STATEMENT OF

RICHARD A. DENISON, Ph.D.
SENIOR SCIENTIST
ENVIRONMENTAL DEFENSE FUND

BEFORE
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COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

AT A HEARING ON

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

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1875 Connecticut Avenue, NW
Washington, DC 20009

T 202 387 3500
F 202 234 6049
edf.org

New York, NY / Austin, TX / Bentonville, AR / Boston, MA / Boulder, CO / Raleigh, NC
Sacramento, CA / San Francisco, CA / Washington, DC / Beijing, China / La Paz, Mexico

THE PROBLEM

Over the past decade, a litany of serious concerns has emerged that calls into question the safety of the thousands of chemicals we use and encounter in our everyday lives:

- Lead has shown up in a host of children's products, imported and domestic, finally leading Congress to impose a ban – only to see another toxic heavy metal, cadmium, immediately take its place, in a most deadly version of the kids' game "whack-a-mole."
- The science of biomonitoring has revealed that virtually all Americans, including newborns, carry in our bodies hundreds of toxic synthetic chemicals, many derived from everyday products – only to learn that no one can tell us how they got there or what effects such a mixture of chemicals is having on our and our children's health, because they haven't been adequately tested or assessed for safety.
- Persistent, bioaccumulative and toxic (PBT) chemicals that we were told we would never be exposed to – such as those used as flame retardants used in furniture and TV casings, in stain-resistant coatings on textiles and food packaging, and as plastics additives – are now routinely detected in the dust in our homes, in our environment, in marine mammals, and even in people living in the remotest parts of the globe.
- Our scientific understanding of how chemicals affect our biology has grown dramatically over the last decade. We now know that the timing of exposures, especially during early development, is critical; that even very low doses of certain chemicals can have adverse effects; and that it is the cumulative effects of long-term, real-world exposures to multiple chemicals that matter most.
- A large and growing body of scientific evidence[1] is linking chemical exposures to several serious chronic diseases and disorders that are becoming more prevalent, including:
    - leukemia, brain and other childhood cancers, which have increased more than 20% since 1975;
    - breast cancer, which went up by 40% from 1973 to 1998;
    - asthma, which almost doubled in prevalence from 1980 to 1995;
    - autism, diagnoses of which have increased 10-fold in the last 15 years; and
    - difficulty in conceiving and maintaining a pregnancy, which affected 40% more women in 2002 than in 1982.
- EPA has had little choice but to resort to pleading with the emerging nanotechnology industry to provide, through a voluntary program, the most basic information EPA feels it needs to decide how best to regulate these materials – only to see a level of participation best described as paltry. Such materials can by no means be assumed to be benign; for example, one class of nanomaterials – multi-walled carbon nanotubes – behaves in a manner that is ominously similar to asbestos.
- EPA is forced to perform Google searches to try to identify all of the uses of chemicals like the hormone-disrupting bisphenol A – because it lacks authority to compel reporting of chemical uses from all levels of chemical supply chains. And even though people are exposed to such chemicals from many different sources, EPA lacks a mandate to assess the aggregate risks.

- EPA can't provide even a rough approximation of the actual number of chemicals in commerce today or how and where they are used – because EPA is severely constrained in collecting even the most basic information from companies that make and use chemicals. Many companies are not even required to notify EPA when they begin to produce a chemical or use it in a new way.
- 85% of all new chemical notices submitted to EPA have no health data whatsoever, and 95% lack any ecotoxicity data. That's because the U.S. is virtually alone among all developed countries in not requiring a minimum data set to be submitted for new chemicals. While EPA can in theory require subsequent testing, the burdens are so high that it has done so for at most a few percent of new chemicals.
- Residents in low-income communities of color like Mossville, Louisiana (which is surrounded by 14 chemical plants) are routinely exposed to deadly chemicals like dioxin, benzene and vinyl chloride in amounts that far exceed general population exposures – yet such disproportionate impacts need not be accounted for when government conducts risk assessments on such chemicals, and actions to reduce the exposures are few and far between.
- The public, state governments and even workers who may be directly exposed to chemicals are denied access to the great majority of chemical information that companies submit to EPA. That's because the companies have been given wide latitude to claim it as confidential, and EPA lacks resources to review the claims to determine if they are legitimate.
    - EPA reviews an average of fourteen – 14 – out of thousands of such claims made each year.
    - Companies are under no obligation to routinely test their chemicals. If they do happen to obtain data showing a chemical they make presents a substantial risk, they are required to submit it to EPA. Yet when doing so, companies have claimed the identities of nearly half of those chemicals to be confidential – despite the fact that Congress ruled such information is ineligible for such protection.
    - More than a quarter of industry submissions claimed information as to whether their chemicals are used in children's products to be confidential.
- Earlier this month, President Obama signed a new law to restrict the use of formaldehyde in plywood and other pressed wood products. In the aftermath of the "toxic trailers" debacle in which hundreds of victims of Hurricane Katrina were exposed to toxic levels of this known human carcinogen, Congress had to step in to address the problem after EPA indicated it lacked authority to do so. Yet this new law limits only one use of one toxic chemical, and it does nothing to halt the ongoing sale and resale of those trailers for use as housing.
    - This sad episode is but one example of how our failure to address chemical risks stymies innovation toward safer chemicals and products: U.S. companies with safer alternatives to this use of formaldehyde have struggled to gain market share against producers of the cheaper, more toxic product.
- Finally and most recently, government has been able to provide few answers to the myriad questions and public concerns raised about the nearly 2 million gallons of chemical dispersants that have been used in the BP oil disaster in the Gulf of Mexico – in large part because precious little safety testing has been required. Moreover:

- No toxicity standard applies to the approval process for dispersants; as a result there has been no incentive for companies to develop safer, more effective dispersants.
- EPA had to cajole and pressure the dispersant maker for weeks before it finally agreed to identify the ingredients in its dispersants, because EPA lacks adequate authority to compel disclosure.

All of the problems I just described can be attributed, in whole or in part, to the failures of our country's main chemical safety law, the Toxic Substances Control Act (TSCA).

THE SOLUTION

Happily, Mr. Chairman, all of these problems would be largely or entirely ameliorated by adoption of the legislation you introduced last week, H.R. 5820, the Toxic Chemicals Safety Act of 2010. It provides the framework for a comprehensive, systematic solution to a set of problems that until now have been addressed, if at all, through reactive, piecemeal actions.

Environmental Defense Fund actively participated, both individually and as a member of the *Safer Chemicals, Healthy Families* coalition (www.saferchemicals.org), in the intensive 3-month process your Subcommittee and Committee staff convened to actively gather and incorporate feedback on a "discussion draft" of the bill that was introduced in mid-April. Numerous changes were made to the draft by staff to clarify intent and reflect stakeholder concerns raised during that deliberative process.

The result is legislation that reflects the considered input from a wide array of stakeholders – all sectors of business and industry, health groups, environmental justice and community organizations, parent groups, the religious community, animal protection organizations, labor, state regulatory officials, and state and national environmental organizations.

In our view, H.R. 5820 strikes the right balance, by reforming TSCA first and foremost to fully protect human health and the environment (including the most vulnerable among us), while also:

- encouraging and rewarding innovation toward safer chemicals and products;
- informing the chemicals marketplace as well as consumers and the public, while protecting legitimate business-confidential information;
- fully utilizing all available information and new scientific methods so as to reduce costs and minimize the use of laboratory animals in testing chemicals; and
- providing EPA with the resources it needs to efficiently and effectively carry out its expanded responsibilities to ensure chemical safety.

My written testimony provides a more detailed comparison of current TSCA to the Toxic Chemicals Safety Act that describes the many vital reforms the new legislation includes.

Let me highlight a few features of H.R. 5820 that reflect its sound basis in science and its balance:

PROMOTING INNOVATION AND SAFER CHEMICALS: First, the legislation will encourage and reward innovation in the marketplace, protecting American jobs while ensuring public and workplace safety. Three examples:

Far from impeding innovation, H.R. 5820 would allow new chemicals to enter the market *without* safety determinations if they are intrinsically low hazard, are safer for particular uses than chemicals already on the market, or serve critical uses. This serves to enhance the competitive strength of the American chemical industry by providing ready market access to innovative, safer chemicals.

H.R. 5820 will level the playing field between new and existing chemicals, by requiring for the first time that existing chemicals be assessed and shown to be safe in order to remain on the market. By also ensuring the safety of new chemicals before they enter commerce, it will help to position those chemicals – and the companies that innovate them – to satisfy the growing global demand for safer chemicals and chemical products.

And by raising U.S. chemical safety standards to a level comparable to that in other major chemical markets across the globe, H.R. 5820 will help U.S. companies to compete in an economy where customers are demanding more and better information about the chemicals they buy, and more evidence of their safety.

ENSURING USE OF THE BEST AND LATEST SCIENCE: Second, H.R. 5820 ensures the best and latest science is used to inform data requirements and risk-based safety determinations and address chemicals of greatest concern. It promotes development and use of emerging methods for testing chemicals that can enhance our knowledge of chemical effects, while increasing efficiency and minimizing costs and animal use. It calls on EPA to rely on the latest recommendations of the nation's premier scientific body, the National Academy of Sciences, in formulating the risk assessment methodology it will use to support safety determinations. It requires EPA periodically to review data requirements and assessment methodologies and revise them to incorporate the best and latest science.

H.R. 5820 establishes a risk-based safety standard that incorporates the common-sense need to assess the aggregate of exposures to multiple sources of the same chemical, and, where sufficient science supports doing so, cumulative exposures to multiple chemicals that contribute to the same health effect. The standard also reflects the firmly established fact that certain segments of the population have an enhanced vulnerability to the adverse effects of chemicals. This is the same tried-and-true safety standard that Congress enacted into law 14 years ago with overwhelming bipartisan support, and that has served us well in protecting public health from pesticides used on food crops.

H.R. 5820 calls for expedited action to reduce exposures to chemicals identified through application of rigorous scientific criteria as persistent, bioaccumulative and toxic (PBT) chemicals to which people are exposed. This particularly dangerous class of chemicals has been targeted for similar action by authorities across the globe – because they build up in the environment and the food chain, posing health risks long after their initial release. The

legislation also calls for prompt action to address "hot spots," localities where ample scientific evidence demonstrates that people are subject to disproportionately high exposures to toxic chemicals.

MEETING LEGITIMATE INFORMATION NEEDS: Third, H.R. 5820 ensures that more and better information becomes available on all chemicals, not only informing EPA safety decisions, but also responding to the growing market demand for such information from many "downstream" American businesses and from consumers. Chemical producers are required to declare the chemicals they make and their known uses, and to provide a minimum data set to characterize their hazards and exposure potential. Producers are also to provide their commercial customers with information on the chemicals they purchase and use, enhancing chemical users' ability both to make informed decisions and to report to EPA on their own uses of chemicals.

At the same time, given the large number and diversity of chemicals involved, the legislation reasonably phases in the new data requirements over a number of years; gives EPA the authority to tailor data requirements to specific types or groups of chemicals, rather than applying a one-size-fits-all approach; reduces both the costs and use of animals in testing by allowing a range of methods to be used to fulfill data requirements; and allows EPA to categorically exempt intrinsically benign chemicals from information as well as other requirements. It also retains the ability of companies to protect legitimate confidential business information (CBI), while allowing EPA to share CBI with state, local and Tribal governments and ensuring full public access to non-CBI.

Mr. Chairman, I strongly urge the Subcommittee to advance H.R. 5820, the Toxic Chemicals Safety Act of 2010, in this Congress. This critically important legislation represents a once-in-a-generation opportunity to protect the American people and our environment from dangerous chemicals.

Thank you.

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[1] Summarized in *The Health Case for Reforming the Toxic Substances Control Act*, 2010, available at http://healthreport.saferchemicals.org/.

Comparison of key policy elements under the
Toxic Substances Control Act and the Toxic Chemicals Safety Act of 2010

Currently under the *Toxic Substances Control Act*	**Under the *Toxic Chemicals Safety Act of 2010***
SAFETY DATA: Few data call-ins are issued, even fewer chemicals are required to be tested and no minimum data set is required even for new chemicals.	Up-front data call-ins for all chemicals would be required. A minimum data set (MDS) on all new and existing chemicals sufficient to determine safety would be required to be developed and made public.
BURDEN OF PROOF: EPA is required to prove harm before it can regulate a chemical.	Industry would bear the legal burden of proving their chemicals are safe.
ASSESSMENT OF SAFETY: No mandate exists to assess the safety of existing chemicals. New chemicals undergo a severely time-limited and highly data-constrained review.	Both new and existing chemicals would be subject to safety determinations as a condition of entering or remaining on the market, using the best available science that relies on the advice of the National Academy of Sciences.
SCOPE OF ASSESSMENT: Where the rare chemical assessment is undertaken, there is no requirement to assess all sources of exposure to a chemical, or to assess risk to vulnerable populations. No guidance is provided on how to determine whether a chemical presents an "unreasonable risk."	The safety standard would require EPA to account for aggregate and cumulative exposures to all uses and sources of a chemical, and to ensure protection of vulnerable populations that may be especially susceptible to chemical effects (e.g., children, the developing fetus) or subject to disproportionately high exposure (e.g., low-income communities living near contaminated sites or chemical production facilities).
REGULATORY ACTION: Even chemicals of highest concern, such as asbestos, have not been able to be regulated under TSCA's "unreasonable risk" cost-benefit standard. Instead, assessments often drag on indefinitely without conclusion or decision.	Chemicals would be assessed against a health-based standard, and deadlines for decisions would be specified. EPA would have authority to restrict production and use or place conditions on any stage of the lifecycle of a chemical needed to ensure safety.
CHEMICALS AND EXPOSURES OF HIGH CONCERN: No criteria are provided for EPA to use to identify and prioritize chemicals or exposures of greatest concern, leaving such decisions to case-by-case judgments.	EPA would develop and apply criteria to identify toxic chemicals that persist and build up in the environment and people (PBTs), and promptly mandate controls to reduce use of and exposure to such chemicals. "Hot spots" where people are subject to disproportionately high exposures would be specifically identified and addressed.
INFORMATION ACCESS: Companies are free to claim, often without providing any justification, most information they submit to EPA to be confidential business information (CBI), denying access to the public and even to state and local government. EPA is not required to review such claims, and the claims never expire.	All CBI claims would have to be justified up front. EPA would be required to review them, and only approved claims would stand. Approved claims would expire after a period of time. Other levels of government would have access to CBI.
RULEMAKING REQUIREMENTS: To require testing or take other actions, EPA must promulgate regulations that take many years and resources to develop.	In addition to the MDS requirement, EPA would have authority to issue an order rather than a regulation to require reporting of existing data or additional testing.