



Formerly the Association of Trial Lawyers of America (ATLA®)

March 12, 2014

The Honorable John Shimkus
Chairman
Subcommittee on Environment and Economy
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Paul Tonko
Ranking Member
Subcommittee on Environment and Economy
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Tonko:

The American Association for Justice (AAJ), formerly the Association of Trial Lawyers of America (ATLA), hereby submits comments in relation to the Energy and Commerce Committee Subcommittee on the Environment and the Economy's hearing on the "Chemicals in Commerce Act," draft legislation that would update the current Toxic Substances Control Act (TSCA).

AAJ, with members in United States, Canada and abroad, is the world's largest trial bar. It was established in 1946 to safeguard victims' rights, strengthen the civil justice system, promote public safety, and protect the constitutionally mandated right to a trial by jury. As advocates for people harmed by toxic chemicals, AAJ strongly supports efforts to reform TSCA to better protect American families from the harmful chemicals which are found in everything from our drinking water to children's toys and consumer products. These chemicals often pose significant and often deadly risks, especially to children, pregnant women, workers and the elderly.

Unfortunately, the recently-introduced draft legislation that is the subject of today's hearing, the "Chemicals in Commerce Act," fails to provide meaningful improvements to existing law and in many ways is actually less protective of public health and the environment because it rolls back state and civil justice protections.

- **Sweeping preemption of state laws.** The draft bill would wipe out existing state laws and regulations, prevent the enactment of any new state laws or regulations, and ban any additional testing for chemicals deemed 'low-priority' by the EPA. Additionally, the draft bill would preempt new and existing state laws and regulations for any chemical deemed 'high-priority' by the EPA after a safety determination has been completed. The draft bill would even go so far as to preempt new and existing state laws just 90 days after the EPA receives a pre-manufacture notice from a chemical manufacturer, even if no action, safety assessment, or testing of any kind has been undertaken for that particular chemical.
- **Failed savings clause.** The stated purpose of the draft bill is to "promote uniform protections...while minimizing undue burdens on commerce," creating a uniform federal law which preempts state laws, and imposing a ceiling on regulation of chemicals at the risk of human health and the environment. Under the draft bill all state statutory and common law remedies are preempted and as a result consumers will be unable to pursue any recourse when harmed by a

toxic chemical. In addition, the purported “savings clause” is entirely ineffective because it fails to preserve state statutory or common law.

- **Unworkable safety standard.** The draft bill maintains the same safety standard that has prevented the Environmental Protection Agency (EPA) from banning known, dangerous chemical substances such as asbestos. Any legitimate TSCA reform proposal must begin by creating a workable safety standard NOT by relying on the same failed language from existing law.
- **Places limitations on sources of science.** The draft bill severely limits the sources of science the EPA can consider. Specifically, the bill uses many terms that sound innocuous, but in practice severely limit the types and sources of science the EPA can consider when making prioritization decisions or chemical safety determinations. As a result, the only information the EPA can consider is drawn from industry-captured studies, while studies from truly independent sources, even renowned universities, are discounted or suppressed entirely from the EPA’s consideration because they don’t meet certain industry-dictated standards.
- **Unduly burdens a resource-depleted EPA.** The draft bill, taken as a whole, singularly tasks the EPA with the responsibility for prioritizing, testing, regulating, and enforcement of 80,000+ chemical substances, while simultaneously wiping out state and civil justice system protections. Yet, the EPA’s budget has been slashed by over 20% since 2010, with the 2015 budget proposals released last week continuing that downward trend, cutting an additional 3.7% from the EPA’s 2014 budget.

Strong federal oversight is essential to ensuring public health, but federal standards but should not prevent Americans from seeking recourse when toxic chemicals cause harm. Just because a chemical is deemed ‘safe’ or ‘low-priority’ by a federal regulator should not mean that the chemical industry’s duty to protect the public ends. If it turns out that the chemical industry learns additional information about the safety of its product, or hid information from the public and harm occurs as a result, individuals should have the right to hold that corporation accountable. AAJ firmly believes that any effort to reform TSCA must specifically and comprehensively preserve the ability of individuals to pursue their rights under both state statutory and common law.

Unless these issues, along with others vital to protecting the public health and environment are adequately addressed, Americans will be even less protected from toxic chemicals than they are today. AAJ applauds the effort to hold earnest discussions about how to keep Americans safe from toxic chemicals, but unfortunately the “Chemicals in Commerce Act,” as introduced, does not present an adequate place to begin the conversation.

AAJ looks forward to working with the committee to enact meaningful TSCA reform that ensures a federal scheme truly protective of the public health, while preserving the authority of state enforcement entities and the civil justice system to promote and effectively protect public health and the environment from the risks of toxic chemicals.

Sincerely,



Linda Lipsen
Chief Executive Officer
American Association of Justice