

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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October 7, 2013

Mr. Calvin M. Dooley  
President and CEO  
American Chemistry Council  
700 Second St. NE  
Washington, D.C. 20002

Dear Mr. Dooley:

I am writing to ask whether the American Chemistry Council (ACC) is abandoning its 2009 principles for reform of the Toxic Substances Control Act. These principles were encouraging because they indicated that ACC understood the serious shortcomings in the law and was willing to engage in a process to ensure that the Environmental Protection Agency (EPA) would have adequate information, resources, and authority to protect the American people from toxic chemical exposure. However, recent statements by ACC representatives appear to indicate that these principles no longer guide ACC's engagement in the issue.

TSCA was enacted in 1976 to address the public health risk of chemicals used in commerce. TSCA requires EPA to analyze new chemicals for their safety and authorizes EPA to restrict or ban the use of new or existing chemicals that pose an "unreasonable risk" to public health or the environment.<sup>1</sup>

Unfortunately, TSCA has not been a success. It is widely understood that TSCA has failed to effectively achieve Congress' goals. Since 2009, the Government Accountability Office (GAO) has included EPA's oversight of toxic chemicals in its High Risk Series, concluding that the law "limits the agency's ability to fulfill its mission of protecting human health and the environment."<sup>2</sup> A broad range of stakeholders, ranging from the National Petrochemical and Refiners Association to the United Steelworkers testified in February 2009 that TSCA needs to be rewritten.<sup>3</sup>

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<sup>1</sup> 15 U.S.C. §2601 *et seq.*

<sup>2</sup> Government Accountability Office, *High-Risk Series: An Update* (Jan. 2009) (GAO-09-271).

<sup>3</sup> Subcommittee on Commerce, Trade, and Consumer Protection, *Hearing on Revisiting the Toxic Substances Control Act of 1976*, 111th Cong. (Feb. 26, 2009).

In 2009, when I was chairman and considering TSCA reform legislation, you released the ACC's principles for reform.<sup>4</sup> The ACC's principles were constructive suggestions for strengthening TSCA, while ensuring that industry concerns were also addressed. I have long hoped that there would be a way to reach a widely supported legislative package that would reflect many of the ACC's principles. However, it now appears that the ACC may be retreating from many of the principles you embraced in 2009.

First, ACC appears to have abandoned its principle that calls for adequate chemical testing. Under current law, EPA does not have authority to require companies to test their chemicals without first finding a risk, which can be difficult in the absence of test results. The result is chemicals can enter or remain in the marketplace without adequate testing. The 2009 ACC principles would have addressed this problem. The principles state:

EPA should be authorized to require companies, as appropriate, to generate relevant new data and information to the extent reasonably necessary to make safe use determinations without having to prove risk as a prerequisite or engaging in protracted rulemaking.<sup>5</sup>

However, on August 14, 2013, ACC wrote the Committee that TSCA's existing information requirements, which do not authorize EPA to require testing without showing risk, "have proven to be sufficient for the review of new chemical substances."<sup>6</sup>

Second, ACC appears to have abandoned its principle that calls for industry to provide EPA with the information needed to make safety determinations. Under current law, EPA bears the burden both of demonstrating that a chemical poses a risk and of generating much of the information that would support that demonstration. This has been cited by many stakeholders as a major flaw of the statute, and it was one reason cited by the GAO for the placement of TSCA on the high risk list.<sup>7</sup> To address this issue, the 2009 ACC principles state, "Industry should have

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<sup>4</sup> American Chemistry Council, *Ten Principles for Modernizing TSCA* (undated) (online at [www.americanchemistry.com/s\\_acc/sec\\_article\\_acc.asp?CID=2178&DID=9939](http://www.americanchemistry.com/s_acc/sec_article_acc.asp?CID=2178&DID=9939)); Consumer Products Specialty Association, *Essential Principles of a Chemicals Management Regulatory Framework* (undated) (online at [www.cspa.org/infocenter/our-issues/principles-for-chemicals-management-policy](http://www.cspa.org/infocenter/our-issues/principles-for-chemicals-management-policy)).

<sup>5</sup> American Chemistry Council, *Ten Principles for Modernizing TSCA* (undated) (online at [www.americanchemistry.com/s\\_acc/sec\\_article\\_acc.asp?CID=2178&DID=9939](http://www.americanchemistry.com/s_acc/sec_article_acc.asp?CID=2178&DID=9939)).

<sup>6</sup> Testimony and questions for the record of Craig Morrison, the Chairman of the ACC Executive Committee, speaking on behalf of ACC, Subcommittee on Environment and Economy, *Hearing on Regulation of New Chemicals, Protection of Confidential Business Information, and Innovation*, 113th Cong. (July 11, 2013).

<sup>7</sup> Testimony of John Stephenson, Government Accountability Office, Subcommittee on Commerce, Trade, and Consumer Protection, *Hearing on Revisiting the Toxic Substances Control Act of 1976*, 111<sup>th</sup> Cong. (Feb. 26, 2009).

the responsibility for providing sufficient information for EPA to make timely decisions about safety.”<sup>8</sup> However, ACC recently praised the status quo wherein EPA bears the burden for demonstrating risk and generating data, calling it “scientifically rigorous, efficient, and workable within the marketplace.”<sup>9</sup>

Third, ACC appears to have abandoned its principle that calls for the use of biomonitoring data. Existing law has been criticized for failing to provide for the use of biomonitoring data on chemical exposures. Unlike modeling or assumptions, biomonitoring data reveals what industrial chemicals are actually being absorbed into the bodies of the public. While biomonitoring data may not answer every question about the risk a chemical may pose, it is very useful in understanding human exposure. The 2009 ACC principles urge the use of biomonitoring data on chemical exposures in prioritizing chemicals for review.<sup>10</sup> However, ACC now says that biomonitoring data should not yet be used because “[e]xperts agree that more studies are needed to understand what biomonitoring information means in a risk context” and “[i]t’s ACC’s position that biomonitoring information must be interpreted in a risk context if it is to be useful in the regulation of chemicals.”<sup>11</sup>

Fourth, ACC appears to have abandoned its call for greater information to be made publicly available. Increased transparency and availability of data has been a common refrain in calls for TSCA reform. According to GAO, “EPA has a limited ability to provide the public with information on chemical production and risk because of TSCA’s prohibitions on the disclosure of confidential business information.”<sup>12</sup> The 2009 ACC principles address this issue and call on EPA to make “chemical hazard, use, and exposure information available to the public in electronic databases” as part of an effort by both EPA and companies to increase transparency.<sup>13</sup> This ACC principle was commendable because citizens should have a right to

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<sup>8</sup> American Chemistry Council, *Ten Principles for Modernizing TSCA* (undated) (online at [www.americanchemistry.com/s\\_acc/sec\\_article\\_acc.asp?CID=2178&DID=9939](http://www.americanchemistry.com/s_acc/sec_article_acc.asp?CID=2178&DID=9939)).

<sup>9</sup> *Id.*

<sup>10</sup> American Chemistry Council, *Ten Principles for Modernizing TSCA* (undated) (online at [www.americanchemistry.com/s\\_acc/sec\\_article\\_acc.asp?CID=2178&DID=9939](http://www.americanchemistry.com/s_acc/sec_article_acc.asp?CID=2178&DID=9939)).

<sup>11</sup> Correspondence from Michael P. Walls, Vice President, American Chemistry Council, to Chairman John Shimkus, Subcommittee on Environment and the Economy, entitled “Responses of Mr. Craig Morrison, President, CEO and Chairman, Momentive Performance Materials Holdings, LLC, to Questions for the Record dated August 1, 2013,” Aug. 14, 2013.

<sup>12</sup> Testimony of John Stephenson, Government Accountability Office, Subcommittee on Commerce, Trade, and Consumer Protection, Hearing on Revisiting the Toxic Substances Control Act of 1976, 111<sup>th</sup> Cong. (Feb. 26, 2009).

<sup>13</sup> American Chemistry Council, *Ten Principles for Modernizing TSCA* (undated) (online at [www.americanchemistry.com/s\\_acc/sec\\_article\\_acc.asp?CID=2178&DID=9939](http://www.americanchemistry.com/s_acc/sec_article_acc.asp?CID=2178&DID=9939)).

know about toxic chemicals to which they are exposed. However, ACC now states that information relating to chemical use should be protected as confidential.<sup>14</sup>

Fifth, ACC appears to have abandoned its position that claims of confidentiality should be re-justified on a periodic basis. According to GAO, EPA has long believed that companies have made excessive claims of confidentiality in TSCA submissions.<sup>15</sup> But reviewing claims is resource-intensive and EPA's ability to do so has been limited. The 2009 ACC principles address this problem by calling for a limit on confidentiality claims, stating, "Companies claiming confidentiality in information submittals should have to justify those claims on a periodic basis."<sup>16</sup> This periodic justification would ensure that information does not continue to be marked confidential after it becomes publicly available through other sources. However, ACC recently re-articulated its position on confidential business information and appears to have dropped its call to have confidentiality claims justified on a periodic basis.<sup>17</sup>

Lastly, ACC appears to have abandoned its call for information sharing between governments. According to GAO, "Officials who have various responsibilities for protecting public health and the environment from the dangers posed by chemicals believe that having access to confidential TSCA information would allow them to examine information on chemical properties and processes that they currently do not possess and could enable them to better control the risks of potentially hazardous chemicals."<sup>18</sup> Sharing information with foreign governments is also important, both because it can promote public safety and because it can induce foreign governments to share information they may have with us. Unfortunately, current law directly limits EPA's ability to share confidential information with state health and

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<sup>14</sup> Correspondence from Michael P. Walls, Vice President, American Chemistry Council, to Chairman John Shimkus, Subcommittee on Environment and the Economy, entitled "Responses of Mr. Craig Morrison, President, CEO and Chairman, Momentive Performance Materials Holdings, LLC, to Questions for the Record dated August 1, 2013," Aug. 14, 2013.

<sup>15</sup> Testimony of John Stephenson, Government Accountability Office, Subcommittee on Commerce, Trade, and Consumer Protection, Hearing on Revisiting the Toxic Substances Control Act of 1976, 111<sup>th</sup> Cong. (Feb. 26, 2009).

<sup>16</sup> American Chemistry Council, *Ten Principles for Modernizing TSCA* (undated) (online at [www.americanchemistry.com/s\\_acc/sec\\_article\\_acc.asp?CID=2178&DID=9939](http://www.americanchemistry.com/s_acc/sec_article_acc.asp?CID=2178&DID=9939)).

<sup>17</sup> Correspondence from Michael P. Walls, Vice President, American Chemistry Council, to Chairman John Shimkus, Subcommittee on Environment and the Economy, entitled "Responses of Mr. Craig Morrison, President, CEO and Chairman, Momentive Performance Materials Holdings, LLC, to Questions for the Record dated August 1, 2013," Aug. 14, 2013.

<sup>18</sup> Testimony of John Stephenson, Government Accountability Office, Subcommittee on Commerce, Trade, and Consumer Protection, Hearing on Revisiting the Toxic Substances Control Act of 1976, 111<sup>th</sup> Cong. (Feb. 26, 2009).

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environmental officials and foreign governments.<sup>19</sup> The 2009 ACC principles address this concern, stating, “Other governments should have access to confidential information submitted under TSCA, subject to appropriate and reliable protections.”<sup>20</sup> When you testified before the Energy and Commerce Committee, you explained, “EPA should have the authority to share appropriate confidential business information with state, local and select foreign governments when it is relevant to a decision on chemical safety and when there are appropriate safeguards against inappropriate disclosure.”<sup>21</sup> However, ACC’s representative recently testified that information should not be “disseminated to foreign governments, et cetera.”<sup>22</sup>

It would be disappointing and a blow to the chances for successful TSCA reform if the ACC has abandoned its 2009 principles. In 2009, ACC was in a position to take a leadership role in strengthening the Toxic Substances Control Act, and Congress needs progressive thinking from the ACC to help find consensus. Other stakeholders remain committed to their principles and to the pursuit of effective legislation, and the ACC should too.

I hope you will clarify where the ACC stands.

Sincerely,



Henry A. Waxman  
Ranking Member

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<sup>19</sup> TSCA §14

<sup>20</sup> American Chemistry Council, *Ten Principles for Modernizing TSCA* (undated) (online at [www.americanchemistry.com/s\\_acc/sec\\_article\\_acc.asp?CID=2178&DID=9939](http://www.americanchemistry.com/s_acc/sec_article_acc.asp?CID=2178&DID=9939)).

<sup>21</sup> Testimony of Cal Dooley, speaking on behalf of ACC, Subcommittee on Commerce, Trade, and Consumer Protection, hearing on Revisiting the Toxic Substances Control Act of 1976, 111<sup>th</sup> Congress (Feb. 26, 2009).

<sup>22</sup> Correspondence from Michael P. Walls, Vice President, American Chemistry Council, to Chairman John Shimkus, Subcommittee on Environment and the Economy, entitled “Responses of Mr. Craig Morrison, President, CEO and Chairman, Momentive Performance Materials Holdings, LLC, to Questions for the Record dated August 1, 2013,” Aug. 14, 2013.