broad authority within this legislation would do more harm
327 than good. American farmers and ranches provide hundreds of
328 millions of people with the safest, most affordable, and most
329 abundant food supply in the world. This is all done with
330 less than two percent of Americans engaged in agriculture

331 compared to 40 percent in 1900. This legislation will lay
332 claim to many chemicals and keep valuable food and
333 commodities off the shelves from American families.

334 Our American farmers and ranchers are the environmental
335 stewards of this earth and they do everything in their power
336 to protect it, their families, and their neighbors. This
337 legislation will be extremely disruptive and detrimental to
338 AG production. As members of Congress we have an obligation
339 to protect human health and the environment, however many can
340 argue that this bill fails to accomplish this instead will
341 cost American jobs, lower the standard of living, and will
342 empower our overseas competitors.

343 Mr. Chairman, I look forward to today's hearing and
344 hearing from our witnesses. And I hope the Subcommittee
345 keeps in mind that chemicals affect roughly 96 percent of our
346 daily lives, and this bill will need to be thoroughly better.
347 Thank you, Mr. Chairman, and I yield back.

348 [The prepared statement of Mr. Latta follows:]

349 ***** COMMITTEE INSERT *****

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350 Mr. {Rush.} The Chair now recognizes the Chairman
351 Emeritus of this small committee, my friend from Michigan,
352 Mr. Dingell, for 5 minutes.

353 Mr. {Dingell.} Mr. Chairman, I thank you for your
354 courtesy, and I commend you for holding this hearing today.
355 There is wide agreement and experience tells us that The
356 Toxic Substances Control Act needs to be reformed. After 33
357 years it has been blatantly clear the law needs a thorough
358 examination and reauthorization. We have heard about this
359 from industry, from environmental groups, and from consumer
360 advocacy organizations. Indeed EPA has not banned a single
361 chemical under TSCA for nearly 20 years.

362 Despite our best intentions back in 1976, TSCA is not
363 working as we hoped that it would when it was enacted. We
364 simply must be doing something in an effort to protect the
365 public from exposure to harmful chemicals. This must be done
366 by using sound and reliable science as the basis. Further, I
367 must bring up an important factor that all too often gets
368 neglected: funding. As we work to reauthorize and revise
369 TSCA, we must work to have an adequate and consistent stream
370 of funding for the program. Without proper funding we will
371 not get results and will lead to a constant source of
372 frustration for everyone involved including industry which

373 desperately needs certainty in order to compete in a global
374 marketplace.

375 I am pleased that the committee has convened a series of
376 stakeholder discussions. This is very important and it is
377 important to consumer advocates, environmental groups, and
378 industry play a role as this process moves forward. I
379 sincerely hope that the process continues and that
380 stakeholders will continue to be consulted as we move
381 forward. I would note that we are still at the beginning of
382 this process and not at the end. And while I feel we must
383 move with speed and expeditiousness, I want to point out that
384 undue haste can result in serious problems.

385 Mr. Chairman, we have our work cut out for us in
386 reforming The Toxic Substances Control Act. We clearly need
387 to protect the public, but we need to do so in a way that
388 does not stifle innovation and that protects American
389 manufacturing and industry, something that we have been
390 hearing quite a bit about lately. The United States has at
391 this time a very fragile economy and we cannot afford to lose
392 any more jobs in this country than we have already lost. In
393 fact we have to work to actually create jobs through
394 legislation like this.

395 This committee has a long and a proud history of taking
396 on the most difficult legislative challenges and turning out

397 good quality and not infrequently bi-partisan bills that have
398 gone on to be both successful in terms of protecting people
399 that we represent and protecting their jobs and financial
400 security. I am hopeful that reforming The Toxic Substances
401 Control Act could be another story of success by this
402 committee. I look forward to hearing our witnesses and to
403 working with you, Mr. Chairman and the Committee on this
404 important matter. I yield back the balance of my time.

405 [The prepared statement Mr. Dingell follows:]

406 ***** COMMITTEE INSERT *****

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407 Mr. {Rush.} The Chair now recognizes the gentleman from
408 Texas, my friend, Mr. Barton for 5 minutes, the Ranking
409 Member of the Subcommittee.

410 Mr. {Barton.} Well, thank you, Chairman Rush. And I
411 also want to thank Chairman Waxman, and former Chairman
412 Dingell and of course our Ranking Member Mr. Whitfield on
413 this Subcommittee for their excellent work so far on this
414 subject and this Congress. I am going to submit my formal
415 statement for the record and I am going to read a little bit
416 from the Republican Memo on this hearing because I think it
417 is by itself a fairly good opening statement. This is from
418 the Republican memo on this hearing. It says on July the
419 22nd, 2010, Chairman Waxman and Chairman Rush introduced
420 legislation entitled The Toxic Chemical Safety Act. This
421 legislation would dramatically rewrite Title I of the Toxic
422 Substance Control Act or TSCA.

423 This legislation is introduced following the circulation
424 of discussion draft in April, followed by 10 listening
425 sessions for various stakeholders to express their views on
426 potential improvements to the technical and policy parts of
427 the draft legislation. TSCA enacted in 1976 gives the EPA
428 authority to regulate the manufacture, processing,
429 distribution, and commerce use and disposal of chemical

430 substances and mixtures. For the purposes of this memo
431 discussion draft Title I which has the actual authorities
432 related to generic chemical regulation is the focus. Title I
433 of TSCA is the only federal environmental law that explicitly
434 gives EPA broad power to regulate domestic manufacturing.

435 In addition, Title I provides EPA authority to gather
436 data on chemicals, review petitions for the use of new
437 chemicals and take action against imminent threats to the
438 environment and the public health. TSCA is a risk based
439 statute that requires the EPA to regulate against an
440 unreasonable risk and to do so in the ``least burdensome way.
441 Interestingly section 6C of TSCA requires the EPA to use
442 another environmental law besides TSCA if a risk of an
443 intruding human health or the environment could be eliminated
444 or reduced in a sufficient--to a sufficient extent by actions
445 taken under another federal law.''

446 Finally TSCA contains preemption provisions that do not
447 allow states to establish testing and other requirements that
448 conflict with existing federal laws. Mr. Chairman, TSCA has
449 been referred to by the current EPA administrator as a model
450 federal law. And yet the discussion draft that yourself and
451 Chairman Waxman have introduced radically changes TSCA. It
452 sets a safety standard that probably could not be met. It
453 changes the burden of proof; I mean it is 170 degrees in its

454 change in direction from the current law which is in my
455 opinion working well.

456 So I want to commend you, Chairman Rush, and the full
457 Committee Chairman Mr. Waxman for the process. To your
458 credit you have put your discussion draft out, you have
459 listened to stakeholders, you have had meetings with myself,
460 and Mr. Whitfield, and other Republicans, and you have
461 indicated that you are not going to have a rush to judgment
462 and no pun intended, Chairman Rush on this legislation. We
463 have got an expert panel here today including the
464 Administrator of the program at EPA. I suggest that we re-
465 listen to them before we decided what to do.

466 I think it is apparent given that today and tomorrow are
467 the last two days we are going to be here before the middle
468 of September, and when we get back in September we are not
469 going to be in session hopefully more than two to three weeks
470 before we break for the campaign for the election. It is
471 very unlikely that we can--are going to do anything on TSCA
472 unless we decide that you wanted to just do a straight,
473 clean, reauthorization. Based on this discussion draft, that
474 doesn't appear to be our intention of our friends on the
475 Majority. So this is a very important hearing, because it
476 probably sets the floor for discussion and act in this area
477 in the next Congress. And with that, Mr. Chairman, I yield

478 back. I do appreciate the hearing, and I do again appreciate
479 the process of the--of listening, and discussing, and sharing
480 that have been exhibited on this issue so far in this
481 Congress. Thank you, Chairman Rush.

482 [The prepared statement Mr. Barton follows:]

483 ***** COMMITTEE INSERT *****

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484 Mr. {Rush.} The Chair thanks the Ranking Member and now
485 recognizes Mr. Green, gentleman from Texas for 2 minutes.

486 Mr. {Green.} Thank you Mr. Chairman for holding this
487 hearing. I would like to welcome both our panels. I want to
488 thank all the stakeholders for their participation in the
489 process over the last few months. Your input is valuable to
490 us and as we work towards reforming TSCA. I also want to
491 thank the Committee for considering the input in
492 consideration as the bill was crafted. I hope this dialogue
493 will continue as the bill moves through the Committee
494 process.

495 In 1976 The Toxic Substance Control Act was written to
496 ensure that human health and environment effects on--of
497 chemical substance were identified and properly controlled
498 prior to placing these materials in Commerce. However, since
499 then recognition that the bill needs to be updated to give
500 the EPA the necessary authority to oversee and regulate
501 chemicals that are hazardous to human health and the
502 environment has only grown to the point that EPA is no longer
503 seen as an effective regulator of consumer products. This
504 need to regulate has been recognized by industry participants
505 as well as consumer, labor, and environmental advocates
506 alike. So while it is broadly recognized that changes need

507 to be made in TSCA, there remains to be some disagreement
508 over the scope of these changes, and I look forward to
509 hearing from our witnesses today on their thoughts on the
510 bill before us.

511 While I appreciate the Committee's work on this bill, I
512 do have some concerns about changes made in the new chemicals
513 program and whether the timelines included in the bill for
514 the EPA to complete their work on reviewing existing
515 chemicals are realistic from a time and personnel
516 perspective. I believe it is important that TSCA reform
517 protects consumers, workers, and the environment while
518 encouraging innovation and ensuring a workable regulatory
519 program. As we move forward I steep that balance in these
520 objections with the end result that is beneficial for both
521 the environment consumers and businesses, and I look forward
522 to working with our Chairman and our Ranking Member. And
523 again thank you, and I yield back my time.

524 [The prepared statement Mr. Green follows:]

525 ***** COMMITTEE INSERT *****

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526 Mr. {Rush.} The Chair now recognizes Dr. Gingrey for 2
527 minutes.

528 Dr. {Gingrey.} Mr. Chairman, thank you. I have got a
529 written statement and I would like to submit it for the
530 record. I may paraphrase some of it, but the distinguished
531 Chairman Emeritus remarks are basically the way I feel about
532 this reauthorization of TSCA. It is necessary. I feel sure
533 that it is necessary. It has been a long time since the law
534 was basically passed back in 1976. And certainly we don't
535 want to expose the public to harmful chemicals; Not one of
536 the 84,000 under the jurisdiction of TSCA. But when I read
537 some of these testimonies, I haven't read every word of every
538 testimony, of course you always bring up what the harmful
539 effects on the children.

540 Now I am a physician and indeed an OB-GYN physician. I
541 have delivered 5,200 children, babies, and I am concerned
542 about them. Of course I am concerned about everybody, but I
543 think there is a great risk here of getting to the point
544 where we literally scare the bejesus out everybody. In fact
545 I was reading one of the testimonies, I don't think I--well,
546 I can find it. I was--go real quickly to page one and we are
547 going to hear from Mr. Owens, but in the second paragraph the
548 last sentence it says and maybe this is just a typo, the time

549 has come to bring TSCA into the 21st century and give the
550 American people the protection from harmful chemicals they
551 expect. So they expect harm from the chemicals? That
552 probably should have read the American people the protection
553 they expect from harmful chemicals. So you know I have some
554 real concerns about overshooting here. I think I went into--
555 went to Georgia Tech as a co-op student back in 1960, and I
556 said I am going to major in chemistry because I love that ad
557 that DuPont had: Better things for better living through
558 chemistry. And so you know, it is good to regulate and make--
559 -protect people and everything, but let us not throw the baby
560 out with the bathwater here. And I really do look forward to
561 your testimony. Mr. Chairman, I yield back.

562 [The prepared statement Dr. Gingrey follows:]

563 ***** COMMITTEE INSERT *****

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564 Mr. {Rush.} The gentleman from Colorado, Ms. DeGette is
565 recognized for 2 minutes.

566 Ms. {DeGette.} Thank you very much, Mr. Chairman. I
567 think we should put this into perspective. We have 80,000
568 chemicals present in Commerce today and many Americans assume
569 that these potentially toxic substances are heavily regulated
570 and are therefore safe. But somehow, only 200 of the 80,000
571 chemicals have been required to undergo EPA mandated testing.
572 Only five are currently under EPA restrictions. And even
573 more alarming is that American babies even before they are
574 born are exposed to more than 350 industrial chemicals,
575 pesticides, and pollutants, most of which are subject to
576 little or no regulation. Now the reason why we have this
577 situation is because TSCA is just frankly inadequate and
578 outdated.

579 When this law was first put into effect in 1976 it was a
580 ground-breaking piece of legislation that took steps to limit
581 the country's exposure to harmful chemicals and toxins. But
582 despite its initial success, TSCA failed to anticipate the
583 scientific and technological developments of the next 30
584 years that would result in unprecedented numbers of
585 chemicals. This updated legislation has a lot of good
586 benefits. It vastly improves our ability to monitor

587 commercial chemicals, it has strong disclosure requirements,
588 and equally importantly it doesn't stop at regulation of
589 current chemicals, but also inspires innovation with
590 incentives to encourage the development of new, safer
591 chemical alternatives. And it is we hope that many of the
592 companies that currently rely on potentially harmful and
593 toxic chemicals will look at the feasibility of safer
594 options.

595 So Chairman, I am proud to be an original co-sponsor of
596 this legislation. It was developed with input from everybody
597 and I think the resulting Act will better equip our
598 regulatory agencies to fight the dangers. I commend you, I
599 commend the committee staff, and I hope that our friends on
600 the other side of the aisle will work with us as we move
601 forward on it.

602 [The prepared statement Ms. DeGette follows:]

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

|
604 Mr. {Rush.} The gentleman from Louisiana, Mr. Scalise
605 is recognized for 2 minutes.

606 Mr. {Scalise.} Thank you, Mr. chairman for having
607 today's hearing on The Toxic Chemical Safety Act, a bill that
608 would dramatically change chemical regulation in the United
609 States, and severely impact every sector of our economy
610 particularly places like my home State of Louisiana that are
611 so dependent on the chemical industry. Mr. Chairman,
612 Louisiana rates second in the nation in total chemical
613 industry value output and we are the ninth largest employer
614 of chemical industry workers in the country.

615 In addition there are more than 100 major chemical
616 plants located in my state not to mention the many
617 petrochemical refiners, chemical processors, distributor,
618 exporters, and retailer that all work in Louisiana and
619 provide thousands of quality high paying jobs. Simply put
620 the chemical and petrochemical industries are the very
621 backbone of our state's economy and the future in economic
622 well being would be threatened if H.R. 5820 were to become
623 law in its present form. I have very serious concerns about
624 the legislation and the consequences it would have for our
625 chemical industry. First, the scope of the legislation is
626 extremely broad. EPA would be given unprecedented new

627 authority to regulate chemical substances, mixtures, and
628 articles and the bill would require a minimum data set for
629 every chemical and mixture distributed in Commerce. And
630 every chemical and mixture will be subjected to scores of job
631 killing new regulations. No one in the supply chain would go
632 untouched.

633 The scope of this legislation also brings its
634 workability in to question. I believe the EPA's resources
635 will be overwhelmed and the chemical industry will be
636 overburdened with the tracking and reporting requirements
637 under the bill. It piles up massive regulatory burdens on
638 the chemical industry and it gives powers to the EPA that
639 will not be able to accomplish, which will disrupt Commerce
640 and put the industry and EPA into a never-ending loop of
641 review. Another serious concern I have is the bill's
642 treatment of confidential business information. The chemical
643 makeup of commercial chemicals and mixture components will be
644 compromised meaning that crucial trade secrets and
645 intellectual property will be lost. Why would a chemical
646 manufacturer or processor try to develop new chemicals or
647 seek new innovative mixtures in America when their work will
648 be made available to their competitors if they make it here
649 rather than a foreign country?

650 And finally, Mr. Chairman, this legislation removes the

651 current TSCA requirement that EPA analyze a new regulations
652 effects on employment. This is proof that the proponents of
653 this legislation know how damaging this bill will be to jobs
654 in the chemical industry, and it flies in the face of claims
655 by this Administration, and the liberals running Congress
656 that their focused on jobs. And really I guess the
657 proponents of this legislation don't want the EPA to look at
658 the impacts of jobs when the bill gives the EPA the authority
659 to shut down businesses and plants. It doesn't take a Ph.D.
660 in economics to understand the impact there. Those actions
661 will destroy jobs. This legislation will cause serious harm
662 to the chemical industry and put thousands of hard working
663 Americans out of work. While I am for ensuring that safe
664 chemicals are being manufactured and used in Commerce we must
665 create--we must not create new federal powers that will defer
666 innovation, destroy American competitiveness, and kill jobs.
667 Thank you, I yield back.

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

669 ***** COMMITTEE INSERT *****

|
670 Mr. {Rush.} The Chair now recognizes the gentleman from
671 Texas, Mr. Gonzales for 2 minutes. The gentlelady from
672 Florida Ms. Castor is recognized for 2 minutes.

673 Ms. {Castor.} Good morning and thank you, Chairman Rush
674 very much for this hearing and all of your leadership during
675 this session of Congress on TSCA reform including H.R. 5820
676 The Toxic Chemical Safety Act which I am proud to be an
677 original co-sponsor. You know toxic, or comprehensive TSCA
678 reform has now been put off for a generation, an entire
679 generation. But we have an opportunity now to confront the
680 threats with toxic chemicals posed to the public health, and
681 to our families, and to your communities. I mean it was 1976
682 when The Toxic Substances Control Act was passed and there
683 were already more than 60,000 chemicals in production in the
684 United States. And we knew very little about the health and
685 environmental impacts. Unfortunately TSCA proved to be very
686 weak and inadequate. EPA required testing on a mere 200
687 chemicals despite the years of solid science that has shown
688 that many, many more are highly toxic. Even more concerning
689 the EPA regulates just five of the more than 80,000 that are
690 now in circulation. We can do so much better. This is the
691 United States of America. We have the science; we have the
692 experts. A particular concern are the consistent

693 biocumulative toxic chemicals these PVT's pose an especially
694 worrisome threat to our communities because they build up in
695 the food chain, and the human body, and they linger for
696 years, and because they increase the risk of breast cancer,
697 and brain cancer, autism, asthma, reproductive disorders, and
698 birth defects. The good news is that we are now the
699 threshold to make real progress. We have terrific experts
700 here today. We have dedicated colleagues throughout the
701 halls of Congress and professional staff, and all of you that
702 are ready to help us modernize chemical regulation. After--
703 so after 34 long years it is time to take action starting
704 with the worst offenders including PVT's. It is time to
705 alter the burden of proof, move away from the research and
706 delay strategy that has done a lot of harm to consumers and
707 families. There is so much at stake for the public health,
708 and our families, and consumers across America, so I am
709 hopeful that we are going to make progress. Thank you and I
710 yield back.

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

712 ***** COMMITTEE INSERT *****

|
713 Mr. {Rush.} The chair now recognizes the gentleman from
714 Pennsylvania, Mr. Murphy for 2 minutes.

715 Mr. {Murphy of Pennsylvania.} Thank you, Mr. Chairman.
716 The Toxic Substance Control Act of 1976 is in need of
717 critical updates. Since it was written, thousands of more
718 chemicals have been invented; many have substantially
719 improved public health and prolonged life. Vehicles made
720 lighter and safer, building materials stronger and safer,
721 medical devices and material coatings that are more useful,
722 reduce rejection by the body, improve medication
723 effectiveness, and reduce infection of risk. Farms are more
724 productive and for all these we are thankful for the
725 scientific inventions.

726 On the other hand there have also been new chemicals
727 associated with harm and public health. Further substances
728 previously thought safe were later deemed unsafe after years
729 of research or after new technologies were developed to test
730 substances. New technologies not available at the time the
731 product was invented. In 1899, Charles Duell, the then
732 Commissioner of the U.S. Patent office declared ``everything
733 that can be invented has been invented.'' Well we recognize
734 now how out of step he was, but we are at risk of applying
735 and codifying a similar standard today. If we were to apply

736 a far reaching standard that says ``ensures for all intended
737 uses with regard to public health that there is a reasonable
738 certainty that no harm will result'' I fear this standard
739 must assume that every test that can be invented has been
740 invented, that every outcome that can be anticipated has been
741 anticipated, that every long term cumulative effect of
742 everything has been measured in every way thinkable and not
743 yet thinkable. This legislation assumes that the EPA is
744 capable of doing these things but assumes--excuse me the EPA
745 is incapable of doing all these things, but is assumes all
746 private industry is capable of meeting this standard. Rather
747 it assumes a standard of ``We can't tell you exactly what it
748 is, and we can't do it ourselves, but you're responsible for
749 knowing what we meant now and the future with the tools you
750 don't have.'' Now I will support standards which say we must
751 work with industry not abdicate the EPA's or the FDA's or
752 anybody else's role in independently assessing product
753 safety. But it is difficult to have a standard applied that
754 no one can quite define but we say we want you to assume all
755 risk. If we are apply and zero risk standard legislation we
756 would pass no bills. I hope that this Committee will
757 continue work on this very, very important issue to move
758 forward on public health, but let us not immobilize our
759 systems and standards, and let us help promote further

760 inventions in the scientific community. Thank you.

761 [The prepared statement Mr. Murphy of Pennsylvania

762 follows:]

763 ***** COMMITTEE INSERT *****

|
764 Mr. {Rush.} The gentleman from Illinois will pass, the
765 Vice Chairman of the Subcommittee. Ms. Schakowsky is
766 recognized for 2 minutes.

767 Ms. {Schakowsky.} Thank you, Mr. Chairman. I want to
768 take just a different perspective on Mr. Owen's statement
769 that my good friend Mr. Gingrey pointed out in the testimony
770 that the time has come to bring TSCA into the 21st Century and
771 give American people the protection from harmful chemicals
772 they expect. I want to use as case in point the issue of
773 asbestos. Eight thousand Americans die each year from
774 complications associated with exposure to asbestos. In 1989,
775 the Environmental Protection Agency attempted to use TSCA to
776 issue a rule to ban the use of asbestos citing the strong
777 evidence of hundreds of studies that conclusively found that
778 asbestos was extremely hazardous to workers and the public as
779 a whole. And despite the overwhelming evidence the U.S.
780 Court of Appeals reversed that decision saying that the EPA
781 had not fulfilled the necessary burden of proof under TSCA.
782 In Mr. Owen's testimony he cites the inability of EPA to
783 phase out the use of asbestos in products despite the
784 ``unanimous scientific opinion about the risk'' as an example
785 of TSCA's ineffectiveness. Now I would actually like to see,
786 there is a process that would allow asbestos to be phased

787 out. I would like it actually to go even faster and to allow
788 the EPA to have the authority to immediately ban the most
789 highly toxic substances like asbestos that including long
790 lasting chemicals known as persistent bioaccumulative toxic
791 pollutants PBT's that build up in the food chain to levels
792 that are harmful to human health and cause environmental
793 harm. But certainly we want to empower the EPA to do the--to
794 be able to remove from the environment those things that we
795 know are killing people. And right now that is not even the
796 possibility. So I am glad that we are doing this. I highly
797 support, heartily support the bill. I am a co-sponsor, and I
798 yield back.

799 [The prepared statement Ms. Schakowsky follows:]

800 ***** COMMITTEE INSERT *****

|
801 Mr. {Rush.} The Chair recognizes Mr. Space for 2
802 minutes.

803 Mr. {Space.} Thank you, Mr. Chairman. I would like to
804 thank you and Ranking Member Whitfield for holding today's
805 hearing on TSCA reform legislation. I am encouraged that we
806 have made some significant process on this priority and I am
807 especially pleased that you and your staff engages in lengthy
808 stakeholder process following the creation of a draft bill
809 and prior to introducing the legislation that is before us
810 today.

811 All of us want to see TSCA modernized because we agree
812 that our current regulatory framework is broken. Indeed even
813 the industry itself has made that explicit acknowledgement.
814 All of us strive for safe communities and livable
815 environments. And during this time of economic down turn
816 part of creating a livable environment is ensuring that we
817 are maintaining jobs and the American industries that support
818 them. I think it is important to understand that there is--
819 this is not a black and white situation here. It is a very
820 grey area and finding that balance is critical to our success
821 as a legislature in dealing with an issue which is admittedly
822 one of grave concern to a lot of people. I look forward to
823 working with you, Mr. Chairman, and members on both sides of

824 the aisle as we piece together legislation that protects both
825 the health of our families, and the jobs that provide for
826 them. And I happen to be one who thinks that we can do so in
827 an effective fashion with regards to both concerns. And with
828 that, Mr. Chairman I yield back.

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

830 ***** COMMITTEE INSERT *****

|
831 Mr. {Rush.} The Chair now recognizes the gentlelady
832 from Ohio, Ms. Sutton for 2 minutes.

833 Ms. {Sutton.} Thank you, Mr. Chairman. And thank you
834 very much for holding this very important hearing. I am
835 going to submit my statement for the record, but this is a
836 critical issue and I look forward to hearing what the
837 witnesses have to say about how we me might be able to
838 strengthen and perfect this bill going forward. Thank you, I
839 yield back.

840 [The prepared statement Ms. Sutton follows:]

841 ***** COMMITTEE INSERT *****

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842 Mr. {Rush.} This hearing now will entertain a unanimous
843 consent request that Mr. Tim Murphy from Connecticut--
844 Christopher, I am sorry, Mr. Christopher Murphy from
845 Connecticut be allowed to sit with the panel for the purposes
846 of questioning the witnesses, and to make some introductory
847 remarks to one of his former constituents and colleagues Dr.
848 Mitchell. Hearing no objections, so ordered. Mr. Murphy,
849 you will be allowed to participate in the questioning of the
850 witnesses. Now it is my privilege and honor to introduce our
851 five panelists who have sat by very patiently while the
852 members address their opening statements. And I want to
853 introduce the panel now. To my left we have Mr. Steve Owens
854 who is the Assistant Administrator of the Office of Chemical
855 and--Chemical Safety and Pollution Prevention for the EPA.
856 Next to Mr. Owens is Dr. Richard Denison. He is a Senior
857 Scientist for the Environmental Defense Fund. And next to
858 Dr. Denison is our former colleague and outstanding member of
859 Congress and he now is the President and Chief Executive
860 Officer of the American Chemistry Council, Mr. Cal Dooley.
861 And next to Mr. Dooley is Mr. Ken Cook who is the President
862 of the Environmental Working Group. And seated next to Mr.
863 Cook is Mr. Howard Williams the Vice President of
864 Construction Specialties, Incorporated of Muncy,

865 Pennsylvania. And seated next to Mr. Williams is Dr. Mark
866 Mitchell, the president of the Connecticut Coalition for
867 Environmental Justice. And seated next to Dr. Mitchell is
868 Ms. Beth Bosley. She is the Managing Director of Boron
869 Specialties, LAC--LLC of Valencia, Pennsylvania. And she is
870 testifying on behalf of The Society of Chemical Manufacturers
871 and their Affiliates. And so again welcome to each and every
872 one of you. And it is the practice of this Subcommittee to
873 swear in the witnesses so I will ask if you would please
874 stand and raise your right hand.

875 [Witnesses sworn.]

876 Mr. {Rush.} Please be seated. Let the record reflect
877 that the witnesses have all answered in the affirmative. Now
878 the Chair recognizes the witness Mr. Owens for 5 minutes.

|

879 ^TESTIMONY OF STEVE OWENS, ASSISTANT ADMINISTRATOR, OFFICE OF
880 CHEMICAL SAFETY AND POLLUTION PREVENTION, ENVIRONMENTAL
881 PROTECTION AGENCY; RICHARD DENISON, SENIOR SCIENTIST,
882 ENVIRONMENTAL DEFENSE FUND; CAL DOOLEY, PRESIDENT AND CHIEF
883 EXECUTIVE OFFICER, AMERICAN CHEMISTRY COUNCIL; KEN COOK,
884 PRESIDENT, ENVIRONMENTAL WORKING GROUP; HOWARD WILLIAMS, VICE
885 PRESIDENT, CONSTRUCTION SPECIALTIES, INCORPORATED; MARK
886 MITCHELL, PRESIDENT, CONNECTICUT COALITION FOR ENVIRONMENTAL
887 JUSTICE; AND BETH BOSLEY, MANAGING DIRECTOR, BORON
888 SPECIALTIES, LLC, SOCIETY OF CHEMICAL MANUFACTURERS AND
889 AFFILIATES

|

890 ^TESTIMONY OF STEVE OWENS

891 } Mr. {Owens.} Good morning. Chairman Rush, Vice Chair
892 Schakowsky, Ranking Member Whitfield, Chairman Emeritus
893 Dingell and other members of this Subcommittee and the full
894 Committee, thank you for the opportunity to be with you today
895 to discuss modernizing The Toxic Substances Control Act or
896 TSCA as it is commonly known. The outside--I am sorry, Mr.
897 Chairman, can you hear me now? Is that better? Sitting here
898 at the little boys table, so I got to spritz you up a little
899 bit more. So but at the outset, Mr. Chairman, I want to

900 thank you and Chairman Emeritus Dingell, and other members of
901 this Subcommittee for the tremendous leadership you have
902 shown on this very important issue. As EPA Administrator
903 Lisa Jackson has said on many occasions the public expects
904 the government to provide assurances the chemicals have been
905 assessed with the best available science and that
906 unacceptable risk has been eliminated. Restoring confidence
907 in our chemical management system is a priority for EPA and
908 this Administration. TSCA regulates chemicals manufactured
909 and used in this country.

910 And while TSCA was an important step when it was first
911 passed in 1976 it is the only major environmental statute
912 that has not been reauthorized since its passage. TSCA is
913 clearly showing its age and its limitations. Over the last
914 34 years TSCA has proven inadequate for providing the
915 protection against chemical risks that the public rightfully
916 expects. Unlike the laws applicable to drugs and pesticides,
917 TSCA does not have a mandatory program by which EPA must
918 review the safety of chemicals. In addition, TSCA places
919 legal and procedural requirements on EPA's ability to request
920 the generation and submission of health and environmental
921 data on chemicals.

922 When TSCA was enacted in 1976, it grandfathered in
923 without any evaluation whatsoever the more than 60,000

924 chemicals that existed at that time. More than 24,000
925 additional chemicals have been produced since then with the
926 result that EPA's TSCA inventory now lists more than 84,000
927 chemicals. Very few of which have actually been studied by
928 EPA for their risks to families and children. Indeed TSCA
929 does not provide EPA adequate authority to reevaluate
930 existing chemicals as new concerns arise or as science has
931 updated. And it does not give EPA full authority to require
932 chemicals to produce toxicity data. As a result, in the 34
933 years since TSCA was passed, EPA has been able to require
934 testing on only around 200 of the more than 84,000 chemicals
935 now listed on the TSCA inventory as several members of the
936 Subcommittee have noted. It has also been difficult for EPA
937 to take action to limit or ban chemicals found to cause
938 unreasonable risk to human health or the environment. Even
939 if EPA has substantial data and wants to protect the public
940 against known risks, the law creates obstacles to quick and
941 effective regulatory action. For example as Vice Chair
942 Schakowsky and other members of this Committee, in 1989 after
943 years of study and nearly unanimous scientific opinion EPA
944 issued a rule phasing out most uses of asbestos in products,
945 and yet a Federal Court overturned most of this action
946 because the rule had failed to comply with the requirements
947 of TSCA. In fact, since 1976 only five chemicals have been

948 successfully regulated under TSCA's authority to ban
949 chemicals.

950 The problems with TSCA are so significant that the
951 Governmental Accountability Office has put the law on its
952 high risk list of items needing attention. Today advances in
953 toxicology and analytical chemistry are revealing new
954 pathways of exposure. There are subtle and troubling effects
955 of many chemicals on hormone systems, human reproduction,
956 intellectual development, and cognition particularly in young
957 children. It is clear that TSCA must be updated and
958 strengthened if EPA is to properly do its job of protecting
959 public health and the environment.

960 Last September Administrator Jackson announced a set of
961 principles on behalf of the Obama Administration to help fix
962 TSCA. First, chemicals should be reviewed against safety
963 standards that are based on sound science and reflect risk
964 based criteria protective of human health and the
965 environment. Second, responsibility for providing adequate
966 health and safety information should rest on industry and EPA
967 should have the necessary tools to quickly and efficiently
968 require testing or attain other information from
969 manufacturers relevant to determining the safety of chemicals
970 without the delays and obstacles currently in place, and
971 without excessive claims of confidentiality. Third, EPA

972 should have clear authority to take risk management actions
973 when chemicals do not meet the safety standard with
974 flexibility to take into account a range of considerations.
975 Fourth, EPA should have clear authority to set priorities for
976 conducting safety review. Fifth, we must encourage
977 innovation in green chemistry, and support strategies that
978 will lead to safer and more sustainable chemicals and
979 processes. And finally, implementation of the law as
980 Chairman Emeritus Dingell pointed out should be adequately
981 and consistently funded in order to meet the goal of assuring
982 the safety of chemicals and to maintain public confidence
983 that EPA is meeting that goal.

984 Manufacturers of chemicals should support the costs of
985 Agency implementation including the review of information
986 provided by manufacturers. Mr. Chairman, a time has come to
987 bring TSCA into the 21st century and the legislation you have
988 introduced is a big step toward doing just that.
989 Administrator Jackson and I look forward to working with you,
990 other members of this Subcommittee, and members of Congress
991 on this very important issue. And I will be happy to answer
992 any questions you might have.

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

994 ***** INSERT 1 *****

|
995 Mr. {Rush.} The Chair recognizes Dr. Denison for 5
996 minutes.

|
997 ^TESTIMONY OF RICHARD DENISON

998 } Mr. {Denison.} Thank you very much. Over the last
999 decade a wide array of concerns has called into question the
1000 safety of the thousands of chemicals that we encounter in our
1001 everyday lives. Let me just mention a few of these, many
1002 more of which are in my written statement. Lead began
1003 showing up in a host of children's products finally leading
1004 Congress to impose a ban only to have another toxic heavy
1005 metal cadmium immediately take its place. PBT chemicals that
1006 several members of the Subcommittee have already mentioned
1007 this morning that we were told we would never be exposed to
1008 are now routinely found in the dust in our homes, in our
1009 environment, and even in the bodies of people living in the
1010 most remote parts of the globe. EPA cannot tell us with any
1011 accuracy how many chemicals are actually in Commerce today.
1012 And it is forced to perform Google searches to find out how
1013 chemicals like the hormone-disrupting bishpenol A are
1014 actually used because it lacks adequate authority to require
1015 reporting of chemical production and use. Eighty-five
1016 percent of new chemical notices received by EPA have no
1017 health data whatsoever because unlike every other developed
1018 country in the world, the U.S. lacks a requirement that

1019 companies submit a minimum data set when they notify EPA of
1020 the new chemical. EPA does require testing occasionally but
1021 only in a few percent of cases. These problems, Mr. Chairman
1022 can be directly attributed to the failures of The Toxic
1023 Substances Control Act. Happily H.R. 5820 would largely or
1024 completely ameliorate these problems. It provides a
1025 comprehensive systematic solution to a set of problems that
1026 we have addressed if at all through a reactive piecemeal
1027 approach. H.R. 5820 will help to protect our health and our
1028 environment while also encouraging innovation, insuring the
1029 use of the best and latest science, and meeting the needs of
1030 the market and consumers for better information. Let me
1031 touch briefly on these three.

1032 First, it will encourage innovation and protect American
1033 jobs. It will allow safer, new chemicals, or those serving
1034 critical uses to enter the market without a safety
1035 determination and provide ready market access to innovative
1036 greener chemicals. It will level the playing field between
1037 new and existing chemicals for the first time requiring
1038 existing chemicals to meet a safety standard and by raising
1039 overall U.S. standards it will help U.S. companies compete in
1040 a global economy for customers are demanding safer chemicals
1041 and products.

1042 Second, H.R. 5820 will be informed by the latest

1043 science. It will spur more effective and efficient testing
1044 methods that also reduce cost and the use of animals. It
1045 will adopt the same tried and true risk based safety standard
1046 that Congress enacted with overwhelming bi-partisan support
1047 14 years ago in the Food Quality Protection Act. And it
1048 takes the common sense approach of assessing the aggregate of
1049 exposure to different uses of a chemical and to protect the
1050 most vulnerable among us. It incorporates the
1051 recommendations of the National Academy of Sciences and calls
1052 on EPA to frequently update its methods to incorporate the
1053 newest and best science. And it calls for expedited
1054 reductions in the exposure to PBT chemicals a particularly
1055 dangerous class of chemicals that have been targeted by
1056 authorities across the globe.

1057 Finally H.R. 5820 will spur the development and access
1058 to better information about chemicals vital not only to EPA
1059 safety decisions, but also to empower to the market to move
1060 toward safer chemicals well in advance of government
1061 regulation. It will also directly respond to the growing
1062 demand for such information by many American businesses and
1063 from consumers. As to workability given the large number of
1064 chemicals involved, the legislation reasonably phases in
1065 requirements over a number of years. It gives EPA the
1066 authority to tailor requirements rather than being one size

1067 fits all. It allows EPA to categorically exempt
1068 intrinsically safe chemicals, and it allows companies to
1069 protect legitimate trade secrets while still allowing EPA to
1070 share that information with state governments where needed.
1071 Mr. Chairman, I strongly urge the Subcommittee to advance
1072 this critically important legislation in this Congress. It
1073 represents a once in a generation opportunity to protect
1074 American people and our environment from dangerous chemicals.
1075 Thank you.

1076 [The prepared statement of Mr. Denison follows:]

1077 ***** INSERT 2 *****

|
1078 Mr. {Rush.} The chair now recognizes our former member
1079 of the Congress--I was the elected with him in '93. Mr.
1080 Dooley is recognized for 5 minutes for the purposes of
1081 opening statement. I want to welcome you back to the--this
1082 House of Representatives.

|
1083 ^TESTIMONY OF CAL DOOLEY

1084 } Mr. {Dooley.} Thank you, Mr. Chairman, I am delighted
1085 to be back, and I want to thank you and Congressman Whitman,
1086 as well as members of the Subcommittee for inviting me to
1087 testify today. Chemical and chemical regulations have a
1088 broad impact on the American economy. A sustainable American
1089 chemistry industry is critical to American security and
1090 economic health, and that is why the American Chemistry
1091 Council last year introduced 10 principles around which we
1092 believe TSCA modernization can and should be designed. But
1093 briefly it is our view that any approach toward updating
1094 chemical regulation should insure worker, and consumer, and
1095 public safety as its highest priority, preserve the ability
1096 of the United States to serve as the innovation industry of
1097 the world, to protect the hundreds of thousands of American
1098 jobs fueled directly and indirectly by the business of
1099 chemistry. Recently I was delighted to hear Speaker Pelosi
1100 announce for the balance of this legislative session
1101 Democrats would focus on a Make It in America theme. While
1102 not always obvious that chemistry, industry, and the
1103 industries, and businesses that rely on it at the core of our
1104 manufacturing sector, the chemical manufacturing sector alone

1105 employs more than 800,000 American workers. 96 percent of
1106 all manufactured goods are touched in some way by chemicals.
1107 We firmly believe that reforming TSCA to enhance the safety
1108 assessment of chemicals while maintaining the ability of the
1109 U.S. chemical industry to be the international leader in
1110 innovation and manufacturing are not mutually exclusive.
1111 However, we must strike the right balance and our assessment
1112 of H.R. 5820 as currently drafted promotes unworkable
1113 approaches to chemical management. It creates additional
1114 burdens that do not contribute to and in fact detract from
1115 making advancements in safety while coming up short with
1116 respect to promoting innovation and protecting American jobs.
1117 In my written testimony I acknowledge that there have been
1118 significant improvements over the discussion draft and--but
1119 today with my limited time I want to focus on some of the
1120 provisions that continue to be a great concern.

1121 First, let me approach--address the safety standard. I
1122 am confident that everybody agrees that when someone gets
1123 behind the wheel of a car, buys a piece of furniture, or puts
1124 on clothing, the chemicals in those products should be safe
1125 for their intended use. However the safety standard as
1126 established in this bill sets an impossibly high hurdle for
1127 all chemicals in Commerce that would produce technical,
1128 bureaucratic, and commercial barriers that would stifle the

1129 manufacturing sector. This--for example the bill requires
1130 that aggregate exposure to a chemical or a mixture meets the
1131 reasonable certainty of no harm. This means that when a
1132 chemical or mixture is listed for a safety determination, the
1133 manufacturer carries the burden of showing with reasonable
1134 certainty not just that the chemicals used, or the chemical
1135 poses no harm, but that all other aggregate exposures from
1136 all other uses of that chemical pose no harm. Even more
1137 troubling are the provisions in the bill that would identify
1138 chemicals that would be subject to a safety determination.
1139 The bill identifies 19 specific chemicals and requires within
1140 12 months that the Administrator of EPA develop and maintain
1141 a list of 300 chemicals that would be subject to a safety
1142 determination. I don't have a clue, you know, what the
1143 rationale was to identify 300 chemicals, but I do know that
1144 there are significant real world consequences resulting from
1145 a chemical being listed. Again the legislation requires that
1146 the manufacturer bear the burden of proof. As an industry,
1147 we are prepared to accept a greater responsibility to
1148 ensuring that we provide the data that meets an appropriate
1149 safety standard, but what is troubling is that there is no
1150 requirement that EPA evaluates the information we submit and
1151 render a safety determination during a specific time frame.
1152 Furthermore, under the bill if the EPA does not issue a

1153 safety determination for whatever reason, it would prohibit
1154 any new use of the chemical. Now you don't have to be a
1155 rocket scientist or a chemical engineer to understand the
1156 impact that this policy will have on innovation and product
1157 development in the United States. Regardless of the
1158 environmental, the economic, or the societal benefits, and
1159 attributes of a product if this contains one of the 300
1160 chemicals listed it would be shut out of the market for
1161 reasons that have nothing to do with the risk of that product
1162 and the exposure that it would present to consumers or the
1163 environment. And it shouldn't be lost on any of you that
1164 this legislation would require every chemical and mixture
1165 that is in Congress to eventually be subject to this safety
1166 determination. You know when you think about the impacts
1167 that this has, I mean, they are so dramatic because you can
1168 have--this is a piece of polysilicon. This is a very common
1169 chemical that has an additive that goes into solar panels
1170 that you see here, it is in the, you know, the blackberrys,
1171 and the cell phones we use. It is in the computers that we
1172 use every day. If perhaps one of these chemicals that are in
1173 all these products was in fact on that safety determination,
1174 that list of 300, and the Administrator of EPA didn't take
1175 action in a timely manner and issue a determination, it would
1176 ban any new use of this polysilicon on any new application

1177 regardless of the actual exposure and the increased risk that
1178 would emanate or result from that product. Clearly this is
1179 something that runs contrary to the interest of providing and
1180 insuring the United States maintains at the forefront of
1181 innovation. We also have serious concerns about the new
1182 chemicals provisions, we have serious concerns as well about
1183 the import provisions which we acknowledge that there was a
1184 good faith effort to try to maintain a level playing field
1185 and I hope that we have the opportunity to address some of
1186 those during our question and answer period.

1187 [The prepared statement of Cal Dooley follows:]

1188 ***** INSERT 3 *****

|
1189 Mr. {Rush.} The Chair now recognizes Mr. Cook for 5
1190 minutes.

|
1191 ^TESTIMONY OF KEN COOK

1192 } Mr. {Cook.} Mr. Chairman, thanks for the opportunity to
1193 testify today, and Mr. Whitfield, and other members of the
1194 Committee. When it comes--oh I am sorry--when it comes to
1195 protecting the public from toxic--

1196 Mr. {Rush.} Pull the mic closer to you please.

1197 Mr. {Cook.} When it comes to protecting--you still
1198 can't hear?

1199 Mr. {Rush.} No, turn it on, yes.

1200 Mr. {Cook.} It wasn't--it says it is on. All right,
1201 sorry. I guess it is--technological breakdown--should I try
1202 the other mic? I am about halfway through my testimony
1203 already.

1204 Mr. {Dooley.} So far my plan is working.

1205 Mr. {Cook.} Cal says his plan is working. When it
1206 comes to protecting the public health from toxic industrial
1207 chemicals Mr. Chairman, The Toxic Substances Control Act has
1208 been so ineffective for so long a lot of people forgot it was
1209 on the books or didn't even know it was. It was the one
1210 environmental law according to their own internal documents
1211 that the industry was actually satisfied with, liked, because
1212 unlike the Clean Air Act or the Clean Water Act, or other

1213 statutes, TSCA really didn't interfere with their business
1214 very much at all. And when the EPA did try and use The Toxic
1215 Substances Control Act under the first President Bush to ban
1216 a notorious stone cold killer, asbestos, the law itself
1217 defeated the agency.

1218 Now this law is defeating the chemical industry.
1219 Because TSCA leaves the government so stunningly unable and
1220 powerless to deal with this soup of toxic industrial
1221 chemicals that are in the environment, that are in all of us,
1222 the American public has lost confidence, has lost trust that
1223 the products they are using, the chemicals they are exposed
1224 to are safe. Now the chemical industry wants a strong law
1225 behind it instead of a weak law underfoot. Within the
1226 environmental community TSCA was the crazy aunt in the attic
1227 that no one talked about and wanted to forget with one
1228 exception, the Environmental Defense Fund which to its great
1229 credit maintained a focus on this statute when most of the
1230 rest of us were not paying attention.

1231 Mr. Chairman, you, Mr. Waxman, your co-sponsors and the
1232 extraordinary staff that has put so much work into this, you
1233 have changed all of that. With the introduction of this bill
1234 which when it becomes law will be the strongest public health
1235 environmental statute in the world. There is not a person in
1236 this room, not a one, not a person in this country, not a one

1237 who does not now have in their body, in their blood dozens,
1238 if not hundreds of TSCA regulated chemicals that are known to
1239 cause cancer in laboratory animals or in people--known. How
1240 many carcinogens? We don't know. Nearly a century into the
1241 chemical revolution no one, not government, not my friends in
1242 industry has bothered to look. As the President's cancer
1243 panel reported earlier this year we are largely left to
1244 speculate if those chemicals alone or in combination are
1245 contributing to cancer and how much they may be contributing.
1246 What that landmark panel's report did say is that we have
1247 grossly underestimated the role these chemicals have played
1248 in the surge of cancer.

1249 Here is what is not speculation, Mr. Chairman. Half of
1250 all the men in this country, a third or all women will one
1251 day hear a doctor say to them you have cancer. I have
1252 nothing to tell you, Mr. Chairman about those moments. It
1253 has gripped my family, my loved ones, as it has the families
1254 of everyone in this room. What could be worse? Let me tell
1255 you. Every baby born in this country today for decades past
1256 has come into the world pre-polluted with a load of toxic
1257 carcinogenic chemicals, pre-polluted with a load of chemicals
1258 that threaten the intricate wiring of their delicate rapidly
1259 developing brains; pre-polluted with a mix of chemicals that
1260 upset their exquisitely sensitive hormone systems that will

1261 regulate their bodies for the rest of their lives and many
1262 more chemicals circulate through that 300 quarts of blood
1263 while they are in the womb that can affect virtually every
1264 organ system in their body. Pollution from the industrial
1265 chemicals that you see to regulate with this landmark
1266 legislation begins in the womb. We know this because my
1267 colleagues have done the studies, the pioneering studies that
1268 documented it.

1269 Mr. Chairman, I have to commend you for this
1270 legislation. It is far reaching. I believe it is fair. I
1271 want to talk very briefly about three points. We believe
1272 strongly that the standard reasonable certainty of no harm
1273 borrowed very usefully from the pesticide law that has helped
1274 our companies lead the world in that marketplace is vital.
1275 Two, we believe very strongly that biomonitoring should be at
1276 the center of this bill more so than it is now. We would
1277 encourage you to look back at the kid safe chemicals act
1278 because our more than 100,000 supporters who signed a
1279 petition to this committee, almost a million supporters in
1280 total, they want to know what chemicals are in the blood of
1281 babies in the womb. And they want to know if those chemicals
1282 are in there, are they safe? We expect the government to be
1283 able to do that.

1284 One final point, Mr. Chairman, I think you have struck

1285 the right balance on confidential business information, the
1286 right balance in addition on most of the other provisions in
1287 the bill that would encourage the government to divulge more
1288 information obtained from the industry. They do bear the
1289 burden to demonstrate that their chemicals are safe in
1290 Commerce. Thank you.

1291 [The prepared statement of Mr. Cook follows:]

1292 ***** INSERT 4 *****

|
1293 Mr. {Rush.} We want to suspend just for a moment while
1294 the technicians attempt to work with the sound system. We
1295 will suspend just for a moment while they are--

1296 [Recess.]

1297 Mr. {Rush.} Let us continue now. The Chair now
1298 recognizes Mr. Williams for 5 minutes for the purposes of an
1299 opening statement.

|

1300 ^STATEMENT OF HOWARD WILLIAMS

1301 } Mr. {Williams.} Thank you, Chairman Rush, Mr. Waxman,
1302 Mr. Whitfield, Subcommittee, and staff for inviting me to
1303 give a business perspective on TSC 5820. I am Howard
1304 Williams, I am Vice President, General Manager of a company
1305 that makes building products and we are--my division is in
1306 Central Pennsylvania. We have about 360 employees at our
1307 facilities and when we add corporate marketing and R and D
1308 into that mix we have added about another 100 people. So
1309 Central Pennsylvania is where we are located. We are part of
1310 a small multi-national. We have--we are privately held; we
1311 are U.S. owned. We operate from 25 sites in 19 countries,
1312 and we make our contextual building products in the non-
1313 residential end of things. Domestic construction amounts for
1314 about 14 percent of our gross domestic product here and this
1315 bill has an opportunity to really help and to inform, and to
1316 grow that level of construction not just here in the U.S.,
1317 but also I could not find the figures for what we export
1318 relative to architectural design and relative to building
1319 products as a nation as a whole. But I am certain of great
1320 multipliers upon the 14 million.

1321 In the areas that we are particularly interested in and

1322 think that actually could help to create jobs, and we will
1323 talk a bit more about that later, are the minimum data sets,
1324 the prioritization, access to disclosure, and restricting the
1325 PBT's. Chemicals and the elimination of PBT's are at the
1326 forefront of all of our building standards. I have
1327 referenced in my written testimony the federal standards that
1328 require environmentally preferable purchasing require that
1329 buildings are built in accordance with lead U.S. green
1330 building standards. They are very clear. They are
1331 wonderfully explicit. Get the PBT's out of here. We
1332 interact--people interact with the building products, we
1333 interact with the furnishings within the spaces that we live
1334 and enjoy and we also have an opportunity periodically to
1335 interact with the PBT's that are off-gassing from those
1336 materials from within products.

1337 Globally we add 78 million people to planet. Ninety
1338 percent of what we do as people is inside of a building, so
1339 it is within buildings and building materials that there is a
1340 great opportunity to make a very real difference in chemical
1341 exposure and product exposure. As a company we now seek to
1342 know the chemistry of our building materials down to 100
1343 parts per million. We want to know what 99.99 percent of our
1344 building products contain because that is the first step for
1345 us to be able to eliminate PBT's, chemicals of concern,

1346 carcinogens. But identifying that chemical composition is a
1347 costly and time consuming process. We have to almost
1348 literally reach through layer upon layer within the supply
1349 chain and pull that information forward because disclosure is
1350 not a subject that endears a researcher to many other
1351 suppliers.

1352 But it is essential, however that work needlessly adds
1353 cost and delay to the process. There is a great business
1354 case for what we are doing. We as a company are growing. We
1355 as a company are adding jobs and again we are located in
1356 Central Pennsylvania. The construction sectors have been hit
1357 hard, but we are growing and adding jobs because of what we
1358 are doing because of the market reception. So there is a
1359 great business case for doing what we are doing. There is
1360 also a case though to be made for this is a profitable and a
1361 responsible thing to do. The result of that though is access
1362 to this change and to greater improvements is something that
1363 the general population doesn't always have access to. More
1364 disclosure, better understanding, or I would even say access
1365 to disclosure. It is really going to help manufacturers of
1366 our products that are wanted by other countries that we are
1367 going to be able to export and grown in our businesses.
1368 Access to that disclosure is critical. And again
1369 environmentally preferable purchases are required on the

1370 basic premises of an act though is that you use recycled
1371 material. Today, tomorrow, and for generations we will be
1372 recycling materials that contain carcinogen materials,
1373 components, that contain PBT's, so in all of this in this
1374 great dynamic of growth of population, in the growth of
1375 proliferation of green products and Acts standards, we are
1376 going to be multiplying some of these PBT's over, and over,
1377 and over again. And the result of that is going to be
1378 exposing more people. We strongly support data sets,
1379 prioritization of chemicals, disclosure, restricting the
1380 PBT's, and I fully recognize that this disclosure end of
1381 things is a very, very difficult subject. We are in
1382 business. We don't like competition to know what we are
1383 doing. We don't want them to know what we are doing, so
1384 disclosure's going to be the toughest point that you as a
1385 group have to deal with and build into this legislation. But
1386 it is a time for innovation, it is a great time for people
1387 environmentalism. The market wants these products. We are
1388 tied to it. It is just chemistry and what is going on in
1389 this world as we heard, 90 percent of everything has
1390 chemistry involved in it. So what a marvelous, marvelous
1391 time where environmentalism, consumerism, and these changes
1392 can come together and make a strong America, make job growth,
1393 redefine green jobs, and the result of that is to take care

1394 of some of the unintended consequences that we face with on a
1395 day to day basis. So thank you.

1396 [The prepared statement of Howard Williams follows:]

1397 ***** INSERT 5 *****

|
1398 Mr. {Rush.} The Chair now recognizes Dr. Mitchell for 5
1399 minutes.

|
1400 ^TESTIMONY OF MARK MITCHELL

1401 } Dr. {Mitchell.} Thank you, Chairman Rush, and members
1402 of the Committee. My name is Dr. Mark Mitchell, I am a
1403 public health physician and I became concerned about--when
1404 looking at the rates of disease, I became concerned about the
1405 increase in the number of diseases that are related to the
1406 environment as opposed to other diseases which were
1407 declining. We saw an increase in those related that are
1408 related to the environment. So that is why I have formed the
1409 Connecticut Coalition for Environmental Justice, and I am the
1410 President of that, and also I am a member of the National
1411 Work Group for Environmental Justice Policy. We work with
1412 environmental justice communities which are communities that
1413 are low income, communities of color that are just
1414 proportionally burdened with environmental hazards and also
1415 have increased rates of disease from these environmental
1416 hazards.

1417 I would like to talk a little bit about the exposure to
1418 these hazards throughout the chemical life cycle from
1419 extraction of chemicals, to production, to distribution, use,
1420 disposal, and legacy exposure to these chemicals. And I will
1421 talk a little bit more about what that is. H.R. 5820 goes a

1422 long way toward addressing the environmental justice concerns
1423 throughout the life cycle, the chemical life cycle.

1424 The first part of the chemical life cycle is the
1425 extraction. And these include mining communities, but also
1426 places like along the Gulf Coast where people are being
1427 exposed today to oil spills that are washing up on their
1428 shores, and being exposed to chemicals from the oil as well
1429 as the dispersants that are used to disperse that oil. There
1430 are also a number of production communities such as
1431 Mossville, Louisiana and Louisville, Kentucky that have many
1432 chemical plants as well as other industrial facilities that
1433 are exposing residents to chemicals on a daily basis. And in
1434 these communities they have exceptionally high pollution
1435 rates. Rates that I believe would not be allowed in more
1436 affluent communities other than Mossville and West
1437 Louisville. And we are seeing very sick people in these
1438 communities. For example, we have a 30 year old that has a
1439 heart attack in the community. We are seeing clusters of
1440 Lupus, large numbers of hysterectomies, depression even, and
1441 premature death. These are communities that I would consider
1442 to be hotspots. And hotspots is a provision that is a new
1443 provision in this bill that would require that these
1444 communities reduce their pollution.

1445 The next phase of use of chemicals of the life cycle of

1446 chemicals is the use phase. Low income communities are even
1447 more exposed than other communities to hazards in everyday
1448 products. For example in about a year ago in Connecticut we
1449 started testing toys for lead. And what we found is that
1450 toys from discount stores such as ``dollar'' stores were more
1451 likely to contain lead than other toys. And these are the
1452 things that are exposing low income people to these toxics in
1453 the toys. We are also concerned about legacy chemicals and
1454 legacy chemicals are chemicals that have out used--have gone
1455 past their useful life but are still--people are still being
1456 exposed to these kinds of chemicals. For example, PCB's TSCA
1457 banned PCB's in the late 1970's. However, people are still
1458 being exposed to PCB's in the Bedford, Massachusetts for
1459 example they have two schools that are built on an old dumps
1460 that are still contaminated with PCB's. I am working with
1461 some of the housing developments that may also be built on
1462 this same dump. It is not clear right now, but the residents
1463 complained that when their children go out and play in the
1464 dirt that they get rashes, and rashes are one of the--are a
1465 potential issue that can be found with PCB's.

1466 Also, H.B. 5820 requires a health based standard and
1467 includes aggregate exposure from all sources. And it
1468 consider--but it can consider the life cycle of chemical
1469 exposure and cumulative exposure. This is important to

1470 environmental justice communities since risk assessment has
1471 served environmental justice communities poorly. So in
1472 summary, we believe that this legislation goes far in
1473 addressing a number of environmental justice issues. We
1474 would like to see the bill passed out Committee this year,
1475 and I would like to thank you, Mr. Chairman for inviting me
1476 to this hearing. And I am certainly willing to answer
1477 questions later.

1478 [The prepared statement of Dr. Mitchell follows:]

1479 ***** INSERT 6 *****

|
1480 Mr. {Rush.} The Chair now recognizes Ms. Bosley for 5
1481 minutes.

|
1482 ^TESTIMONY OF BETH BOSLEY

1483 } Ms. {Bosley.} Thank you, Chairman Rush, Ranking Member
1484 Whitfield, and members of the Subcommittee.

1485 Mr. {Rush.} Would you pull it closer to you?

1486 Ms. {Bosley.} Certainly. I am pleased to testify
1487 before you today on behalf of the Society of Chemical
1488 Manufacturers and Associates. SOCMA has about 300 members
1489 and we make a \$60 billion impact on the U.S. Economy. We
1490 also contribute to the chemical industry's status as one of
1491 the nation's leading exporters. We are very proud to say
1492 that we have an excellent track record with respect to health
1493 and safety of our colleagues, our workers, and our
1494 communities. We have testified before this Subcommittee
1495 before and we have also participated in the discussions that
1496 you have had recently on the discussion draft. We comment
1497 you for those discussions and believe they improved the draft
1498 bill.

1499 On balance, however, we are disappointed that the bill
1500 before us today still creates a burden which far--is far out
1501 of proportion with the benefit. The burden is not just a
1502 matter of profitability. It will deal a heavy blow to a
1503 strategic American industry that is already fighting

1504 recession and foreign competition. Among its goals for this
1505 legislation Congress seeks to and I am quoting here from the
1506 bill ``assist in renewing the manufacturing section of the
1507 United States and ensure that the products of the United
1508 States remain competitive in the global market.''

1509 Mr. Chairman, we believe that to the contrary this bill
1510 would face--this bill would in fact pose a great competitive
1511 disadvantage to the industry and would cause a reduction in
1512 manufacturing employment and a shift in our factories to
1513 foreign shores would accelerate. The chemical industry
1514 already fights hard to compete with countries that have
1515 cheaper resources, lower wage standards, and more lax
1516 regulation. We don't have to look far to find examples of
1517 public health concerns about tainted food or lead in
1518 children's toys as we have already heard about. That is the
1519 risk of encouraging manufacturing to migrate from our shores
1520 and far away from the protections of robust American
1521 regulation. Congress recognizes the importance of innovation
1522 and U.S. competitiveness as well as in achieving the aims of
1523 the bill through continual evolution towards safer and less
1524 toxic chemical substances.

1525 The U.S. chemical industry leads the world in research
1526 on approved manufacturing process and safety advancements to
1527 minimize the impacts of chemicals on human health and the

1528 environment. It is important, more important than ever that
1529 we maintain our lead on innovation. Chemistry as an enabling
1530 technology allows other industries such as aerospace,
1531 electronics, and advanced materials to be cleaner, greener,
1532 and more competitive, and it is not enough to do the product
1533 innovation in the United States. We need to do the
1534 manufacturing also. Here I am quoting Matt Miller of the
1535 Center of American Progress. Miller quotes former Intel CEO
1536 Andy Grove who says manufacturing is the only way to gain the
1537 hands-on experience with products that leads to all
1538 subsequent innovations. Surrender the manufacturing and you
1539 lose this virtuous cycle.

1540 Speaking for the members of SOCMA we are concerned that
1541 the burdens created in H.R. 5820 will indeed drive innovation
1542 and manufacturing from our shores. The following points
1543 highlight our major concerns and recommendations. For many
1544 industrial chemicals the safety standard in this bill creates
1545 a new burden without a benefit. The standards we use to
1546 regulate drugs which are intended to be bioactive, and food
1547 additives, which are intended to be consumed, should not be
1548 the model for how we regulate industrial chemicals. These
1549 chemicals often serve only as contained intermediates during
1550 the production of other products. The bill as written would
1551 impose unnecessary burdens and cost even on low risk, low

1552 volume chemicals. New chemicals and new uses would be
1553 subject to a yearlong review which would discourage the
1554 introduction of new chemicals and new applications of
1555 existing chemicals into the marketplace. The current new
1556 chemicals program which involves a 90 day review has
1557 generally received broad support.

1558 Through this program EPA has successfully reviewed
1559 45,000 new chemicals protecting and informing the public
1560 without impeding the innovation that is crucial to American
1561 competitiveness. EPA's use of models in the evaluation of
1562 new and existing chemicals should be encouraged since they
1563 have proven to be an accurate and efficient alternative to
1564 animal testing. An important--an improvement to the new--
1565 current new chemicals program would include modifying the
1566 approach to CBI such that the use of PMN data isn't permitted
1567 within EPA to review other new chemicals and as well as
1568 existing chemicals.

1569 Based on yesterday's revision that received of the bill,
1570 it appears that Congress intends to eliminate mixtures from
1571 review under section five. We support this revised approach
1572 since the inclusion of mixtures would present an extremely
1573 high burden for the industry and for EPA for mixtures that
1574 may not even have a risk. But we need to study the
1575 implications of the narrow redaction of mixture language

1576 before commenting further. H.R. 5820 has no preemption of
1577 state regulation regarding chemicals on which EPA has already
1578 reached a safety determination. Congress should consider a
1579 preemption to avoid disruption of interstate Commerce from
1580 potentially conflicting state laws. Protection of American
1581 intellectual property is weakened by this bill. By disclosing
1582 chemical identity in all health and safety studies, we in
1583 effect hand our innovation to foreign competitors with a long
1584 history of low quality copycat products. It is possible to
1585 fully inform the product--the public about health and safety
1586 information without publicly disclosing proprietary aspects
1587 of a particular chemical. This reflects our broader
1588 recommendation that EPA should be made the agency charged
1589 with making unbiased science based safety determination
1590 regarding chemicals. Let me be clear. SOCMA members are
1591 passionately committed to the public health, the protection
1592 of public health and the environment. We believe its
1593 legitimate role of Congress to weigh economic impact such as
1594 potential job loss against policy objectives. However, we
1595 respectfully content that the government must avoid creating
1596 an unnecessary burden as would be the case with H.R. 5820.
1597 We understand the complexities associated with modernization
1598 TSCA and believe our chemicals policy goals can be
1599 accomplished in a way that does not devastate a strategic

1600 American industry. Thank you for the opportunity here and I
1601 would be happy to answer any questions.

1602 [The prepared statement of Ms. Bosley follows:]

1603 ***** INSERT 7 *****

|
1604 Mr. {Rush.} The Chair indeed thanks all the witnesses.
1605 And now it is time for the questioning of the witnesses by
1606 members of the Subcommittee. And for that purpose the Chair
1607 recognizes himself for 5 minutes for the purposes of
1608 questioning the witness. And I will begin with Dr. Denison
1609 and Mr. Williams.

1610 And my question to you is, Dr. Denison, you said in your
1611 testimony that H.R. 5820 will spur innovation and protect
1612 American jobs. Can you explain in light of your statement,
1613 and in light of some of the testimony we have heard today
1614 some of the exact feelings expressed--in your expounding in
1615 your statement in light of some of the anxiety that has been
1616 expressed about the bill's potential impacts on job retention
1617 and creation. Can you express--expound on your position on
1618 the retention and creation of jobs in regard to this bill?

1619 Mr. {Denison.} Yes, Mr. Chairman. Thank you. The U.S.
1620 has fallen well behind much of the rest of the world in its
1621 chemicals policies and practices. And I think that one of
1622 the things that this bill will do is to raise the standards
1623 in the U.S. to those of other areas of the world including
1624 the major markets of the chemicals industry. The motivation
1625 behind the improvement in those standards in other parts of
1626 the world has been as much to promote sustainability and

1627 create a more sustainable chemicals industry as it has to
1628 protect health and the environment. And I fear that the
1629 industry in this country right now is in a similar place to
1630 where the auto was a decade or more ago where it fails to
1631 recognized where the rest of the world is going and where its
1632 own markets are going. We need to have therefore, an
1633 industry that is driven toward innovation, yes, but
1634 innovation that includes safety as a critical, central
1635 element of that innovation. I couldn't say it better than a
1636 member, a representative from DuPont, one of ACC's companies
1637 that said in response to the REACH regulation in Europe that
1638 they would--they as a company that invested heavily in R and
1639 D and innovation saw REACH as a business opportunity to
1640 innovate the new chemicals that would be restricted under
1641 REACH, and be out ahead of the current in terms of creating
1642 the jobs, and creating the new products that will satisfy the
1643 growing demand globally for safer chemicals.

1644 Mr. {Williams.} Chairman Rush, to answer that question
1645 from my viewpoint, seven years ago when I began doing as much
1646 research as I could on this subject, I found in answer to a
1647 Google search how many people in America will buy
1648 environmentally preferable products. At the time and it is
1649 somewhat a smile to the face, it was approximately seven
1650 percent. And the person that put that information together

1651 said it is roughly equivalent to those who will vote for
1652 Ralph Nader in a Presidential Election. Today similar
1653 research says it is approaching 58 percent. Two years ago
1654 McGraw Hill did a smart reports survey where they said that
1655 environmentally preferable building products had reached the
1656 tipping point. We are an international company. We know
1657 that when we can put our products from here into the UK and
1658 into Europe where the buying preferences are to have
1659 environmentally responsible product and most especially the
1660 word you hear more often in Europe is PVC. You hear it, but
1661 you also note that they are not currently buying materials
1662 that are free of PVC. Our materials here that we are able to
1663 put together are preferable not just here in the United
1664 States, but also in Europe. And I think the definition of
1665 green jobs needs to change. I recently received a survey,
1666 fill this out; help me understand green jobs for
1667 Pennsylvania. I cannot answer that survey by answering the
1668 questions. I am going to have to footnote that survey
1669 because it talks about solar, it talks about renewable
1670 energy. That is such a limited view. We as a company are
1671 putting our products out into an architectural market that is
1672 asking for environmentally preferable products and
1673 responsible products. And they are reaching toward us and
1674 pulling that product almost literally off of our shelves.

1675 They are green jobs that we are adding every day to our
1676 business. And as the businesses in Michigan, and as the
1677 businesses in other states supply us with product, green jobs
1678 that are heretofore defined as different jobs, less defined
1679 as green jobs. These jobs are growing on a day to day basis
1680 here in the United States.

1681 Mr. {Rush.} Thank you. Dr. Mitchell, your organization
1682 defines environmental justice communities as ``low-income
1683 communities and communities of color that are
1684 disproportionately burdened with environmental hazards and
1685 suffer disproportionately from environmentally related
1686 diseases.'' Do you agree that this legislation will mark a
1687 tremendous step forward in restoring public trust in the
1688 American chemical industry and in EPA's ability to protect
1689 human health and the environment, and do you think that this
1690 bill will go a long way towards correcting some of the issues
1691 that are found in hotspots across the nation?

1692 Dr. {Mitchell.} Absolutely, Mr. Chairman. I think that
1693 people expect that government is going to be protecting them.
1694 When they go into a store and buy things off the shelf they
1695 expect that they are going to be safe. And they don't know
1696 that there is a safe product right next to a more dangerous
1697 product. For example, if you are looking at cleaning
1698 products. I think that this legislation will help to take

1699 more dangerous products off of the shelves, you know when
1700 there is a safer alternative. And also people will know what
1701 is in the products that they buy, and I think that that is
1702 very, very important. And environmental justice communities,
1703 you know we are very concerned about that and also we sort of
1704 put our members at risk. For example there are companies
1705 that are suing communities that are interested in finding out
1706 about the health effects of their violations, of their state
1707 violations of contracts specifically like in Mesquite, New
1708 Mexico. You know Helena Chemicals is suing the company. I
1709 think that that won't be necessary under this new bill that
1710 if government really can protect the public, I think that
1711 that will be very helpful.

1712 Mr. {Rush.} That concludes the Chairman's time. Chair
1713 now recognizes Mr. Whitfield for 5 minutes.

1714 Mr. {Whitfield.} Thank you very much and thank you all
1715 for your testimony. I noticed that one of the findings in
1716 this legislation relates to creating jobs that this
1717 legislation can help create jobs. And Mr. Williams you
1718 eluded to that and I think Dr. Denison, you indicated that
1719 the chemical policies and practices in the U.S. were not as
1720 progressive as they were in the rest of the world. And the
1721 point that I would make is if we were creating all these
1722 green jobs, then why is our unemployment rate still at almost

1723 10 percent? And why is the unemployment rate in most
1724 countries in Europe greater than in the U.S. if what you are
1725 saying is this kind of progressive legislation will be
1726 creating jobs? Now that is a little aside to the real
1727 purpose of this legislation, but I don't think we should be
1728 trying to sell this legislation on the fact that we are going
1729 to create a lot of jobs with this legislation. Mr. Dooley,
1730 is this legislation, do you expect this legislation to create
1731 jobs in your--in the members of your association?

1732 Mr. {Dooley.} No, absolutely not. And we are
1733 absolutely convinced that it would result in a significant
1734 reduction and the ability of the U.S. manufacturers and the
1735 chemical industry to continue to be the international leader
1736 at bringing new innovations and new products and maintaining
1737 our manufacturing base here in the United States. And you
1738 know I find it remarkable that Mr. Denison would say that
1739 somehow the U.S. chemical industry is falling behind. In the
1740 United States last year one out of every 10 patents that was
1741 issued in this country was issued to the chemical and
1742 chemistry industry. We are by far the leader of any chemical
1743 industry internationally in terms of the new innovations that
1744 we are bringing to market. When we see a consumer demand for
1745 a safer alternative, it is going to be our industry that is
1746 going to be the forefront in meeting that consumer demand.

1747 And when you look at the provisions in this, when you look at
1748 the safety standard that would require somebody that might
1749 have a new, maybe it is an advanced solar cell that has a
1750 chemical that just might be on the--subject to a safety
1751 determination, before they could bring that, you know, green
1752 product that could increase our energy efficiency and energy
1753 security, they would have to go out and identify every other
1754 product in the marketplace that had that same chemical in it.
1755 They would also have to analyze every ambient exposure to it
1756 be in the air, water, and soil before they would even have
1757 the chance to demonstrate that they could meet that
1758 reasonable certainty of no harm. If you think that this is
1759 somehow going to create jobs in the United States, I would
1760 beg to you to come and visit the industry and understand how
1761 it works, let alone the new chemicals provisions which would
1762 also we thing would thwart and impede the development of new
1763 products and new jobs in this country.

1764 Mr. {Whitfield.} Ms. Bosley, do you think it would
1765 create new jobs in the--your members?

1766 Ms. {Bosley.} No, I can give you an example of--so in
1767 everybody's car there is a piece that connects the roofing to
1768 the frame. It is a plastic piece that is not very long.
1769 There is about 19 chemicals that go into that singular piece.
1770 13 of those chemicals are hazardous to some extent and they

1771 are all as you might imagine low margin chemicals. We live
1772 in the reality of a market economy, and you make what you can
1773 make for the price that the market is willing to pay for it.
1774 If those chemical companies are going to have to go back and
1775 do the increased burden of 5820, there will be no margin left
1776 for them. So now not only have you lost the jobs associated
1777 with the manufacture of those 19 chemicals, you have lost the
1778 polymerization jobs, the extrusion jobs, and now that piece
1779 is going to come into the country as an article which is
1780 beyond the reach of EPA.

1781 Mr. {Whitfield.} Well, you know this points out that we
1782 do have to have a balancing act here, because yes, we want
1783 safe products. We want to make sure the chemicals are safe,
1784 but we don't want to damage our economy particularly at this
1785 point in our nation's history where we are struggling to come
1786 out of a down economy. So and I noticed that in this
1787 legislation they abolished the unreasonable risk standard and
1788 least burdensome method to proceed, so that they consider--do
1789 not consider particularly the impact on jobs per say, which I
1790 think realistically at least have to think about. Well, I
1791 see my time has expired.

1792 Mr. {Denison.} Congressman, maybe I could respond to
1793 Mr. Dooley? I do think there is a fundamental
1794 misunderstanding of the bill. He said in his oil statement

1795 and again just now that somehow company--an individual
1796 company would have to go out and assess the exposure not only
1797 to their use of the chemical but to everybody else on the
1798 market. That is a fundamental misunderstanding of the--that
1799 is a role for EPA under this legislation, not for an
1800 individual company to do those assessments. I just want to
1801 set that straight.

1802 Mr. {Dooley.} Mr. Chairman, if I can respond to that is
1803 our reading of the legislation it is a clear statement that
1804 the burden of proof lies with the manufacturer. When you
1805 look at the safety standard and the obligation to assess
1806 aggregate exposures to a chemical that is bringing into the
1807 market, in no way does it state clearly that that is the
1808 responsibility of EPA. Now if that is the intent of the
1809 authors, then that is something that we would be more than
1810 pleased to work with you. But as we read the legislation
1811 today, that is a burden, and an obligation, and a
1812 responsibility on the industry.

1813 Mr. {Rush.} The Chair now recognizes Ms. DeGette for 5
1814 minutes.

1815 Ms. {DeGette.} Thank you, Mr. Chairman. You know, Mr.
1816 Dooley, when we served together in Congress I never disagreed
1817 with you. I think that is about to change I am sorry to say.
1818 I want to talk for a minute about this issue of the

1819 manufacturers' burden. Because what you have been talking
1820 about is that you think that industry has the burden of
1821 showing with reasonable certainty that all aggregated
1822 exposures from the use of the chemical pose no harm. Right?
1823 Yeah, okay, but take a look at--well I don't know what
1824 section it is--it is, I will get you the exact reference. It
1825 is on page 44 of the draft legislation, a manufacturer is
1826 only responsible for showing reasonable certainty of no harm
1827 for a chemical's intended use. And industry would not have
1828 to conduct studies considering all exposures to a chemical.
1829 So would you agree that a standard based on intended use
1830 would not require companies to prove that all uses and
1831 exposures are safe? You need to turn your microphone on, Mr.
1832 Dooley.

1833 Mr. {Dooley.} There are other sections of the bill when
1834 you get to the safety standard and what it would trigger. It
1835 was subject to that is that the intended use isn't the
1836 trigger is that if you have the intended use that has that
1837 chemical in, as we have read and interpreted it will result
1838 in the obligation for the assessment of all other aggregate
1839 exposures.

1840 Ms. {DeGette.} Mr. Owens, do you--is that the intention
1841 with this legislation?

1842 Mr. {Owens.} Representative DeGette, we didn't draft

1843 the bill, so I can't really speak on what the--

1844 Ms. {DeGette.} Okay, well, I mean is that your
1845 interpretation then of the draft legislation?

1846 Mr. {Owens.} Well, I think that--let me put it this
1847 way. The way that that standard has worked for example it is
1848 a standard that is used as Dr. Denison said and others have
1849 said in our Food Quality Protection Act we evaluate pesticide
1850 potential exposures with reasonable certainty of no harm
1851 standard and we at EPA evaluate the aggregate exposures when
1852 we are making that safety determination. Now whether that is
1853 how this is written, I know our lawyers are still looking at
1854 it at our agencies, so I can't really say right now what
1855 their conclusion will be. But that is how we have done it.

1856 Ms. {DeGette.} And Mr. Dooley, I will tell you that
1857 what I just said is our intention, too, so if we need to work
1858 together on fixing this language we are happy to do that, but
1859 that is our intention. I wanted to ask you, Ms. Bosley, in
1860 your written testimony and you referred to this also today in
1861 your oral testimony. You said the U.S. chemicals industries
1862 competitiveness has continued to decrease substantially in
1863 recent years due to competition from countries like China and
1864 India with lower resource costs, lower wage standards, and a
1865 less burdensome regulatory environment. I am going to assume
1866 that it is not your organization's positions that we should

1867 decrease wage standards and decrease the regulatory
1868 environment in the Unites States. That is not your position,
1869 is it?

1870 Ms. {Bosley.} Certainly not.

1871 Ms. {DeGette.} And I would also ask you, I would think
1872 that your organization would also believe that we need to
1873 renovate TSCA for this new century. Correct?

1874 Ms. {Bosley.} We do.

1875 Ms. {DeGette.} And also, Mr. Dooley, your organization
1876 would think the same. It is not that you oppose re--you know
1877 fixing TSCA for this new environment that we have now.

1878 Right?

1879 Mr. {Dooley.} No, we have made this one of our highest
1880 priorities.

1881 Ms. {DeGette.} Right, you also, and in fact both or
1882 your organizations have been at the table during the
1883 negotiations, so I have a--I want to ask both of you this
1884 question.

1885 Mr. {Dooley.} I would--I would put negotiations in
1886 parenthesis. I wouldn't necessarily characterize the
1887 discussions as negotiations.

1888 Ms. {DeGette.} Okay, well, here is my question to you.
1889 Is--what safety standards does your organization recommend
1890 that we adopt?

1891 Mr. {Dooley.} We would think that we could learn some
1892 terrific lessons by looking at what Canada has done in the
1893 past couple of years and instituting a reform that their
1894 chemical management system which is very similar with the
1895 concepts that we have developed out where you would develop,
1896 you would prioritize the chemicals based on reason with those
1897 we should of greatest concern.

1898 Ms. {DeGette.} So you think the Canada standards would
1899 be appropriate standards for us to look at?

1900 Mr. {Dooley.} That the Canada scheme and their system
1901 would be much more I think appropriate in terms of
1902 prioritizing the chemicals based on the risk of exposures and
1903 then adopting a system where you would determine how you can
1904 manage those risks for those products as they are put into
1905 the marketplace for their intended use.

1906 Ms. {DeGette.} Thank you. Ms. Bosley, what standard
1907 would your organization at safety standard?

1908 Ms. {Bosley.} I would agree. We have--we are a
1909 proponent of Canada's system also and I might say is the
1910 first thing Canada did was to put their arms around the exact
1911 number of chemicals in Commerce. Canada has a similar number
1912 of 75 or 85,000 chemicals that were on a list called the DSL.
1913 They through polling of industry they paired that list down
1914 to 23,000 chemicals that were actually in Commerce. Some of

1915 the chemicals were no longer manufactured, or imported into
1916 Canada. Many of the chemicals were no longer manufactured.
1917 When they had that list of 23,000 they were having a much
1918 better area in order to prioritize that list and require a
1919 different base set of testing depending on the highest
1920 priority chemicals.

1921 Ms. {DeGette.} Dr. Denison, could you just respond to
1922 these suggestions by Mr. Dooley and Ms. Bosley?

1923 Mr. {Denison.} Certainly. I applaud what Canada did.
1924 As a very small country with a tiny percent of the global
1925 chemicals market and the vast majority of those chemicals
1926 being imported rather than produced there it made sense for
1927 them to do what they did. But it is far away from being a
1928 proper model for the United States of America. In fact,
1929 they--their process was hampered enormously by the enormous
1930 data gaps that led them not to be able to even classify
1931 thousands of chemicals against the criteria that they used to
1932 prioritize chemicals. Moreover, they found that many of the
1933 chemicals, in contrast to what Ms. Bosley said, they only
1934 actually started with 23,000 chemicals. They didn't have
1935 75,000 chemicals. We have a much bigger problem on our
1936 hands, and we need a much more systematic solution that
1937 speaks for the fact that we have a major part of the global
1938 chemicals market.

1939 Mr. {Rush.} The Chair recognizes Dr. Gingrey for 5
1940 minutes.

1941 Dr. {Gingrey.} Mr. Chairman, let me address my first
1942 couple of questions to Mr. Cook. Mr. Cook, industry
1943 witnesses have expressed concern that if this bill passes as
1944 it is written it will drive innovative manufacturing outside
1945 of the United States and indeed kill high paying American
1946 manufacturing jobs. Do you have any concerns that the global
1947 environment could suffer if we force this type of
1948 manufacturing to countries with much less robust or even
1949 indeed nonexistent environmental controls?

1950 Mr. {Cook.} I would be very concerned if that were to
1951 be the case, Congressman. There is no question. I was
1952 surprised to hear it brought up by my colleague at the table
1953 that the industry is already losing jobs. We are already
1954 shipping jobs overseas not because we have toughened our
1955 regulatory standards, of course we have not done anything for
1956 30 years, but simply because it is cheaper to do business
1957 over there. That is where our chemical industry is going.

1958 Dr. {Gingrey.} Well, excuse me, Mr. Cook, but you say
1959 not because of regulatory standards. These regulatory
1960 standards that we are talking about in this bill are not
1961 inexpensive. Let me shift real quickly. I will come back to
1962 you because this issue of jobs is real important, certainly

1963 real important to our side of the aisle as you can tell from
1964 the questions. Mr. Williams, I think in your either response
1965 to a question or maybe your testimony, you said that green
1966 jobs would come out of the State of Michigan? Are you
1967 talking about Flint or Detroit? Where exactly in Michigan
1968 are you talking about that we are going to grow green jobs?

1969 Mr. {Williams.} Okay, what I was talking about the
1970 growth of green jobs were as our product demand rises, our
1971 supplier in Michigan produces more product and hires more
1972 people to--

1973 Dr. {Gingrey.} But Mr. Williams, how long do you expect
1974 that to take? The people in Michigan are suffering pretty
1975 badly right now, they are not--

1976 Mr. {Williams.} I am sure they are and candidly I am on
1977 your side of the aisle. I was pleased as a conservative
1978 Republican Central Pennsylvania a county that goes Republican
1979 in every election to be able to come here and to be able to
1980 speak because I do think we share a tremendous number of same
1981 beliefs and values in job creation here in America. I don't
1982 want to see that go--

1983 Dr. {Gingrey.} Yes, sir, I understand. Of course,
1984 these are not political questions. We are just talking about
1985 what is good for the country, whether Republican or Democrat.
1986 But let me shift back to Mr. Cook, because I had another

1987 question for him. In the conclusion of your testimony you
1988 state and I quote, ``The federal government must place a
1989 greater emphasis on biomonitoring of cord blood.'' Then you
1990 also state that, and this is a quote, too, ``detection of a
1991 chemical in umbilical cord blood does not prove that it will
1992 cause harm.'' Well, last November the CDC stated on the
1993 record before this Subcommittee that our ability to detect
1994 chemicals through biomonitoring, and this is their quote ``is
1995 exceeding the ability to actually determine whether health
1996 effects are occurring.'' So, why then should the federal
1997 government devote more resources, a tremendous amount of
1998 resources to an enormously expensive procedure that you state
1999 isn't an indication of health risk and the CDC states isn't
2000 offering an increasing rate of return on health risk? This
2001 cord blood monitoring.

2002 Mr. {Cook.} That is an excellent question, Congressman,
2003 thank you, and a couple of points. First of all the CDC is
2004 continuing to do extensive monitoring precisely because they
2005 know that the raw material for the decision making process
2006 that you need to start figuring out some of these health
2007 effects and some of their impacts is biomonitoring
2008 information. In my case I don't think anyone should argue
2009 that because you are exposed to a chemical means that you are
2010 going to come down with the disease or illness that might be

2011 indicated by animal studies. But we find that as the
2012 American people have waited, and waited, and waited some more
2013 for the government to do anything to protect them by
2014 modernizing this law, they want to know what they are being
2015 exposed to so that perhaps they can take some steps on their
2016 own while the government is making up its mind.

2017 Dr. {Gingrey.} Well, yeah, and it is just like Dr.
2018 Mitchell was saying about the importance of designated areas
2019 across the country of hotspots. First thing you know these
2020 folks that are working, and living, and maybe employed at
2021 these companies that the manufacturing companies, chemical
2022 manufacturing companies they are going to think they are
2023 living a super fund neighborhood. And I--as I said in my
2024 opening remarks I think we are scaring the heck out of
2025 everybody. Let me make one last quick question, Mr. Chairman
2026 if you will bear with me because I did want to shift back to
2027 our former colleague Cal Dooley. You had some props there
2028 and you held them up and one of them was a Blackberry. How
2029 many of your props would meet safety standard under this
2030 bill? And for the sake of argument, assume that they don't.
2031 Under this bill, how long would it take to get a comparable
2032 alternative pilot to the market?

2033 Mr. {Dooley.} Excuse me, thank you again. Based on our
2034 intent and interpretation if they were in fact subject to the

2035 safety determination is that we quite frankly don't know if
2036 we could gather the information on the aggregate exposure
2037 that would allow EPA to make a determination whether or not
2038 we could bring that to market. We don't think we could get
2039 there. And the problem is with a new chemical you are saying
2040 how long will it take us to develop a new chemical? Well,
2041 you have all the R and D that is going into that as well, but
2042 then you have to then before you can bring that chemical to
2043 market you are going to have to make the investment, too, on
2044 the data that is going to be required. We look at that as
2045 probably being in the ball park based on our experience with
2046 the data we have been providing on the HPV program at EPA to
2047 be probably in the million dollar range. Then you have to
2048 wait another year for EPA to make--maybe make a determination
2049 on whether or not that product is safe to bring to market.
2050 So you are, you know, you are probably looking at a minimum
2051 of two to three years before even an alternative could even
2052 be available to come into the market.

2053 Dr. {Gingrey.} Thank you, Mr. Dooley. Mr. Chairman, I
2054 yield back, thank you.

2055 Mr. {Denison.} Can I reply briefly to that, Mr.
2056 Gingrey? I do think that this is not a standard that has
2057 come out of space, dropped out of space. We have had this
2058 standard in place in the pesticide arena for 14 years and

2059 9,000 pesticide tolerances have been reviewed under that
2060 standard. The majority of which remain on the market today.
2061 They met the standard. And it required aggregate exposure
2062 assessment. Now I am not saying that standard gets moved
2063 over without any adjustment, but it is not as if we are
2064 starting out from scratch here.

2065 Mr. {Dooley.} You know I must say before I came to
2066 Congress I was a farmer. And I used a lot of pesticides. I
2067 was in Congress when we put forth these regulations that
2068 Richard just mentioned in that this is a standard. But
2069 people need to understand is that on a pesticide you have a
2070 limited set of uses. It has to be registered for a specific
2071 number of crops that it could be applied to. There is a
2072 defined universe of exposures that an individual is going to
2073 encounter. It is easy in those situations to identify the
2074 aggregate exposure. When you look at a chemical, like it
2075 might be polysilicon it could be used in a thousand different
2076 applications and products. It could have different pathways
2077 of entry into, you know, of through those exposures. And the
2078 difference between a pesticide and why you might want to have
2079 a different standard there is that they are meant to be
2080 consumed. You are all going to consume them in the
2081 vegetables and the products you eat. You are not going to be
2082 eating a solar cell. You are not going to be eating your

2083 Blackberry. It has a much less of a level of risk of
2084 exposure, and that is why it should have a different standard
2085 of safety than what we are using in the pesticide industry.

2086 Mr. {Rush.} Mr. Cook, do you want to respond?

2087 Mr. {Cook.} We were heavily involved in the development
2088 of the Food Quality Protection Act idea. Point number one is
2089 this if I may borrow that, Cal. I prefer I Phones, but then
2090 again, your microphone works, so this ought to be as safe as
2091 a pesticide. That is all we are saying with no reasonable
2092 certainty of no harm, and when the agency determines that
2093 this product's packaging is safe then it is very unlikely
2094 that the next manufacturer coming along is going to trigger
2095 the safety standard and require years of review. So I just
2096 think it is--I disagree with my friend, Cal on that
2097 particular point. I believe as Richard has suggested, Dr.
2098 Denison has suggested, some chemicals are not going to make
2099 it under your law. If--when it becomes law. A very large
2100 number, probably most are going to meet the safety standard
2101 with modest changes. If it is a chemical that ends up in
2102 this, Dr. Gingrey, then I think--and we know that because we
2103 have looked, then I think stepping back we will say, well, if
2104 it meets the safety standard is it likely that more
2105 exceedances, more products will cause it to exceed it. I
2106 think the agency will be in a good position to say yes, or no

2107 without having every company that is trying to use this same
2108 plastic going through an elaborate exercise. So I think it
2109 can be very workable. And I think if we set the standards so
2110 that we reward R and D, if as Dr. Denison said innovation
2111 comes to embrace safety, we will be creating jobs here that
2112 our competitors overseas who don't invest in R and D won't be
2113 able to meet. But if we don't, if cost, and price, labor is
2114 the only consideration our jobs are going to keep going
2115 overseas.

2116 Mr. {Rush.} The Chair now recognizes the gentleman from
2117 Maryland, Mr. Sarbanes for 5 minutes.

2118 Mr. {Sarbanes.} Thank you, Mr. Chairman, thank you for
2119 your dogged determination to make sure we reform this statute
2120 and have the right kind of safety measures in place. I, as
2121 you know, I strongly support the legislation that has been
2122 introduced and was glad to be a co-sponsor of it. I think
2123 again as I have said every time I get the chance on this
2124 matter, the average American listening to this discussion
2125 would be amazed at how little we know about so many chemicals
2126 that are out there in the stream of Commerce. And frankly,
2127 must view it as an abdication of the responsibility of
2128 government to act on their behalf to protect them. So I
2129 would have like to have seen even stronger of provision
2130 perhaps in this. I am very happy with what is in it, and I

2131 am incredulous at industry's insistence that this is going to
2132 compromise them, handicap them, whatever phrase you want to
2133 use. I have boundless confidence that the chemical industry
2134 will figure this out and keep right on going. And I also
2135 understand just on the last point that was made by Mr. Dooley
2136 about how long it would take for certain things to happen.
2137 My understanding is that there is a faster track that can be
2138 pursued for looking at safer alternatives in some instances
2139 and so forth. So I just believe you are going to be able to
2140 assimilate these new requirements and frankly there is two
2141 dimensions to this. There is the consumer protection piece
2142 which I think is the--my first motivation. But there is also
2143 I think the opportunity for the business community to profit
2144 from having these new regulations in place. We are hearing
2145 all this stuff about how it is going to undermine jobs and so
2146 forth. I actually think it is going to improve the prospects
2147 of businesses that manufacture products that have these
2148 chemicals in them and I will tell you why. The more the
2149 public becomes aware of the fact that there is a lot of these
2150 chemicals out there that nobody really has a handle on, I
2151 think the more--and I don't think it is because of alarmism,
2152 I think it is just their own educated perspective. The more
2153 concerned they become about using these products whether it
2154 is because they are concerned about their children's health

2155 or they are concerned about their own health. I mean frankly
2156 I have started to try to minimize my--I mean it may be having
2157 an impact on the way our house looks, but I am trying to
2158 minimize the use of cleaning products in my house because I
2159 don't know, and that is what is really--what is in those
2160 products. So people are going to start reacting to the
2161 information that is out there that there not being enough
2162 oversight in place with respect to these chemicals. And I
2163 think it is going to harm the businesses and the industries
2164 that deliver those products to the public. And if we can
2165 restore confidence that these products have gotten the right
2166 kind of look and that the chemicals that go into them have
2167 been determined to be safe, et cetera, I think they are going
2168 to be more likely to want to purchase those products and it
2169 is going to be better for business. Now I just wanted to ask
2170 Mr. Denison getting back to this narrative about the bill
2171 hampering innovation, shifting production to developing
2172 countries, and so forth. When you look at regulation in the
2173 U.S., and Canada, and Europe, and so forth do you subscribe
2174 to the notion that having this TSCA reform in place is going
2175 to significantly undermine U.S. innovation and
2176 competitiveness?

2177 Mr. {Denison.} Congressman, I do not. I think there is
2178 a very strong record of better regulation spurring innovation

2179 and providing industry with a certainty as to what its
2180 targets are for meeting those regulations, and for meeting
2181 consumer demand that is based on them. I think you are
2182 absolutely right to point to the consumer confidence issue.
2183 In fact, ACC's decision to embrace modernization of TSCA was
2184 based on large part on their concern that the consumers were
2185 losing confidence in the safety of their products. We have
2186 to have real reform in order to restore that confidence. And
2187 that means we have got to have much better information, but
2188 we also have to have a government that is able to act on that
2189 information. And that doesn't mean weakening the safety
2190 standard. If Ms. Bosley is right, then many of her--of
2191 SOCMA's chemicals are intermediates with very limited
2192 exposure. Then they will pass the safety standard that much
2193 more easily. That is not a reason to lower the standard and
2194 to put U.S. companies at a disadvantage to other parts of the
2195 world that have those higher standards. So I totally reject
2196 the notion that a stronger regulatory program will impede
2197 innovation. It will spur it.

2198 Mr. {Sarbanes.} I appreciate that and I just have run
2199 out of time. I will just close by saying I think industry
2200 can really step--the government and industry can partner
2201 around good strong standards and take this thing to the next
2202 level. Everybody is going to come out the better for it,

2203 industry and the public. So with that I yield back.

2204 Mr. {Rush.} The chair now recognized the gentleman from
2205 Pennsylvania, Dr. Murphy for five minutes.

2206 Mr. {Murphy of Pennsylvania.} Thank you, Mr. Chairman.
2207 Thank you to the panel. I would have many of you to know
2208 that I believe at the beginning of the 20th century life span
2209 was about 45 years or so. By the end of the 20th century it
2210 has reached 70 some years. Does anybody know why? Any
2211 guesses? Dr. Mitchell, do you have anything?

2212 Dr. {Mitchell.} Yes, the major thing that happened is
2213 public health and prevention, you know, especially water,
2214 sewer, public sanitation all those things.

2215 Mr. {Murphy of Pennsylvania.} But, of course, chlorine
2216 is toxic. I don't know if anybody's abdicating we stop
2217 chlorinating water. Any of you doing that? Here is a
2218 question I had, too. Mr. Williams, I had to step out of the
2219 room during your testimony. I read it and I am really
2220 impressed with new building designs and new building
2221 materials particularly ones that avoid carcinogenic
2222 materials. I want to ask you if in the materials one uses in
2223 buildings, too, do you also look at paints, and the
2224 substances that might reduce mold risk as positive factors
2225 there?

2226 Mr. {Williams.} That is not, we don't manufacture

2227 products of that type.

2228 Mr. { Murphy of Pennsylvania.} I mean use them. Do you
2229 use them in buildings or do you recommend them?

2230 Mr. {Williams.} Only in our own buildings.

2231 Mr. { Murphy of Pennsylvania.} Okay.

2232 Mr. {Williams.} And--

2233 Mr. { Murphy of Pennsylvania.} Can you give us
2234 reasonable certainty that there is no harm will result from
2235 use of those?

2236 Mr. {Williams.} I am not familiar with paints.

2237 Mr. { Murphy of Pennsylvania.} There is also a lot--
2238 there is a concern that more people die from diseases they
2239 did not have when they went to the hospital than by diseases
2240 they went to the hospital for.

2241 Mr. {Williams.} They are socomial, yes.

2242 Mr. { Murphy of Pennsylvania.} They are socomial
2243 infections or a wide range of those. We know that a lot of
2244 paints are being developed now. A lot of antimicrobial
2245 paints, a lot of antimicrobial clothing to reduce the risk of
2246 that, so for you and for Dr. Mitchell, somewhere in here
2247 there may be a payoff. Some of these are treated with silver
2248 and one can have silver toxicity. Some have a certain level
2249 of nanoparticles including zinc. Zinc is pretty toxic, too,
2250 and so the question is given that no socomial infections

2251 affect about two million people a year cost \$50 billion of
2252 health care system that kill about 100,000 people a year, can
2253 either of you give me some certainty that no harm will result
2254 from using or not using these?

2255 Mr. {Williams.} First of all we at one time researched
2256 and began to use an anti-microbial within our product. A
2257 couple of points to that. Research has shown for years that
2258 the vast majority in perhaps from the 95th to 98th percentile
2259 of all known socomial infection is caused by procedures and
2260 by health workers failing to wash their hands. If you look
2261 at facilities today you will find numerous--

2262 Mr. {Murphy of Pennsylvania.} Sure, but though I might
2263 had I have worked in hospitals for 30 years, but I also know
2264 that someone washed their hands, they could touch their
2265 clothing, they could touch their tie, touch a pen, touch a
2266 stethoscope, touch a doorknob, and when surfaces are coated
2267 they may produce it, but the point it when you wash your
2268 hands your are also using chemical agents which can be toxic.

2269 Mr. {Williams.} Right, well, what--

2270 Mr. {Murphy of Pennsylvania.} Also saying one of those
2271 which can be very toxic, but you know the common use is to
2272 wash your hands. Because you wash your hands a lot all day
2273 does that end up with other problems? And my question is you
2274 are providing valuable information. My question is where is

2275 the line here in terms of trying to help this?

2276 Mr. {Williams.} Well, what we found is as we began to
2277 think we had a good product that at the time was using an
2278 additive for anti-microbial we found that in order to raise
2279 the content level sufficient to kill in a time frame that
2280 someone else then wouldn't come touch, we stopped using the
2281 product because we realized we would virtually have to have a
2282 sign on the product that said please don't touch for four and
2283 a half minutes while anti-microbial kills. And that was the
2284 difficulty with that although there are a great number of
2285 antimicrobials out there we are also seeing that health care
2286 leaders such as Kaiser-Permanente is refusing to use products
2287 with antimicrobials in them. A lot of this is a market
2288 driven issue from the manufacturing and a marketing company.
2289 We thought we had the right stuff with the antimicrobials.

2290 Mr. {Murphy of Pennsylvania.} So if they are not using
2291 them are we going to be developing new ones?

2292 Mr. {Williams.} No, I think the thing is they are not
2293 using them because of the toxicity at the level at which they
2294 would kill as opposed to base product--

2295 Mr. {Murphy of Pennsylvania.} Well, my concern is I
2296 would hope you would work with this committee--

2297 Mr. {Williams.} That is okay I guess--

2298 Mr. {Murphy of Pennsylvania.} I hope you work with

2299 this committee to help make sure we are able to develop new--

2300 Mr. {Williams.} Right, yeah, and I think this final
2301 answer is efficacy on some of these things is a very
2302 important issue.

2303 Mr. {Rush.} The Chair wants to inform the members of
2304 the Subcommittee and also the witnesses if I can impose on
2305 your time for a second round of questions or one question
2306 each per member. I think that this would be important for
2307 the deliberation of the Subcommittee. And with that the
2308 Chair will extend the opportunity for each member to ask one
2309 additional question. Only one question and the Chair will
2310 begin with himself for his one additional question.

2311 I am not--I just want to ask, I think I will ask this of
2312 both Mr. Dooley and also Mr. Cook. This is a pretty
2313 controversial question I am going to ask, but there are some
2314 people who have stated that this--the TSCA reform is
2315 necessary to fight cancer. Will you respond to that? And do
2316 you agree with that and respond and what do you think about
2317 that statement?

2318 Mr. {Cook.} Mr. Chairman, I think there is no question
2319 that protecting public health from exposure to these toxic
2320 chemicals is a vital part of what we need to be doing to make
2321 sure we are being cost effective and smart about prevention
2322 of cancer and other chronic diseases. There is a very strong

2323 literature on this subject. We can do it at a modest cost in
2324 many cases. We are not talking about giving up modern life.
2325 We are talking about moving to safer substitutes. We have
2326 done it before. We got lead out of gasoline, got rid of
2327 PCB's, everyone said we wouldn't have an electrical grid.
2328 Took care of DDT, went off the market, people--some people
2329 said we wouldn't have food, so we can do this. If we don't
2330 though and if we don't conduct the kinds of studies and
2331 collect the kind of information that your legislation would
2332 for the first time require, we are going to continue
2333 operating in the dark. And I go back to the President's
2334 cancer panel. Just this year very strongly saying that
2335 including exposures before we entered the world in the womb
2336 and going forward we have grossly underestimated the
2337 contribution that these chemicals are probably making to
2338 cancer in this country, that one half of all men and one
2339 third of all women one day will get that diagnosis.

2340 Mr. {Rush.} Mr. Dooley.

2341 Mr. {Dooley.} Yes, let me answer it this way is you
2342 know our industry absolutely is committed to insuring that
2343 every product that is on the shelf is safe and that EPA has
2344 the ability to work with the industries, we are providing the
2345 appropriate data and information to insure that they can make
2346 a determination that that product is in fact safe for its

2347 intended use. In reference to the specific issue in terms of
2348 cancer is that that is where we go back to where we ought to
2349 be embracing a system of prioritizing those chemicals that
2350 are greatest concern. And we ought to be focusing the
2351 resources and the expertise of both the regulatory sector as
2352 well as the private sector on understanding what are those
2353 risks and can those risks be managed? And so we would
2354 suggest rather than the blanket approach that is embodied in
2355 this legislation that would ultimately require every chemical
2356 to have a safety determination, is that we ought to identify
2357 those chemicals that we know are carcinogenic, that maybe
2358 they are an endocrine disruptor, maybe they are a persistent
2359 in bio-cumulative toxin. And those are the ones that we say,
2360 you know what we need to understand more about these. We need
2361 to ask industry to provide us more research and data. We
2362 need to EPA spending more time and effort and analyzing
2363 whether or not we can manage the risk of those products in
2364 Commerce. And if we do that effectively I think we are going
2365 to have a more efficient effective system that is going to
2366 contribute in reducing some exposures to some products that
2367 might be being used now that might in some way be
2368 contributing in limited instances to increase in some
2369 diseases.

2370 Mr. {Rush.} The Chair now recognizes our Ranking Member

2371 Mr. Whitfield for one question.

2372 Mr. {Whitfield.} Thank you. Before I ask my question
2373 and Mr. Chairman, I ask unanimous from inclusion in the
2374 record the testimony of Charles M. Hower pursuant to the
2375 previous agreement with you all and members maybe they are
2376 able to submit questions to him for the record.

2377 Mr. {Rush.} The Chair is mindful of that agreement and
2378 hearing no objections so ordered.

2379 Mr. {Whitfield.} And then I ask unanimous consent that
2380 we submit for the record letters and statements regard on
2381 this legislation from 12 different groups.

2382 Mr. {Rush.} Hearing no objections so ordered.

2383 [The information follows:]

2384 ***** COMMITTEE INSERT *****

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2385 Mr. {Whitfield.} For my question, first of all thank
2386 you all very much for your patience and being with us today.
2387 We appreciate it. Mr. Owens, in your testimony you talked
2388 about in 1989 the court case in which EPA ruling phasing out
2389 the use of asbestos that a federal court overturned that
2390 decision by EPA because the rule failed to comply with the
2391 TSCA regulation or requirement. I was wanting--I wanted to
2392 know specifically what part of the TSCA, the existing TSCA
2393 law was that decision made on?

2394 Mr. {Owens.} Thank you, Congressman. Can you hear me?
2395 Thank you, Congressman Whit for the question. It was a
2396 decision called the corrosion proof fittings decision and the
2397 Federal Circuit Court of Appeals looked at basically the two
2398 significant obstacles that EPA has to overcome in order to
2399 regulate any toxic substances under TSCA in this case
2400 specifically asbestos first. There was the requirement in
2401 the law that we determined that there defined that there was
2402 an unreasonable risk of harm from the substance in this case
2403 asbestos. And then once we made that determination to select
2404 the least burdensome alternative to regulate that substance.
2405 And it is a very length, technical, complicated decision
2406 where they went through a whole host of various alternatives
2407 that might exist out there and determine that--

2408 Mr. {Whitfield.} But it was based on the unreasonable
2409 risk and least burdensome--

2410 Mr. {Owens.} Both there was a--and the basic conclusion
2411 as was said despite nearly unanimous scientific opinion that
2412 asbestos creates an enormous range of health problems
2413 including cancer that EPA could not meet the burdens under
2414 the existing statute to eliminate any uses of asbestos or to
2415 significantly regulate those uses.

2416 Mr. {Whitfield.} Thank you.

2417 Mr. {Rush.} The Chair now recognizes Mr. Sarbanes.

2418 Mr. {Sarbanes.} Thank you, Mr. Chairman. Mr. Dooley,
2419 you said I think you said something to the effect of rather
2420 than requiring that every product have a safety determination
2421 that we focus on those that we know are harmful, potentially
2422 carcinogenic and so forth. But I don't really understand
2423 that. In other words how are we going to know that something
2424 is not harmful or carcinogenic if we don't do a safety
2425 determination on it? I understand that there is ones that we
2426 know right out of the gate are the worst of the worst and so
2427 forth, had that discussion in other hearings and we want to
2428 move quickly on those. But if you don't have a process that
2429 conducts a safety determination of a chemical how are you
2430 going to know that it doesn't fall into fall that other
2431 category?

2432 Mr. {Dooley.} Because, Mr. Sarbanes, I think that it is
2433 probably an area which we agree on is that--and I think EPA
2434 would acknowledge is that they have the ability by reviewing
2435 a data set, by reviewing the chemical characteristic, the
2436 molecular weight, the molecular structure, comparing it to
2437 other chemicals of similar composition is that they can make
2438 determinations on which chemicals are going to be those of
2439 greater concern. There is, obviously now, there is a number
2440 of different databases out there where they have identified,
2441 you know, carcinogenic chemicals; where they have already
2442 identified chemicals that could be an endocrine disruptor.
2443 Those lists are currently available today. And so there is,
2444 but there is also I think broad recognition that there is a
2445 lot of chemicals in Commerce today that pose really very
2446 little health risk. And so why should we be, again,
2447 requiring EPA to spend as many of their attention and
2448 resources on those low concern chemicals versus those that
2449 would be of the greatest concern? And the issue on the
2450 safety determination, the safety determination is what
2451 triggers, you know, the obligation to go out and to consider
2452 every aggregate exposure from that chemical. And so do you
2453 want to have EPA, which under the legislation in the first 12
2454 months they have to identify 300 chemicals. They would be
2455 required within 30 months to go out and with those 300

2456 chemicals that could have--maybe each one had a, you know a
2457 hundred applications, or in the marketplace, 30,000
2458 different, you know products that they are in is that they
2459 would have to go out and do an aggregate assessment of all of
2460 the exposures resulting from those 300 chemicals, and make a
2461 determination in whether or not they could meet that standard
2462 of a reasonable certainty of no harm, of a having adverse
2463 impacts on the public welfare. I mean, you know, I don't--
2464 you know when you look at the track record of EPA and their
2465 evaluation of chemicals, I mean, I would be astounded if Mr.
2466 Owens today could tell you that it would be even remotely
2467 possible for them to conduct a safety determination on 300
2468 chemicals in the next 30 months after this legislation was
2469 implemented.

2470 Mr. {Sarbanes.} Well, let me ask Mr. Owens. I mean do
2471 you think you have got the ability and as I understand it the
2472 statute makes clear that there is certain shortcuts that can
2473 be taken depending on the kind of chemical that you are
2474 looking at. So do you think you have the ability to move
2475 forward on this in a deliberate and timely way?

2476 Mr. {Owens.} Well, Congressman, I think the bill also
2477 provides for additional resources for EPA to conduct that
2478 activity. So I think the short answer would be if we
2479 received the additional resources we could make, depending on

2480 the level of resources, substantial progress toward achieving
2481 a goal like that. But it will depend in part on us getting
2482 additional resources from Congress to achieve some of the
2483 mission that you would direct us to do.

2484 Mr. {Rush.} The Chair now recognizes Mr. Murphy.

2485 Mr. {Murphy of Pennsylvania.} Thank you. I would like
2486 to ask perhaps again, you have heard my questions before
2487 about some of these substances that have some medical
2488 prevention applications. Many chemicals used in medicines
2489 can make them more effective, some preventative objects, some
2490 antimicrobials, anti-bacterial. Where does this bill, in
2491 this current version sit in terms of being able to encourage
2492 further research development application and even current use
2493 of some of these chemicals and products whose goal is and
2494 intended use is to treat disease and prevent infection? Will
2495 this help it, hurt it, stop it? What?

2496 Mr. {Dooley.} Well, again with our interpretation and
2497 understanding of the legislation is that we think it would
2498 hurt it and harm bringing new products into the marketplace.
2499 I mean I have another one of my props here that I haven't
2500 used yet, but it is a hand sanitizer.

2501 Mr. {Murphy of Pennsylvania.} That is dangerous stuff.

2502 Mr. {Dooley.} It is. And it would have, you know its
2503 problem ingredient is ethanol, ethyl alcohol. It is quite

2504 possible that ethanol, would, could be listed as a chemical
2505 of concern and at some point would be required to be subject
2506 to a safety determination. Again, under what is required
2507 under the Act is that legislation of this be as it was
2508 implemented, once it was on that safety determination, you
2509 would have to go out, again, and to identify every product
2510 that had ethanol in it in Commerce today and maybe those that
2511 are in naturally occurring. So that would incur your fuel,
2512 your biofuels, it would incur your wine and occasional gin
2513 and tonic that I drink. It would include, you know,
2514 thousands of different applications that then would require
2515 EPA to make a determination. Is there a reasonable certainty
2516 that this poses no harm? Well, of course it poses some harm
2517 to some, you know, in some instances because it is designed
2518 to kill things. And that is where we think it is, you know
2519 we have to be very careful with this standard. If you don't
2520 have a standard that is set appropriately is that it is going
2521 to harm a lot of innovations that have a lot of positive
2522 contributions that it can make. And again I go back if it is
2523 on list of 300, and the EPA hasn't made the determination is
2524 that if the language says you cannot bring a new application
2525 a new use of that chemical to the marketplace until EPA has
2526 completed the safety determination.

2527 Mr. { Murphy of Pennsylvania.} Thank you.

2528 Mr. {Denison.} Congressman, could I also answer that
2529 question?

2530 Mr. {Rush.} Do you have a comment, Mr. Denison on the
2531 last question?

2532 Mr. {Denison.} Very briefly, yes. I think there is
2533 some confusion about the scope here. I mean, first, Cal your
2534 wine and beer are fine. There is an exemption right up front
2535 for alcoholic beverages. But medical--

2536 Mr. {Dooley.} The exemption that they wouldn't regulate
2537 it by toxic--

2538 Mr. {Rush.} Mr. Dooley, Mr. Denison is recognized. He
2539 has the time.

2540 Mr. {Denison.} Thank you. Medical applications and
2541 drugs and so forth are not intended to be covered either
2542 here, so I think there is some confusion. The other thing is
2543 I think there is an interpretation of this standard that
2544 somehow it is a zero risk standard. That it would drive
2545 anything that has any hazard whatsoever off the market. It
2546 is not in its application under The Food Quality Protection
2547 Act, it is a risk based standard that establishes a level of
2548 risk that is going to be acceptable. So I think that is
2549 really important to understand here.

2550 Mr. {Rush.} Mr. Dooley.

2551 Mr. {Dooley.} And Rush, I just want to--when he said I

2552 didn't understand the legislation, the exemption for alcohol
2553 is to ensure that it exempted from TSCA. It doesn't exempt
2554 it from being considered in the aggregate exposures that
2555 would result which was the point that I was making.

2556 Mr. {Rush.} Mr. Scalise is recognized for one question.

2557 Mr. {Scalise.} Thank you, Mr. Chairman. I have a
2558 question for Mr. Owens and I would like a comment back from
2559 Ms. Bosley and Mr. Dooley as well. Chemical distribution
2560 companies have a unique role in the supply chain in that they
2561 serve as middle men for the manufacturers and industrial
2562 customers. A majority of distributors also blend chemicals
2563 and mixtures, and distributors that provide blending services
2564 could be subject to many of the requirements of this
2565 legislation that manufacturers are subject to. It is also
2566 feasible they will have to gather use and exposure info for
2567 other areas of the supply chain. Are you concerned that this
2568 bill could have a disproportionate impact on chemical
2569 distributors?

2570 Mr. {Owens.} Thank you, Congressman. We are still in
2571 the process of reviewing all the particulars of the bill, so
2572 it is a little difficult for me to say what might happen and
2573 what might not happen under some of the individual
2574 provisions. But let me respond to it this way, that we have
2575 had a lot of conversations about the information that is

2576 useful and necessary to gather in order to make all kinds of
2577 determinations that might be required to be made under this
2578 bill. We have heard a lot of different opinions on that
2579 including from downstream manufacturers and some companies
2580 involved in the chemical distribution chain that think they
2581 need to have this kind of information that would be available
2582 under this or some other version of this bill in order to
2583 know what is going into the products or the chemicals that
2584 they are producing themselves using the ingredients that are
2585 available out there. By the same token we think it is
2586 important for the manufacturers of these chemicals to know
2587 the uses to which their chemicals are being put especially if
2588 they are going to be subject to some sort of aggregate
2589 cumulative exposure determination that we would make at the
2590 agency. So we want to make sure that there is a right
2591 balance that is struck here, and the types of information
2592 that we need to make the determinations that would be
2593 required again under this or whatever version of this bill
2594 might come forward gives us that level of information and
2595 meets the needs. We want to make sure also that one sector
2596 isn't unduly burdened at the expense of another sector. So
2597 that would be part of what we would be looking at when we
2598 were determining what the minimum data set requirements would
2599 be. Under new legislation if there is a requirement like

2600 that then there would be different types of minimum data
2601 requirements for different types of chemicals. And we would
2602 take the specifics of the individual chemical into account.

2603 Mr. {Scalise.} Thanks, Mr. Dooley, and then Ms. Bosley.

2604 Mr. {Dooley.} You know I think it would have some
2605 impact. This is an area where I think that you know we agree
2606 that you know that there has to be a greater degree of
2607 transparency than what currently occurs under TSCA. And
2608 there has to be a greater sharing of information throughout
2609 the valued chain. But I would also like to maybe segue, if
2610 this chemical distributor though was importing a product
2611 under the existing TSCA or under the legislation is that they
2612 would be subject to meeting all the requirements of this bill
2613 which would mean if you had a chemical distributor that just
2614 for discussion purposes was trying to import in this
2615 Blackberry, or maybe this sanitizer. If it was subject to
2616 the safety determination whether it was a chemical
2617 distributor, or Target, or Best Buy, they would be required
2618 to again to insure that they would have to do the
2619 determination of all the aggregate exposures again and also
2620 would be the ones that would be responsible for making the--
2621 gathering the data to make the determination that this
2622 imported product did not pose a reasonable risk of harm. And
2623 we think that is a burden that is inappropriate to put on a

2624 distributor or a retailer on the importing of a particular
2625 article.

2626 Mr. {Scalise.} Thank you. Ms. Bosley.

2627 Ms. {Bosley.} I might say that as I said earlier I
2628 think yesterday afternoon we got some new language. There
2629 was a clerical error regarding mixtures and the way the bill
2630 reads now I guess I am more confused than anything, it is--
2631 the mixtures were taken out of the title but not the text.
2632 And it was taken out of certain sections but not other
2633 sections, but mixtures is where chemical distributors will be
2634 primarily affected. They do a lot of mixing and if they have
2635 to do--if they have to provide a safety determination on
2636 every mixture at every concentration it will inordinately
2637 affect them.

2638 Mr. {Scalise.} All right thank you. I yield back.

2639 Mr. {Rush.} The chair now asks unanimous consent that
2640 the following letters be concerning the H.R. 5820 be entered
2641 into the record. A letter from American Chemical Counsel and
2642 others, American Cleaning Institute, Wilson Manufacturing
2643 Associates, and Consumers Special New Products Association,
2644 the National Association of Manufacturers, the National
2645 Association of Chemical Distributors, the Retail Industry
2646 Leaders Association, Crop Life America, the Vinyl Institute,
2647 Pine Chemicals Association, The People for The Ethical

2648 Treatment of Animals, and also a statement for the record
2649 from the National Special Chemical and Residents Association.

2650 Hearing no objections so ordered.

2651 [The information follows:]

2652 ***** COMMITTEE INSERT *****

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2653 Mr. {Rush.} This concludes--is that including the--all
2654 right this concludes this hearing. The Chair really wants to
2655 be very intense in his appreciation for all the witnesses.
2656 This has been a real provocative and informative discussion.
2657 Your testimony has really contributed to the progress of the
2658 existing bill, and as we proceed with this bill with other
2659 additional hearings, and also with hopefully a mock up
2660 sometime in the future. So I want to thank each and every
2661 one of you. You have really done this Subcommittee a great
2662 service by your participation by your testimony and by the
2663 sacrifice of your time. Thank you so very much and the
2664 Subcommittee now stands adjourned.

2665 [Whereupon, at 2:40 p.m., the Subcommittee was
2666 adjourned.]