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July 16, 2013

The Honorable Barbara Boxer  
Chairman  
Committee on Environment & Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable David Vitter  
Ranking Member  
Committee on Environment & Public Works  
456 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Boxer and Ranking Member Vitter:

Recently, with the introduction of S. 1009, the “Chemical Safety Improvement Act,” a renewed dialogue has begun surrounding reform of the Toxic Substances Control Act (TSCA). As advocates for the people harmed by toxic chemicals, the American Association for Justice (AAJ) strongly supports efforts to reform TSCA to better protect American families from the harmful chemicals found in everything from children’s toys and our country’s drinking water to consumer products. These chemicals pose significant and often deadly risks, especially to America’s children, pregnant women, and workers.

In order to effectively protect the American public, TSCA reform must provide the Environmental Protection Agency (EPA) with adequate tools to evaluate chemical safety and make clear that state courts are free to consider information beyond that which is utilized by the EPA. Allowing state courts to consider additional information serves to improve health and safety by increasing public knowledge about a chemical’s potential hazards. Legislation must also safeguard states’ rights to protect their citizens through the civil justice system and through state laws.

While we applaud the effort to hold earnest discussions about how to keep families safe from toxic chemicals, S. 1009 is lacking in several areas vital to the protection of public health and safety; accordingly AAJ opposes S. 1009 as it is currently drafted.

S. 1009 raises serious concerns about the health standards utilized by the EPA and whether the EPA has access to important chemical safety data. These concerns are compounded by the fact that it is unclear what impact the EPA’s process will have on a state’s ability to consider information.

One of the great failures of TSCA is that the standard for safety has been interpreted by courts to require the EPA to conduct an insurmountable amount of cost benefit analyses before a chemical can be regulated. Under this bill, any new safety standard must address this failure in multiple

ways, including putting limits on how an EPA safety determination is used at the state level and making clear that state courts are free to consider information and evidence they deem important, regardless of the EPA's determinations.

In addition, state tort law must not be preempted by federal regulatory action. State civil justice systems enhance federal efforts by providing direct accountability. Just because a chemical is deemed "safe" by a federal regulator should not mean that the manufacturer's duty to protect the public ends. If a manufacturer learns additional information about the safety of its product or the manufacturer hid information from the public or the EPA, Americans should have the right to hold that manufacturer accountable in state court.

State tort law is the only way injured Americans can recover when they are harmed. If a company poisons the groundwater, the company should be responsible for that act as compared to injured Americans and taxpayers.

Consider the case of the cancer-causing chemical Hexavalent chromium. In the 1950s, a station operated by Pacific Gas & Electric began leaking chromium 6 into the groundwater in Hinkley, California. For more than two decades the residents were poisoned as they drank, bathed and swam in the polluted water. Families suffered numerous physical ailments, including higher rates of lung cancer, respiratory problems, and tumors. 650 victims filed suit in 1993 and were able to reach a settlement with PG&E including an injunction to end the use of hexavalent chromium and an agreement to clean up the affected area. The case prompted other utilities to take similar actions. Without the ability to file a claim against PG&E, the dangers of chromium 6 may never have come to light and the families impacted would never have received justice.

Further, the ability of states to enact chemical safety laws is critical to the protection of public health, especially when it comes to shedding light on new information regarding the danger of chemicals. Sufficient testing and regulation at the federal level are prevented by limits on federal resources, rapidly changing technologies and the ever-expanding proliferation and use of chemicals. Multiple states have enacted laws to protect the health of their citizens. This reflects the fact that states are often in the best position to know what laws are necessary based on the unique needs and health risks assessed at the state and local levels. The Federal government should not deprive states of this right, nor should they be cutting off appropriate avenues of redress.

AAJ looks forward to continuing to vigorously work toward the goal of enacting TSCA reform to effectively protect the public health.

Sincerely,



Linda A. Lipsen