

## Hope For TSCA Reform In The 112th Congress

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Overhaul of the Toxic Substances Control Act (TSCA) continues to be a hot issue. At a Senate Environment and Public Works Committee hearing on disease clusters and environmental health held on March 29, 2011, Sen. Frank Lautenberg, D-NJ, announced his intention to introduce a revised version of his 2010 TSCA legislation in "the coming weeks."<sup>1</sup> With the Senate scheduled to recess for several weeks beginning April 18, that introduction might come quite soon.

Sen. Lautenberg's announcement was preceded by the first hearing of the 112th Congress specifically on TSCA, held on Feb. 3, 2011, by the Subcommittee on Superfund, Toxics and Environmental Health, which Sen. Lautenberg chairs.<sup>2</sup> Stakeholders can look back to that earlier hearing for an important preview of some of the themes of discussion that are likely to play out after any TSCA legislation is introduced.

One main theme promoted by every witness and attending senator at that hearing was that TSCA reform is still possible despite the results of the last election. However, the other issues discussed both at and since the TSCA hearing have made clear that despite stakeholder agreement on generalities, disagreements over important details still need to be resolved.

### **Senator Lautenberg's Views**

In his prepared remarks at the March 29 Environment and Public Works hearing, Sen. Lautenberg stated:

"I will soon re-introduce an updated version of my Safe Chemicals Act, which would require chemical makers to prove that their products are safe before those substances end up in our bodies. I received helpful feedback on the bill last year, and I will incorporate ideas that further improve the bill. I remain committed to working with colleagues from both parties to modernize the Toxic Substances Control Act in a way that protects public health and works for businesses."

However, Sen. Lautenberg's statements so far during the 112th Congress have to a large extent reiterated the same points he has made over the years

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regarding various reasons for TSCA reform. It is therefore unclear the extent to which the bill that he intends to introduce will differ from the version of the Safe Chemicals Act that he introduced in 2010.

On the other hand, Sen. Lautenberg has consistently maintained that he is “committing to moving TSCA reform legislation in this Congress.” While directly acknowledging that the political landscape has “shifted somewhat,” Sen. Lautenberg has noted that other environmental laws such as the Safe Drinking Water Act and the Food Quality Protection Act passed in previous Republican-dominated Congresses, and at both hearings, he asked his Republican colleagues for serious dialogue.

### Republican Views

Given the acknowledged importance of bipartisanship in the current political climate, the ideas and principles offered by a number of Republican Senators are likely to shape negotiations on Sen. Lautenberg’s announced legislation.

Sen. David Vitter, R-La., for one, has been promoting six overarching principles, which he described at the February TSCA hearing:

1. The TSCA Inventory of existing chemical substances should be updated, since there are far fewer chemicals in significant commerce (according to Vitter, probably a quarter) than the 84,000 that are listed.
2. A program styled after the European Regulation on Registration, Evaluation, Authorisation and Restriction of Chemical Substances (REACH) would threaten to kill innovation in the U.S. and hamstring small and medium size manufacturers in particular.
3. It is premature to assume that REACH is the future. REACH could actually impair human health and safety by impairing the introduction of safer alternatives into the marketplace.
4. Studies relied on by EPA for limiting particular chemicals must be reproducible and proven.
5. The peer review process must be absolutely independent, and studies must not be “cherry-picked” by “activists” within agencies.
6. If the EPA is going to use resources to re-review a chemical prior to an established timeframe, it must use sound and not politicized science. (This principle refers to the EPA’s reevaluation of the popular pesticide atrazine, which is regulated under the Federal Insecticide, Fungicide and Rodenticide Act rather than under TSCA.)

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Sen. Vitter's principles echo to some degree the principles that have been offered repeatedly by Ranking Member Sen. James Inhofe, R-Okla. According to Sen. Inhofe, TSCA reform must: (1) be based on the best available science; (2) use a risk-based standard for chemical reviews; (3) include more rigorous cost-benefit requirements; (4) protect proprietary information; (5) reduce the likelihood of litigation; (6) avoid compelling product substitution; and (7) prioritize reviews for existing chemicals.<sup>3</sup>

### Stakeholder Views and Themes

All six witnesses at the February TSCA hearing, including individuals from government, industry and NGOs, testified in support of TSCA modernization.

However, EPA Administrator Lisa Jackson recently expressed skepticism about the political prospects for federal chemicals legislation at a meeting of the Environmental Council of the States.

It appears that the EPA's substantive position on the need for chemicals management reform, and on its desired shape, has nevertheless changed rather little since the last Congress. At the February TSCA hearing, Steve Owens, Assistant Administrator of EPA's Office of Chemical Safety and Pollution Prevention, mainly reiterated prior testimony on TSCA's flaws and their impacts and on the Obama administration's principles for TSCA reform.

Industry and NGO perspectives presented at and since the February TSCA hearing have been more diverse and have highlighted a number of important substantive themes. For example, there is essentially universal acknowledgement that protecting jobs and the economy is an important issue, although stakeholders disagree on what that means for chemicals management.

The economic debate has also looked to international reference points. Sen. Lautenberg asked about companies doing business in Europe or selling into Europe which are making "record profits." He may have been implying that the REACH model can be adapted for the United States without significant negative impact on businesses.

Cal Dooley, president and CEO of the American Chemistry Council, however, observed that REACH is still in its infancy, and argued that legislators and NGOs should resist assuming that the U.S. chemicals

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management program is “falling behind” until the accomplishments of REACH can be better evaluated.

Reflecting the importance of this international theme, several days prior to the Environment and Public Works hearing on disease clusters, Democratic staffers from the Subcommittee on Superfund, Toxics and Environmental Health met with several governmental and industry experts on REACH. The meeting was intended to highlight some particular issues and experiences to consider in any U.S. chemicals management reforms.

Actions at the state and local level to regulate chemicals are another major theme that will shape legislative negotiations. In support of federal TSCA legislation, Sen. Lautenberg, NGOs and even industry have cited reports that legislators in at least 30 states are planning to introduce chemicals legislation this year. Some have identified conflicting state laws as a reason for a stronger federal TSCA.

However, as was demonstrated at the February TSCA hearing, stakeholders remain divided on whether a preemption provision is needed, or whether it would be sufficient for a strengthened TSCA to reduce the impetus for most state chemical laws by restoring public confidence.

Finally, Sen. Lautenberg, EPA officials and some NGOs have acknowledged that some information claimed as confidential business information (CBI) should be protected. It may be noteworthy that Sen. Inhofe’s statement for the record of the February TSCA hearing indicated that “if we can’t get the votes we need for a comprehensive solution, then we may have to consider alternative legislative options to address specific issues that might have broader bipartisan support.” In light of a possible emerging consensus on treatment of CBI, that topic may be just such an issue.

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<sup>1</sup> Press Release, Senator Frank R. Lautenberg, “At Senate Hearing on Disease Clusters, Lautenberg Announces Plans for Reforming Toxic

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Substances Control Act” (Mar. 29, 2011),  
<http://lautenberg.senate.gov/newsroom/record.cfm?id=332189&>.

<sup>2</sup> Subcommittee on Superfund, Toxics and Environmental Health, “Assessing the Effectiveness of U.S. Chemical Safety Laws” (Hearing, Feb. 3, 2011), statements and remarks available at [http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_id=cd4fd6b9-802a-23ad-4d18-eac94d1414b3](http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=cd4fd6b9-802a-23ad-4d18-eac94d1414b3). Also added to the official record were written statements from the Society of Chemical Manufacturers and Affiliates (SOCMA), [http://www.socma.com/assets/file/socma1/PDFfiles/GR\\_PDF\\_files/Lautenberg-Inhofe-Letter-TSCA-Hearing-020211-FINAL.pdf](http://www.socma.com/assets/file/socma1/PDFfiles/GR_PDF_files/Lautenberg-Inhofe-Letter-TSCA-Hearing-020211-FINAL.pdf); the National Council of Churches of Christ (NCC) Eco-Justice Program, <http://www.ncccojustice.org/downloads/health/senatetoxicshearingltr.pdf>; and the National Petrochemical & Refiners Association (NPRA), [http://www.npra.org/newsRoom/?fa=viewCmsItem&title=Latest News&articleID=6877](http://www.npra.org/newsRoom/?fa=viewCmsItem&title=Latest%20News&articleID=6877).

<sup>3</sup> See Press Release, Senate Environment and Commerce Committee Minority Page, “Senator Inhofe Statement on TSCA Reform” (Sept. 29, 2009), [http://epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord\\_id=0ccdc0e4-802a-23ad-4db0-7ff8d96ce095](http://epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=0ccdc0e4-802a-23ad-4db0-7ff8d96ce095).