



KEY CONCERNS WITH THE CHEMICAL SAFETY IMPROVEMENT ACT (Lautenberg/Vitter S.1009)

Last week, Senators Lautenberg and Vitter introduced a bill (S. 1009) to rewrite the Toxic Substances Control Act (TSCA), the law intended to regulate toxic chemicals. TSCA, which was enacted in 1976, is regarded as a failure across the political spectrum, and true reform would be welcome. But the Lautenberg-Vitter bill in its current form would be in many ways as ineffective as current law and in some regards even worse. While some individual provisions of S. 1009 are improvements over TSCA, other provisions would mute or erase their impact, and the bill as a whole could leave the public with less protection. We urge you to take a close look at the details of the bill. We are ready to work with the bill's proponents to address its failings. We ask that you join us in pushing to fix this bill – by not co-sponsoring it until its weaknesses are remedied or, if you have co-sponsored it already, by calling for the necessary changes.

These are the primary problems with the bill:

- **No deadlines or minimum requirements** – The key to making any statute work is ensuring that it has enforceable deadlines. Yet S. 1009 imposes no statutory deadlines for assessing chemicals or making decisions on whether to regulate them. The bill's sponsors argue that, unlike TSCA, the measure directs EPA to assess chemicals. But without any mandatory and enforceable schedule, action can be delayed indefinitely, and no one will be able to compel the agency even to start evaluating a chemical. There is also nothing in the bill requiring EPA to take action on a minimum number of chemicals. Long experience has shown what happens in response to statutes with such gaps – nothing.
- **Preemption of state authority** – The bill imposes limits on the ability of states to protect their citizens – limits that are in critical ways worse than current law. This is noteworthy because states have often taken the lead in regulating toxic chemicals, and many environmental laws allow states to exceed federal protections. Yet S. 1009 blocks states from taking new action on a chemical as soon as the Environmental Protection Agency (EPA) has listed the substance as a “high priority” and scheduled an assessment. This is especially damaging because years could elapse between the time EPA schedules an assessment and the time it conducts the assessment and decides whether to regulate. Numerous chemicals could be languishing on the schedule, which as noted above, would be unenforceable. Under the bill, states could request a waiver – an acknowledgment perhaps of how sweeping the pre-emption is – but EPA could grant one only in very limited circumstances, and states should not have to request such permission in any event. The bill also preempts states from taking any new action on chemicals deemed “low priority” by EPA. This is especially problematic because EPA can designate hundreds or even

thousands of chemicals as “low priority” simply because the agency lacks sufficient data on hazard or exposure. States cannot seek waivers for “low priority” chemicals under the bill.

- **Unprotective safety standard** – The bill relies on the current standard in TSCA for determining whether a chemical is safe to use as intended. That standard -- “unreasonable risk” -- is too weak to protect the public. The bill’s sponsors point out that they have removed two other related constraints in TSCA concerning cost-benefit analysis and a requirement that chemicals be regulated in the “least-burdensome” way. But those improvements do not strengthen the scientific standard for deciding whether a chemical should be regulated. EPA should instead be directed to use a more protective standard; one example is in the Food Quality Protection Act of 1996 (FQPA), which uses a standard of “reasonable certainty of no harm.” Notably, the FQPA was a bi-partisan bill passed unanimously by a conservative Republican Congress. S. 1009 should also be strengthened by explicitly requiring that the level of safety take into account vulnerable sub-populations including infants, children, pregnant women, and workers, and by requiring (rather than just allowing) EPA to consider aggregate exposures to a chemical. Beyond the problems with the safety standard, S. 1009 includes requirements for phasing out or banning chemicals that may be as onerous as the ones that made TSCA a dead letter.
- **Assessment methodology** – The bill’s technical language on how chemicals should be prioritized and assessed is both cumbersome and tilted toward the chemical industry, and it does not direct EPA to follow the assessment methods that have been recommended by the National Academy of Sciences.

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