



The Honorable Frank Lautenberg
United States Senate
Washington, DC 20510

June 21, 2008

The Honorable Hilda Solis
United States House of Representatives
Washington, DC 20515

The Honorable Henry Waxman
United States House of Representatives
Washington, DC 20515

Re: The Kid Safe Chemicals Act of 2008

Dear Senator Lautenberg, Chairman Waxman and Congresswoman Solis:

We are writing to convey several remarks regarding The Kid Safe Chemicals Act of 2008 (KSCA). The Science & Environmental Health Network (SEHN) is a non-profit organization dedicated to implementing the precautionary principle as a basis for environmental and public health policy. SEHN has worked on chemicals policy at the national, state and local levels for many years.

KSCA represents a welcome, long overdue effort to improve the management of chemicals in commerce over that provided by the federal Toxics Substances Control Act (TSCA). Numerous reports by government, universities and environmental health advocates over the years have demonstrated the manifold deficiencies of TSCA. They have highlighted TSCA's outdated and inadequate approach for protecting communities, workers, consumers, children and the environment from dangerous chemicals as well as its failure to promote industrial development of safer chemicals. Growing scientific evidence of human contamination with hazardous chemicals and mounting global toxic pollution underscores the urgency of reforming TSCA. We congratulate you and your staffs for developing a serious proposal for this much needed reform.

We respectfully offer several comments for your consideration. Our first comment relates to the importance of considering cumulative impacts in developing the overarching goals of a chemicals policy. Then we follow with more specific comments directed to the structure of KSCA as it is currently written.

A. KSCA Should Seek to Reduce Cumulative Impacts of Chemicals.

As the centerpiece of its approach for controlling hazardous chemicals in commerce, KSCA applies a specific “safety standard” separately to each individual chemical. As it is defined in the Act, this safety standard requires not that each chemical be absolutely safe, but only that it, taken alone, presents no more than a specified level of threat. Thus, subject only to this safety standard, an unlimited number of chemicals that are capable of causing cancer, reproductive harm, neurological harm and virtually every other form of damage to human health and the environment will be permitted by KSCA to remain in commerce, to be present in products used by all members of our society (including children), and to be disseminated into the environment.

The limitation of this approach to managing chemicals is that it does not take account of the cumulative impact on human health and the environment of the tens of thousands of chemicals in global commerce. By “cumulative impact” we mean not just the effect of chemicals in commerce in combination with each other, but also in combination with the myriad chemicals that originate as pollutants (such as those that result from combustion of fuels, chemical degradation, and various industrial processes) and in combination with all the other causes of adverse effects on human health and the environment that are occurring throughout the world today. This issue is of particular concern for mutagens, carcinogens, and reproductive/developmental toxicants (which affect multiple generations) and for persistent or bioaccumulative chemicals that remain in the environment (the latent dangers of which are committed to both ourselves and future generations, whether we recognize those dangers or not). Because cumulative impacts are not controlled by the Act, or even assessed, many chemicals that individually meet the safety standard will undoubtedly still contribute to adverse effects on human health and the environment. This problem will only grow as the world continues to become industrialized and as global volume of chemicals and chemical pollution continues to grow.

The chemicals industry should be accountable for all of the cumulative contributions of its products to adverse effects on human health and the environment, including both current and future generations. Just as the Toxic Substances Control Act of 1976 was not up to the task of regulating the rapidly growing chemicals industry of the late twentieth century, no chemicals law that fails to account for the problem of cumulative impacts will be up to the task of protecting human health and the environment in the twenty-first century.

Accordingly, we believe that a comprehensive chemicals law should prevent chemicals in commerce from cumulatively contributing to adverse effects on human health and the environment. It should include a set of incentives that will motivate a

continual reduction in the hazardous properties of chemicals, and should not be structured solely around a safety standard for individual chemicals that will allow an unlimited number of harmful chemicals to continue in commerce. It should create tools for assessing the cumulative impact of chemicals and should incorporate legal structures designed to promote the development of alternatives that are less hazardous, persistent or bioaccumulative even than those that are deemed to meet the law's safety standard. The law should reflect a policy that a continual search for safer alternatives and their use must become the hallmark of the chemicals industry in the United States and throughout the world.

We recognize that KSCA intends to implement mandatory public chemical information requirements. One of the salutary functions of such public information is to provide information to the marketplace that will enable the market to respond to consumer demand for safer alternatives, and thus provide the chemicals industry with a market-based motivation to continually develop safer products. However, there is a need for additional government policy instruments designed to strongly discourage use of hazardous chemicals, especially including carcinogens, mutagens, reproductive/development toxicants and persistent or bioaccumulative chemicals. Some examples of such instruments are:

- Industrial manufacture and use of chemicals with problematic intrinsic properties could be subjected to publicly available alternatives analyses that provide society with available options to such manufacture and use.
- Taxes or fees on hazardous chemicals designed to discourage their use.
- Requirements for those marketing hazardous chemicals to invest in research on safer alternatives.
- Time-limited authorizations for hazardous chemicals designed to prompt periodic review of the need for them.
- It may be appropriate in some circumstances for government to regulate use of a hazardous chemical in favor of a safer alternative.

While this is an incomplete list of preliminary ideas, we believe it is essential that further effort be committed to developing such instruments and incorporating them into a law designed to promote continual reduction of the cumulative impact of chemicals in commerce.

B. Comments on the Structure of KSCA.

KSCA contains numerous features that we strongly approve of and believe to be critical components of a modern chemicals policy. We urge that these features be maintained in the law and that they be strengthened in accord with our comments.

1. The safety standard defined by KSCA focuses solely on whether a chemical poses harm to human health and the environment with respect to available data. It rejects TSCA's inappropriate balancing of such harm against vested industrial economic interests (although exemptions are available in some circumstances). It thus establishes a

baseline standard of risk to human health and the environment that each chemical in commerce must meet in order to remain on the market.

2. KSCA places the burden of proof on the chemical industry to demonstrate that their products meet the safety standard. It rejects TSCA's inappropriate and outdated approach of presuming chemicals are safe and then requiring EPA to prove otherwise. Chemicals that are found in umbilical cord blood are in particular presumed to fail the safety standard.

3. KSCA applies to all chemicals in commerce, whether already on the market or yet to be introduced. It rejects the inappropriate preference built into TSCA for older chemicals that were already on the market when TSCA was passed and that still constitute the large majority by weight of chemicals in commerce.

4. KSCA requires the chemical industry to produce a minimum publicly available data set for all chemicals in commerce as a condition for placing or keeping them on the market. While we strongly support this requirement, we are nevertheless concerned that as written KSCA may be susceptible to other interpretations and thus may not make this requirement ironclad. We believe that a mandatory statutorily-defined "no data, no market" requirement is a prerequisite of effective chemicals management. The public availability of safety information would not just enable better government protection of human health and the environment but would also, as we have mentioned, enable the existing demand for safer chemicals help drive the market toward producing safer products. Accordingly, the bill should unambiguously provide that a defined data set sufficient to enable a reasonable evaluation of the risks associated with every chemical in commerce by government, industry and consumers must be made publicly available by a date(s) certain.

5. The safety standard applies to all aggregate exposures to a chemical in commerce from all uses as well as legacy exposures from existing environmental contamination. This "aggregate exposure" is a far cry from the kind of cumulative impact of chemicals that we believe the law should seek to control, for it focuses only on the effect of each chemical individually. Nevertheless, we believe the safety standard should apply to aggregate exposures and should not be balkanized into evaluation of small increments of exposure from particular uses. What is important to society is that chemicals themselves be safe, not just that each individualized use would be safe if it were the only use.

Accordingly, the safety standard should evaluate aggregate exposure from all uses of each chemical and existing environmental contamination; industry should be required to ascertain and report all uses of each chemical; and any authorization under the Act must specify and apply only to the exposures and uses considered in evaluating the safety standard.

6. The safety standard is intended to protect the "public welfare." We interpret this term as including protection of the environment and non-human species, and strongly

support such protection. We believe that the meaning of this term should be made more explicit in the law to ensure its broad application. Environmental contamination by toxic chemicals is an important component of the ecological crisis we face today, which is diminishing the habitability of the Earth for all people. Chemical manufacturers should be accountable for damage their products contribute to the environment and general public welfare as well as for direct damage to human health.

Finally, implementation of the safety standard established by the Act, like implementation of any technical legal test, will always be subject to uncertainty and error. Inevitably, chemicals will erroneously be permitted on the market even though they would not in fact meet the safety standard if more were known about them. Society's confidence that chemicals in commerce actually do meet the "reasonable certainty of no harm" safety standard could be materially enhanced by requiring that industry demonstrate that chemicals satisfy that test by clear and convincing evidence rather than by the less stringent legal standard of preponderance of the evidence. Also, robust provisions for ensuring transparent decision-making and public input will enhance society's confidence in the safety of chemical products.

Reforming U.S. chemical policy is a major undertaking that will take further thought and work. And yet, it is a doable task. Europe has taken significant steps to reform its management of chemicals already, and California is proceeding under its Green Chemistry Initiative. The time for chemicals policy reform has come.

Thank you for your hard work in developing the Kid Safe Chemicals Act of 2008 over the last several years. You have demonstrated courage and commitment to public health. We look forward to working with you on the details of this legislation to strengthen it and to ensure that it will in fact enable government to protect Americans and the environment from the cumulative impact of dangerous chemicals, establish a transparent chemicals market that will allow consumers and industrial users of chemicals to choose safer alternatives and provide a system of incentives that will motivate the chemicals industry to actively and continually develop and use safer chemicals.

Sincerely,

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