

## **Californians for a Healthy and Green Economy (CHANGE)**

### **Opposes the Chemical Safety Improvement Act of 2013 (S.1009 Lautenberg/Vitter) Unless Substantial Changes Are Made to Protect Public Health, Workers and Communities**

**July 24, 2013**

Californians for a Healthy and Green Economy (CHANGE - <http://www.changecalifornia.org/>) is a statewide coalition of 37 environmental health and environmental justice groups, health organizations, labor advocates, community-based groups, parent organizations, faith groups, and others who are concerned with the impacts of toxic chemicals on human health and the environment.

There is widespread agreement across the political spectrum that chemicals policy in the United States is broken and needs a comprehensive upgrade. The primary law that regulates industrial chemicals in the U.S., the Toxic Substances Control Act (TSCA), dates to 1976 and is ineffective and outdated. The Chemical Safety Improvement Act (CSIA - S.1009), introduced in the U.S. Senate on May 22, 2013 with bi-partisan support, reflects this consensus about the need for reform.

Increasing scientific research clearly indicates that many chemicals can be harmful to public, environmental, and occupational health. Yet industrial chemicals that have been identified by authoritative scientific bodies as hazardous remain under-regulated and are commonly found in many products Americans use every day at home, work and in the community. Basic health and safety data about the effects of exposure to many of these chemicals is not available to the public because chemical manufacturers are not required to conduct adequate studies before bringing their chemicals to market, or the information is inappropriately protected as a trade secret, or toxicity studies simply have not been done.

CHANGE recognizes that a bipartisan effort to address the shortcomings of TSCA is an important development. However, the CSIA as written fails to solve the problem: the pervasive, ongoing, and indiscriminate exposure to toxic chemicals for everyone on Earth.

It is undeniable that hundreds of hazardous and/or under-studied chemicals are now routinely found in human tissue in biomonitoring studies. It is equally clear that these hazards are plausibly linked to many diseases and adverse health endpoints. CHANGE is not the first to note that we are in the middle of an uncontrolled chemistry experiment. These substances do not belong in our bodies. We must reduce exposure to hazardous chemicals, even as we continue to learn more about their influences on the health of people, environments, and organizations.

CHANGE strongly opposes the CSIA unless significant amendments are made. The language of this bill does not advance prevention, protect public health, nor reduce harm. The CSIA does not fix many of TSCA's significant problems that have left the public unprotected from toxic chemicals. Specific shortcomings include:

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Asian and Pacific Islander Obesity Prevention Alliance \* Bayview Hunters Point Community Advocates \* Black Women for Wellness \* Breast Cancer Action \* Breast Cancer Fund \* California Healthy Nail Salon Collaborative \* California Latinas for Reproductive Justice \* California Pan-Ethnic Health Network \* Californians Against Waste \* Californians for Pesticide Reform \* Center for Environmental Health \* Center for Race, Poverty and Environment \* Clean Water Action \* Coalition for Clean Air \* Commonweal \* Communication Workers of America- District 9\* Communities for a Better Environment \* East Yard Communities for Environmental Justice \* Environment California \* Environmental Working Group \* Forward Together (formerly Asian Communities for Reproductive Justice) \* Green Schools Initiative \* Green Science Policy Institute \* Healthy 880 Communities \* Healthy Child, Healthy World \* Healthy Children Organizing Project\* Instituto de Educación Popular del Sur de California \* Just Transition Alliance \* Making Our Milk Safe (MOMS) \* Movement Strategy Center \* Pesticide Action Network North America \* Physicians for Social Responsibility – Los Angeles \* Science and Environmental Health Network \* Silicon Valley Toxics Coalition \* United Steel Workers – Local 675 \* Worksafe

1. The CSIA's safety standard fails to shift the burden of proof about chemical health and safety onto the chemical manufacturers to demonstrate their products are safe. The bill too closely parallels the failed language of TSCA by saying a chemical must not pose an "unreasonable risk to human health or the environment under intended uses." We support the language of the 1996 *Food Quality Protection Act*, as well as the introduced *Safe Chemicals Act* (S.696), both of which call for "reasonable certainty of no harm." That language provides a much higher margin of health and safety, and level of protection for the public, as it shifts the burden of proof onto the manufacturer to demonstrate "reasonable certainty of no harm." Surely this is the standard we want for our children.
2. The CSIA does not adequately consider aggregate exposure, which is the reality in the world today. We know from biomonitoring studies that everyone is exposed repeatedly to multiple environmental chemicals. By not requiring an assessment of cumulative exposure, the CSIA repeats the mistake in TSCA by looking at one chemical at a time without acknowledging cumulative impacts from ongoing exposures.
3. There is no mandate that disproportionately-affected communities and vulnerable populations receive added protections. Over-exposed and burdened fence-line communities, workers who handle chemicals, and people at sensitive developmental stages, such as infants and pregnant women, are more vulnerable to harm from chemical exposures than the general population. They require a law that protects their ability to thrive and attain their right to good health by addressing the impacts of disproportionate exposures that lead to actual reductions in toxic chemicals in their home and work environments.
4. The CSIA effectively curtails the rights of states to determine their own standards of protection in environmental, occupational, and other public health arenas. The bill would prohibit states from taking action once the U.S. EPA designated a chemical as either a high or low priority, or if EPA simply began a safety determination process. A waiver provision for states to act is limited and cumbersome and is unlikely to succeed in many cases. We need a federal law that is as protective as possible, but states absolutely must retain the right to set a higher bar than federal minimums.

Furthermore, under the CSIA, "no State or political subdivision of a State may establish or **continue to enforce**..." current laws that in any way pertain to a chemical that EPA begins to address. This means that current and proposed regulations that offer real preventive action about chemicals would be invalidated. This would be particularly harmful in California, affecting occupational health regulations (e.g., registering the presence of carcinogens in occupational settings, the 200-plus permissible exposure limits/PELS unique to the state), environmental health regulations (e.g., the *Safer Consumer Products Regulations*) and public health activities (e.g., about lead).

5. The CSIA has no timelines or milestones for EPA action, instead calling for EPA action "from time to time" or in a "timely manner." We know from experience that regulatory action to prevent or reduce harm from chemicals is a long process in the best of circumstances. EPA must have firm deadlines and deliverables to advance its obligations under any new law.
6. The CSIA requires the use of cost-benefit analysis at the critical regulatory decision-making point where a phase out or ban of a chemical is contemplated. While the bill provisions state that only health considerations can be factors in making a "safety determination" (which we support), it must also be the case that regulatory decisions, including but not limited to phase-out or bans of problematic chemicals, should also be based solely on health factors. Traditional cost-benefit analyses are unlikely to adequately consider externalities such as costs to the public health, the need for environmental remediation, decline in property values, and reduced

productivity at work, for example. The end result will mean some of the most toxic chemicals will remain in commerce despite their failure to meet the safety standard.

7. The CSIA makes an unsupportable assumption that lack of information equals a lack of harm. Any bill reforming TSCA should require a minimum toxicity data set be submitted and reviewed before any chemical is designated as a "low priority."

8. Confidential Business Information (CBI) provisions in the CSIA include a "gag rule" on medical professionals who receive information necessary to treat patients who may have been harmed by exposure to toxic chemicals. This restricts health care providers from carrying out their mission to "do no harm." The CSIA's CBI provisions also impair the ability of public health practitioners to do their job, and reduce the right-to-know for workers, employers, and other members of the public.

9. The CSIA makes no special provisions for nanomaterials despite the fact that they are insufficiently studied, differ structurally from their parent compounds, and may present new health hazards and risks.

10. There is no language in the CSIA that allows the EPA to collect fees to help pay for safety assessments or determinations. Coupled with the lack of enforceable deadlines, this ensures that meaningful action to reduce exposure to toxic chemicals will be extremely modest.

11. The CSIA has no provisions that support the development of green chemistry-based alternatives. The bill needs meaningful incentives in the bill that strengthen innovation in the marketplace for non-toxic and less-toxic alternatives that promote safety and economic growth.

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