



## MEMORANDUM

### Via E-Mail

DATE: November 17, 2009

TO: Clients and Friends

FROM: The Acta Group, L.L.C.

RE: House Subcommittee Holds Hearing on Prioritizing Chemicals for Safety Determination

Today the House Committee on Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection held a hearing entitled "Prioritizing Chemicals for Safety Determination." The hearing was intended to examine the options for prioritizing chemicals for safety determinations in the event that Congress passes legislation amending the Toxic Substances Control Act (TSCA) and reflects Congress's sustained interest in chemical management reform legislation.

The hearing, which was hastily pulled together, was well attended by Subcommittee Members, both Republican and Democrat. This may indicate widespread political interest in TSCA reform, which could lead to eventual difficulties in resolving what are almost certain disagreements between the majority and minority Members. Among the Members who attended were Representative John Dingell (D-MI), former Chair of the full Committee, who in the past has taken some interest in TSCA matters, and Representative Ed Markey (D-MA), another senior Member of the Committee. Markey seemed to ask the most pointed questions, most of which were critical of the current law and regulatory program. Representative George Radanovich (R-CA), Ranking Member of the Subcommittee, seemed the most aggressive in questioning the premise that the current law is fundamentally flawed and unable to protect the public in its current form, and made repeated references to the potential adverse impact of ill-conceived legislation on jobs and the economy.



Memorandum to Clients and Friends

November 17, 2009

Page 2

The questions and commentary of Members was mostly predictable and followed party lines. Democrats stressed the fundamental “failure” of the current law and the need for drastic revisions certain to increase greatly and enhance current TSCA requirements. Republicans stressed the need to modernize TSCA without imposing unnecessary costs to avoid newly imposed requirements that would place the chemical industry at an economic competitive disadvantage with little gain in reducing real risks (especially at a time of double digit unemployment and general economic recession). The testimony and the responses of Steve Owens, Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances (OPPTS), United States Environmental Protection Agency (EPA), did not break any new ground. His testimony was consistent with past public statements about the Obama Administration’s priorities and goals for TSCA reform. Owens did not offer or outline any more specifics about possible TSCA amendments being considered by the Administration, nor did he offer any newly specific plans for reinvigorating the program under current law.

Witnesses included:

- Steve Owens, Assistant Administrator, OPPTS, EPA;
- Eric Sampson, Director, Division of Laboratory Sciences, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC);
- Daryl Ditz, Senior Policy Advisor, Center for International Environmental Law;
- William J. Greggs, Consultant, Consumer Specialty Products Association (CSPA), the Grocery Manufacturers Association (GMA), and the Soap and Detergent Association (SDA); and
- Beth D. Bosley, Boron Specialties, on behalf of the Society of Chemical Manufacturers and Affiliates (SOCMA).

The witness statements are available on the Internet at [http://energycommerce.house.gov/index.php?option=com\\_content&view=article&id=1820:prioritizing-chemicals-for-safety-determination&catid=129:subcommittee-on-commerce-trade-and-consumer-protection&Itemid=70](http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1820:prioritizing-chemicals-for-safety-determination&catid=129:subcommittee-on-commerce-trade-and-consumer-protection&Itemid=70).



Memorandum to Clients and Friends  
November 17, 2009  
Page 3

Owens highlighted the Obama Administration's principles for TSCA reform:

- Chemicals should be reviewed against safety standards that are based on sound science and reflect risk-based criteria protective of human health and the environment;
- The responsibility for providing adequate health and safety information should rest on industry, and, if industry does not provide the information, EPA should have the necessary tools to require testing or obtain other information from manufacturers that are relevant to determining the safety of chemicals;
- EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns;
- EPA should have clear authority to set priorities for conducting safety reviews;
- Innovation in green chemistry should be encouraged, and research, education, recognition, and other strategies that will lead us down the road to safer and more sustainable chemicals and processes should be supported; and
- TSCA implementation should be adequately and consistently funded to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is meeting that goal. To that end, manufacturers of chemicals should support the costs of EPA implementation, including the review of information provided by manufacturers.

According to Owens, EPA is currently evaluating an initial set of chemicals, based on available hazard, exposure, and use information, for potential action. EPA announced in September 2009 that the initial list of chemicals includes benzidine dyes and pigments; bisphenol A (BPA); penta, octa, and decabromodiphenyl ethers (PBDEs) in products;



Memorandum to Clients and Friends

November 17, 2009

Page 4

perfluorinated chemicals; phthalates; and short-chain chlorinated paraffins. EPA intends to complete and make public action plans for four of the chemicals. Owens testified that, following this, EPA will engage with stakeholders on prioritizing additional chemicals for evaluation, and “aim[s] to complete and make publicly available a group of chemical action plans every four months. EPA intends to engage stakeholders and dialogue with other federal partners, as well as the public, in the discussion about prioritizing chemicals for future risk management action over the coming months through public notices and public meetings.”

Sampson testified regarding the CDC’s biomonitoring program, which includes its *National Report on Human Exposure to Environmental Chemicals*. According to Sampson, CDC plans to publish the fourth *Report* by the end of **2009**. The *Report* will include data on 212 chemicals. CDC also supports targeted studies through partnerships with states, other federal agencies, academic institutions, and international organizations. These studies examine vulnerable populations, particularly newborns, children, pregnant women, and population groups or communities known or likely to have higher exposures. In fiscal year 2009, CDC awarded a total of \$5 million to three states -- California, New York, and Washington -- for state-based biomonitoring programs. Sampson noted that, although biomonitoring is far ahead of the science of interpreting what exposures mean for health, the data are valuable for a variety of public health purposes, such as identifying relative levels of exposure in the population and setting priorities for research into the health impacts of chemicals.

Ditz offered three recommendations for addressing the safety of chemicals: EPA needs authority to regulate the “worst of the worst” chemicals; prioritization should be used to determine the order in which chemicals will be reviewed, not to exclude any chemicals from review; and manufacturers must provide up-to-date, comprehensive data on all chemicals. Ditz described the “worst of the worst” chemicals as those that are persistent, bioaccumulative, and toxic (PBT).

Greggs testified that the priority setting process must be risk-based, taking into consideration both a chemical’s hazards and potential exposures. According to Greggs, CSPA, GMA, and SDA have collaborated with various industry representatives to develop a risk-based tool that EPA can use to prioritize chemical substances in a timely manner under a modernized TSCA. CSPA, GMA, and SDA recommend the use of a framework that accounts for increasing levels of hazard on one axis and increasing levels of potential exposure on the other axis. Using this framework, the highest hazard and highest potential exposure chemicals would be the highest priority for further assessment, while the lowest hazard and lowest potential exposure chemicals would be the lowest priority for further review by EPA.



Memorandum to Clients and Friends  
November 17, 2009  
Page 5

Bosley testified that SOCMA supported the TSCA Inventory reset, which was part of EPA's discontinued Chemical Assessment and Management Program (ChAMP). The TSCA Inventory currently includes over 80,000 chemicals, but, according to SOCMA, data show that only about a third of these chemicals are currently in commerce. Bosley described TSCA programs that have been effective, such as the New Chemicals Program and High Production Volume Chemical Challenge Program. Bosley recommended that a standard:

- Not overlook the basic principle of risk (evaluation of hazard and exposure);
- Not burden EPA by requiring a determination that each chemical is safe for its intended use; and
- Provide adequate funding for EPA.

\* \* \* \* \*

We hope this information is helpful. As always, please call if you have any questions.