June 12, 2013

The Honorable John Shimkus
Chairman
House Energy & Commerce Committee
Subcommittee on Environment & Economy
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Paul Tonko
Ranking Member
House Energy & Commerce Committee
Subcommittee on Environment & Economy
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Tonko:

The undersigned are thirty-four law professors, legal scholars, and public interest lawyers from across the country who have years of collective experience in the fields of administrative, public health, and environmental law, with a particular focus on state and federal toxics policy. In view of tomorrow's hearing, we write to express serious reservations with the "Chemical Safety Improvement Act," which was introduced by Sen. David Vitter and the late Sen. Frank Lautenberg on May 22, 2013, in an effort to reform the Toxic Substances Control Act. Supporters have heralded the bill as a "historic step" toward fixing our broken framework for regulating chemicals on the market. However, for reasons explained herein, we cannot support the bill as written, which must be strengthened to overhaul current law and ensure that chemicals are safe for people, particularly vulnerable populations such as children.

In our expert opinion, the bill:

- Essentially preserves the same inadequate safety standard used in current law, which has been read by at least one court to require the U.S. Environmental Protection Agency (EPA) to engage in an onerous balancing of costs and benefits to justify restrictions on toxic chemicals;

- Retains the same obstructive standard of judicial review that appears in current law, which requires judges to demand substantial evidence from EPA to justify any safety determination or restriction of a chemical that poses risks to public health and the environment;

- Contains sweeping preemption language that would prevent states from enforcing existing, and adopting new, laws designed to supplement federal law in protecting people and the environment from exposures to harmful substances; and

- Takes the extraordinary step of making any safety determination by EPA dispositive on the question of whether a chemical is safe in federal and state courts. This would effectively bar judges and juries from taking into account other relevant evidence regarding the safety of a chemical, particularly new evidence developed after the determination is made.

Here are our four major concerns presented in detail:

**Safety Standard**. The bill defines "safety standard" as one that "ensures that no *unreasonable risk* of harm to human health or the environment will result from exposure to a chemical substance." Chemical Safety Improvement Act, S. 1009, 113th Cong. § 3(16) (emphasis added). This definition fundamentally reproduces the same safety standard found in current law. *See* Toxic Substances Control Act § 6(a), 15 U.S.C. § 2605(a). Unlike strictly health-based standards (*e.g.*, "reasonable certainty of no harm"), laws that use "unreasonable risk" language have been interpreted to require EPA to complete a complex balancing of costs and benefits before the agency can impose a restriction on a chemical to address safety concerns. *E.g.*, John S. Applegate, *Synthesizing TSCA and REACH: Practical Principles for Chemical Regulation Reform*, 35 Ecology L.Q. 721 (2008); *see also* Noah M. Sachs, *Jumping the Pond: Transnational Law and the Future of Chemical Regulation*, 62 Vand. L. Rev. 1817 (2009). Therefore, even without language in the safety standard directing EPA to restrict a chemical using the "least burdensome requirements," Toxic Substances Control Act § 6(a), 15 U.S.C. § 2605(a), by retaining the "unreasonable risk" language, the Chemical Safety Improvement Act might be read to place a heavy burden on EPA to impose even modest restrictions on a chemical. As a result, we believe that the same outcome in *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991) (striking down EPA asbestos ban and phaseout rule) could be possible under the safety standard proposed in this bill, particularly with the heightened judicial review discussed in the next paragraph.

**Judicial Review**. Courts typically use a reasoned decisionmaking standard to review agency actions, meaning they will not strike down a regulation unless an agency has acted in an arbitrary or capricious manner. *E.g.*, *Allied Local & Regional Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 77 (D.C. Cir. 2000) (EPA consideration of factors listed in statute "adequate to constitute reasoned decisionmaking"); *see also* Administrative Procedure Act, 5 U.S.C. § 706. In contrast, the Chemical Safety Improvement Act, like the Toxic Substances Control Act, would require courts to apply a heightened standard of judicial review when evaluating rules made pursuant to the bill. Specifically, courts would have to set aside rules requiring the development of more test data, safety determinations, and restrictions on chemicals unlikely to meet the safety standard if, in their opinion, EPA has not supported them with "substantial evidence." Chemical Safety Improvement Act, S. 1009, 113th Cong. § 16(2). In practice, this standard can be read to "impose[ ] a considerable burden" on EPA to develop a record that can withstand a hard look from courts, particularly when all of the other procedural hurdles in the bill are factored in. *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, 1214 (5th Cir. 1991), quoting *Mobile Oil Co. v. Fed. Power Comm'n*, 483 F.2d 1238, 1258 (D.C. Cir. 1973).

**Preemption**. The Chemical Safety Improvement Act would appear to largely preempt state regulations designed to protect public health and the environment from exposure to harmful chemicals. It would preempt existing and future state regulations that: require the development of test data or information on chemicals for which companies have to submit similar information to EPA; restrict the manufacture, processing, distribution, or use of a chemical after EPA has issued a safety determination for that chemical; or require notification for the use of a chemical substance if EPA has determined that it is a significant new use that must be reported to the agency. Chemical Safety Improvement Act, S. 1009, 113th Cong. § 15(a). The bill also would prohibit states from creating new restrictions on the manufacture, processing, distribution, or use

of a chemical that EPA has classified as high- or low-priority. *Id.* § 15(b). This preemption provision is sweeping in nature and raises serious questions as to whether states could even enact or continue to enforce laws that simply require companies to disclose information about chemicals to consumers or require that products carry warning labels. Numerous states have passed laws in recent years in the absence of federal regulatory action to protect the public from toxic chemicals. *E.g.*, Safer Chemicals Healthy Families, *Healthy States: Protecting Families from Toxic Chemicals While Congress Lags Behind* (2010), http://www.saferstates.com/attachments/HealthyStates.pdf. If this bill were to become law, it would perpetuate many of the Toxic Substances Control Act's shortcomings while preventing states from protecting public health and the environment in the absence of a robust federal law — or in the case of a strong federal regulatory framework, from complementing EPA's efforts to achieve this important goal.

**Private Remedies**. The bill takes the extraordinary step of making a safety determination by EPA admissible in any federal or state court and dispositive as to whether a chemical substance is safe. Chemical Safety Improvement Act, S. 1009, 113th Cong. § 15(e). As a result, the bill's section on private remedies could significantly encroach on the right of judges and juries to evaluate and weigh relevant evidence regarding the potential injuries caused by toxic chemicals. In turn, this could have the effect of granting chemical companies immunity from legal actions by private parties once EPA has issued a positive safety standard determination, even when subsequent evidence calls into question the agency's reasoning.

In view of these issues, and others identified by public health and environmental groups, we believe the Chemical Safety Improvement Act preserves some of the most problematic features of the Toxic Substances Control Act, while making it harder for state and private actors to ensure the safety of chemicals in the absence of a strong federal backstop for regulating these substances. As a result, the bill, as currently drafted, takes a step backward in the protection of public health. We respectfully ask that the bill be made stronger to achieve meaningful reform of current toxics law and are available to provide substantive recommendations as needed.

As the House considers TSCA reform, we hope our views on the Senate bill will be instructive. Please submit this letter for the record.

Sincerely,

*Note: Institutions listed for identification purposes only. The signators do not purport to represent the views of their institutions.*

**John S. Applegate**
*Walter W. Foskett Professor of Law*
Indiana University Maurer School of Law

**Nicholas A. Ashford, Ph.D., J.D.**
*Professor of Technology and Policy and Director, MIT Technology & Law Program*
Massachusetts Institute of Technology

**Hope Babcock**
*Professor of Law and Co-Director, Institute for Public Representation*
Georgetown University Law Center

**William W. Buzbee**
*Professor of Law*
Emory Law School
*Visiting Professor of Law*
Georgetown University Law Center (Fall 2012)

**Charles C. Caldart**
*Lecturer in Environmental Law and Policy*
Massachusetts Institute of Technology
*Director of Litigation*
National Environmental Law Center

**Alejandro E. Camacho**
*Professor of Law and Director, Center for Land, Environment, & Natural Resources*
University of California, Irvine

**Cinnamon P. Carlarne**
*Associate Professor of Law*
Ohio State University Michael E. Moritz College of Law

**David W. Case**
*Associate Professor of Law*
University of Mississippi School of Law

**Thomas Cluderay**
*General Counsel*
Environmental Working Group
*Adjunct Professor of Law*
Georgetown University Law Center

**Carl F. Cranor**
*Distinguished Professor of Philosophy and Faculty Member, Environmental Toxicology*
University of California

**David M. Driesen**
*University Professor*
Syracuse University College of Law

**Stephen Dycus**
*Professor of Law*
Vermont Law School

**Angelique Townsend EagleWoman (Wambdi A. WasteWin)**
*Associate Professor of Law and James E. Rogers Fellow in American Indian Law*
University of Idaho College of Law

**Adam M. Finkel, Sc.D.**
*Senior Fellow and Executive Director*
Penn Program on Regulation University of Pennsylvania Law School *Professor of Environmental and Occupational Health* University of Medicine and Dentistry of New Jersey School of Public Health

**Victor Flatt**
*Tom and Elizabeth Taft Distinguished Professor of Law and Director, Center for Law, Environment, Adaptation, & Resources (CLEAR)* University of North Carolina School of Law *Distinguished Scholar of Carbon Markets* Global Energy Management Institute University of Houston

**Steve C. Gold**
*Associate Professor of Law*
Rutgers University School of Law - Newark Rutgers, The State University of New Jersey

**Carmen G. Gonzalez**
*Professor of Law*
Seattle University School of Law

**Lisa Heinzerling**
*Professor of Law*
Georgetown University Law Center

**Oliver Houck**
*Professor of Law*
Tulane University School of Law

**Howard A. Latin**
*Distinguished Professor of Law and Justice John J. Francis Scholar*
Rutgers University School of Law Rutgers, The State University of New Jersey

**Albert Lin**
*Professor of Law*
UC Davis School of Law

**Mary L. Lyndon**
*Professor of Law*
St. John's University School of Law

**Thomas O. McGarity**
*Joe R. and Teresa Lozano Long Endowed Chair in Administrative Law*
University of Texas School of Law

**Joel A. Mintz**
*Professor of Law*
Nova Southeastern University Law Center

**Joseph A. Page**
*Professor of Law*
Georgetown University Law Center

**Rick Reibstein**
*Adjunct Professor*
Boston University
*Faculty*
Harvard Extension School

**John Rumpler**
*Senior Attorney*
Environment America

**Noah Sachs**
*Professor of Law*
University of Richmond School of Law

**Sidney A. Shapiro**
*University Chair in Law*
Wake Forest University

**Amy Sinden**
*Professor of Law*
Temple University Beasley School of Law

**William Snape**
*Fellow and Practitioner in Residence*
American University Washington College of Law

**Rena Steinzor**
*Professor of Law*
University of Maryland School of Law

**Robert R.M. Verchick**
*Gauthier-St. Martin Chair in Environmental Law*
Loyola University New Orleans

**Wendy Wagner**
*Joe A. Worsham Centennial Professor*
University of Texas School of Law

cc: The Honorable Fred Upton, Chairman, House Energy & Commerce Committee The Honorable Henry Waxman, Ranking Member, House Energy & Commerce Committee

June 12, 2013

The Honorable John Shimkus
Chairman
House Energy & Commerce Committee
Subcommittee on Environment & Economy
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Paul Tonko
Ranking Member
House Energy & Commerce Committee
Subcommittee on Environment & Economy
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Tonko:

We the 24 undersigned environmental and occupational health, environmental justice, and public interest organizations have worked for decades to reform the Toxic Substance Control Act and protect the public from the hazards of chemical exposure. In light of tomorrow's hearing, we write to express serious reservations with the "Chemical Safety Improvement Act," which was introduced by Sen. David Vitter and the late Sen. Frank Lautenberg on May 22, 2013, in an effort to reform the Toxic Substances Control Act.

We respect and appreciate the current effort to identify areas of bipartisan compromise and consensus on chemical safety legislation. However, we believe that the resulting Chemical Safety Improvement Act, S. 1009, has serious limitations and would fall far short of our shared goal of safeguarding human health from the risks posed by exposure to toxic chemicals**.** As a result, we will oppose this bill as it is currently written unless it is amended to address our key concerns.

The proposed CSIA would fail to provide a policy framework essential to securing much-needed health protections that have been lacking for nearly 40 years under current law. The compromise measure, if passed in its current form, could undermine a number of state protections, including California's Proposition 65 law, without ensuring any real improvement in federal toxic substances controls. CSIA could have a crippling effect on every state's freedom to regulate toxic chemicals and protect its own residents. Many of our organizations have fought for and helped enact state laws restricting the use of hazardous chemicals in consumer products. Most other major federal environmental laws allow states to take more aggressive action to protect citizens from environmental threats. CSIA, in contrast, may actually preempt state laws requiring warning labels on toxic products. Furthermore, the bill may also prevent private citizens from taking action in state or federal court for harm and injury caused by chemical exposure.

We are also troubled by the fact that CSIA would not explicitly protect pregnant women and children. It would not require EPA to consider the cumulative burden of chemical pollution for residents of highly polluted communities and for workers, which is essential for Americans living and working in or near contaminated industrial and military sites; including many in Louisiana, New Jersey, Indiana, Alaska, and California.

In addition, the CSIA would not require that chemicals be shown to be safe before manufacturing begins. EPA would still face the daunting challenge of rapidly assessing thousands of industry submissions on new chemicals, the majority of them containing absolutely no health and safety

data. Moreover, the agency would be required to justify any requests for safety testing and would be allowed to grant chemical companies permission to begin production before it completes its safety determination. This practice of "conditional registration" has been widespread in EPA's pesticides program, which has allowed thousands of pesticides to sidestep important aspects of the traditional approval process.

The proposed bill would do no better at setting up a system to protect the public from the hazards of the 84,000 chemicals already on the market. Overall, it would set a high bar for EPA to enact any restrictions on chemicals, and the burden would remain on the agency to prove that chemicals are harmful, rather than requiring manufacturers to prove they are safe.

CSIA would retain TSCA's current weak safety standard instead of the more protective standard previously proposed by Sen. Lautenberg in his Safe Chemicals Act. Furthermore, it-would set no clear timelines to ensure that EPA assesses hazardous chemicals in a timely manner, and it would not establish a quick timeframe for action on chemicals known to be hazardous to human health, including persistent, bioaccumulative toxins.

Finally, the bill would offer too many secrecy protections for chemical companies and may limit the ability of doctors, nurses, first responders and public health departments to obtain vital information about a particular substance to identify and treat people who have been injured by these so-called "secret chemicals."

For these and other reasons the Chemical Safety Improvement Act is not acceptable in its current form. We look forward to working with you to pass legislation that makes public health a priority.

Sincerely,

Pamela K. Miller
Executive Director
Alaska Community Action on Toxics

Robyn O'Brien
Founder
AllergyKids Foundation

Linda Reinstein
President
Asbestos Disease Awareness Organization

Jay Feldman
Executive Director
Beyond Pesticides

Annie Sartor
Policy and Campaigns Coordinator
Breast Cancer Action

Jeanne Rizzo
President
Breast Cancer Fund

Catherine A. Porter
Policy Director
California Healthy Nail Salon Collaborative

Sean Moulton
Director, Open Government Policy
Center for Effective Government

Lois Gibbs
Executive Director
Center for Health, Environment & Justice

Barbara Warren
Executive Director
Citizens' Environmental Coalition

Davis Baltz
Precautionary Principle Project Director
Commonweal

Judy Braiman
President
Empire State Consumer Project

June 12, 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:

The undersigned are thirty-four law professors, legal scholars, and public interest lawyers from across the country who have years of collective experience in the fields of administrative, public health, and environmental law, with a particular focus on state and federal toxics policy. We write to express serious reservations with the "Chemical Safety Improvement Act," which was introduced by Sen. David Vitter and the late Sen. Frank Lautenberg on May 22, 2013. Supporters have heralded the bill as a "historic step" toward reforming our broken framework for regulating chemicals on the market. However, for reasons explained herein, we cannot support the bill as written, which must be strengthened to fix current law and ensure that chemicals are safe for people, particularly vulnerable populations such as children.

In our expert opinion, the bill:

- Essentially preserves the same inadequate safety standard used in current law, which has been read by at least one court to require the U.S. Environmental Protection Agency (EPA) to engage in an onerous balancing of costs and benefits to justify restrictions on toxic chemicals;

- Retains the same obstructive standard of judicial review that appears in current law, which requires judges to demand substantial evidence from EPA to justify any safety determination or restriction of a chemical that poses risks to public health and the environment;

- Contains sweeping preemption language that would prevent states from enforcing existing, and adopting new, laws designed to supplement federal law in protecting people and the environment from exposures to harmful substances; and

- Takes the extraordinary step of making any safety determination by EPA dispositive on the question of whether a chemical is safe in federal and state courts. This would effectively bar judges and juries from taking into account other relevant evidence regarding the safety of a chemical, particularly new evidence developed after the determination is made.

Here are our four major concerns presented in detail:

**Safety Standard**. The bill defines "safety standard" as one that "ensures that no *unreasonable risk* of harm to human health or the environment will result from exposure to a chemical

substance." Chemical Safety Improvement Act, S. 1009, 113th Cong. § 3(16) (emphasis added). This definition fundamentally reproduces the same safety standard found in current law. *See* Toxic Substances Control Act § 6(a), 15 U.S.C. § 2605(a). Unlike strictly health-based standards (*e.g.*, "reasonable certainty of no harm"), laws that use "unreasonable risk" language have been interpreted to require EPA to complete a complex balancing of costs and benefits before the agency can impose a restriction on a chemical to address safety concerns. *E.g.*, John S. Applegate, *Synthesizing TSCA and REACH: Practical Principles for Chemical Regulation Reform*, 35 Ecology L.Q. 721 (2008); *see also* Noah M. Sachs, *Jumping the Pond: Transnational Law and the Future of Chemical Regulation*, 62 Vand. L. Rev. 1817 (2009). Therefore, even without language in the safety standard directing EPA to restrict a chemical using the "least burdensome requirements," Toxic Substances Control Act § 6(a), 15 U.S.C. § 2605(a), by retaining the "unreasonable risk" language, the Chemical Safety Improvement Act might be read to place a heavy burden on EPA to impose even modest restrictions on a chemical. As a result, we believe that the same outcome in *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991) (striking down EPA asbestos ban and phaseout rule) could be possible under the safety standard proposed in this bill, particularly with the heightened judicial review discussed in the next paragraph.

**Judicial Review**. Courts typically use a reasoned decisionmaking standard to review agency actions, meaning they will not strike down a regulation unless an agency has acted in an arbitrary or capricious manner. *E.g.*, *Allied Local & Regional Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 77 (D.C. Cir. 2000) (EPA consideration of factors listed in statute "adequate to constitute reasoned decisionmaking"); *see also* Administrative Procedure Act, 5 U.S.C. § 706. In contrast, the Chemical Safety Improvement Act, like the Toxic Substances Control Act, would require courts to apply a heightened standard of judicial review when evaluating rules made pursuant to the bill. Specifically, courts would have to set aside rules requiring the development of more test data, safety determinations, and restrictions on chemicals unlikely to meet the safety standard if, in their opinion, EPA has not supported them with "substantial evidence." Chemical Safety Improvement Act, S. 1009, 113th Cong. § 16(2). In practice, this standard can be read to "impose[ ] a considerable burden" on EPA to develop a record that can withstand a hard look from courts, particularly when all of the other procedural hurdles in the bill are factored in. *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, 1214 (5th Cir. 1991), quoting *Mobile Oil Co. v. Fed. Power Comm'n*, 483 F.2d 1238, 1258 (D.C. Cir. 1973).

**Preemption**. The Chemical Safety Improvement Act would appear to largely preempt state regulations designed to protect public health and the environment from exposure to harmful chemicals. It would preempt existing and future state regulations that: require the development of test data or information on chemicals for which companies have to submit similar information to EPA; restrict the manufacture, processing, distribution, or use of a chemical after EPA has issued a safety determination for that chemical; or require notification for the use of a chemical substance if EPA has determined that it is a significant new use that must be reported to the agency. Chemical Safety Improvement Act, S. 1009, 113th Cong. § 15(a). The bill also would prohibit states from creating new restrictions on the manufacture, processing, distribution, or use of a chemical that EPA has classified as high- or low-priority. *Id.* § 15(b). This preemption provision is sweeping in nature and raises serious questions as to whether states could even enact or continue to enforce laws that simply require companies to disclose information about

chemicals to consumers or require that products carry warning labels. Numerous states have passed laws in recent years in the absence of federal regulatory action to protect the public from toxic chemicals. *E.g.*, Safer Chemicals Healthy Families, *Healthy States: Protecting Families from Toxic Chemicals While Congress Lags Behind* (2010), http://www.saferstates.com/attachments/HealthyStates.pdf. If this bill were to become law, it would perpetuate many of the Toxic Substances Control Act's shortcomings while preventing states from protecting public health and the environment in the absence of a robust federal law — or in the case of a strong federal regulatory framework, from complementing EPA's efforts to achieve this important goal.

**Private Remedies**. The bill takes the extraordinary step of making a safety determination by EPA admissible in any federal or state court and dispositive as to whether a chemical substance is safe. Chemical Safety Improvement Act, S. 1009, 113th Cong. § 15(e). As a result, the bill's section on private remedies could significantly encroach on the right of judges and juries to evaluate and weigh relevant evidence regarding the potential injuries caused by toxic chemicals. In turn, this could have the effect of granting chemical companies immunity from legal actions by private parties once EPA has issued a positive safety standard determination, even when subsequent evidence calls into question the agency's reasoning.

In view of these issues, and others identified by public health and environmental groups, we believe the Chemical Safety Improvement Act preserves some of the most problematic features of the Toxic Substances Control Act, while making it harder for state and private actors to ensure the safety of chemicals in the absence of a strong federal backstop for regulating these substances. As a result, the bill, as currently drafted, takes a step backward in the protection of public health. We respectfully ask that the bill be made stronger to achieve meaningful reform of current toxics law and are available to provide substantive recommendations as needed.

Sincerely,

*Note: Institutions listed for identification purposes only. The signators do not purport to represent the views of their institutions.*

**John S. Applegate**
*Walter W. Foskett Professor of Law*
Indiana University Maurer School of Law

**Nicholas A. Ashford, Ph.D., J.D.**
*Professor of Technology and Policy and Director, MIT Technology & Law Program*
Massachusetts Institute of Technology

**Hope Babcock**
*Professor of Law and Co-Director, Institute for Public Representation*
Georgetown University Law Center

**William W. Buzbee**
*Professor of Law*
Emory Law School
*Visiting Professor of Law*
Georgetown University Law Center (Fall 2012)

**Charles C. Caldart**
*Lecturer in Environmental Law and Policy*
Massachusetts Institute of Technology
*Director of Litigation*
National Environmental Law Center

**Alejandro E. Camacho**
*Professor of Law and Director, Center for Land, Environment, & Natural Resources*
University of California, Irvine

**Cinnamon P. Carlarne**
*Associate Professor of Law*
Ohio State University Michael E. Moritz College of Law

**David W. Case**
*Associate Professor of Law*
University of Mississippi School of Law

**Thomas Cluderay**
*General Counsel*
Environmental Working Group
*Adjunct Professor of Law*
Georgetown University Law Center

**Carl F. Cranor**
*Distinguished Professor of Philosophy and Faculty Member, Environmental Toxicology*
University of California

**David M. Driesen**
*University Professor*
Syracuse University College of Law

**Stephen Dycus**
*Professor of Law*
Vermont Law School

**Angelique Townsend EagleWoman (Wambdi A. WasteWin)**
*Associate Professor of Law and James E. Rogers Fellow in American Indian Law*
University of Idaho College of Law

**Adam M. Finkel, Sc.D.**
*Senior Fellow and Executive Director*
Penn Program on Regulation University of Pennsylvania Law School *Professor of Environmental and Occupational Health* University of Medicine and Dentistry of New Jersey School of Public Health

**Victor Flatt**
*Tom and Elizabeth Taft Distinguished Professor of Law and Director, Center for Law, Environment, Adaptation, & Resources (CLEAR)* University of North Carolina School of Law *Distinguished Scholar of Carbon Markets* Global Energy Management Institute University of Houston

**Steve C. Gold**
*Associate Professor of Law*
Rutgers University School of Law - Newark Rutgers, The State University of New Jersey

**Carmen G. Gonzalez**
*Professor of Law*
Seattle University School of Law

**Lisa Heinzerling**
*Professor of Law*
Georgetown University Law Center

**Oliver Houck**
*Professor of Law*
Tulane University School of Law

**Howard A. Latin**
*Distinguished Professor of Law and Justice John J. Francis Scholar*
Rutgers University School of Law Rutgers, The State University of New Jersey

**Albert Lin**
*Professor of Law*
UC Davis School of Law

**Mary L. Lyndon**
*Professor of Law*
St. John's University School of Law

**Thomas O. McGarity**
*Joe R. and Teresa Lozano Long Endowed Chair in Administrative Law*
University of Texas School of Law

**Joel A. Mintz**
*Professor of Law*
Nova Southeastern University Law Center

**Joseph A. Page**
*Professor of Law*
Georgetown University Law Center

**Rick Reibstein**
*Adjunct Professor*
Boston University
*Faculty*
Harvard Extension School

**John Rumpler**
*Senior Attorney*
Environment America

**Noah Sachs**
*Professor of Law*
University of Richmond School of Law

**Sidney A. Shapiro**
*University Chair in Law*
Wake Forest University

**Amy Sinden**
*Professor of Law*
Temple University Beasley School of Law

**William Snape**
*Fellow and Practitioner in Residence*
American University Washington College of Law

**Rena Steinzor**
*Professor of Law*
University of Maryland School of Law

**Robert R.M. Verchick**
*Gauthier-St. Martin Chair in Environmental Law*
Loyola University New Orleans

**Wendy Wagner**
*Joe A. Worsham Centennial Professor*
University of Texas School of Law

June 12, 2013

Senator Barbara Boxer
Chairman
Environment & Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Senator David Vitter
Ranking Member
Environment & Public Works Committee
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Boxer and Ranking Member Vitter:

We the 24 undersigned environmental and occupational health, environmental justice, and public interest organizations have worked for decades to reform the Toxic Substance Control Act and protect the public from the hazards of chemical exposure.

We respect and appreciate the current effort to identify areas of bipartisan compromise and consensus on chemical safety legislation. However, we believe that the resulting Chemical Safety Improvement Act, S. 1009, has serious limitations and would fall far short of our shared goal of safeguarding human health from the risks posed by exposure to toxic chemicals**.** As a result, we will oppose this bill as it is currently written unless it is amended to address our key concerns.

The proposed CSIA would fail to provide a policy framework essential to securing much-needed health protections that have been lacking for nearly 40 years under current law. The compromise measure, if passed in its current form, could undermine a number of state protections, including California's Proposition 65 law, without ensuring any real improvement in federal toxic substances controls. CSIA could have a crippling effect on every state's freedom to regulate toxic chemicals and protect its own residents. Many of our organizations have fought for and helped enact state laws restricting the use of hazardous chemicals in consumer products. Most other major federal environmental laws allow states to take more aggressive action to protect citizens from environmental threats. CSIA, in contrast, may actually preempt state laws requiring warning labels on toxic products. Furthermore, the bill may also prevent private citizens from taking action in state or federal court for harm and injury caused by chemical exposure.

We are also troubled by the fact that CSIA would not explicitly protect pregnant women and children. It would not require EPA to consider the cumulative burden of chemical pollution for residents of highly polluted communities and for workers, which is essential for Americans living and working in or near contaminated industrial and military sites; including many in Louisiana, New Jersey, Indiana, Alaska, and California.

In addition, the CSIA would not require that chemicals be shown to be safe before manufacturing begins. EPA would still face the daunting challenge of rapidly assessing thousands of industry submissions on new chemicals, the majority of them containing absolutely no health and safety data. Moreover, the agency would be required to justify any requests for safety testing and would be allowed to grant chemical companies permission to begin production before it completes its safety determination. This practice of "conditional registration" has been widespread in EPA's

pesticides program, which has allowed thousands of pesticides to sidestep important aspects of the traditional approval process.

The proposed bill would do no better at setting up a system to protect the public from the hazards of the 84,000 chemicals already on the market. Overall, it would set a high bar for EPA to enact any restrictions on chemicals, and the burden would remain on the agency to prove that chemicals are harmful, rather than requiring manufacturers to prove they are safe.

CSIA would retain TSCA's current weak safety standard instead of the more protective standard previously proposed by Sen. Lautenberg in his Safe Chemicals Act. Furthermore, it-would set no clear timelines to ensure that EPA assesses hazardous chemicals in a timely manner, and it would not establish a quick timeframe for action on chemicals known to be hazardous to human health, including persistent, bioaccumulative toxins.

Finally, the bill would offer too many secrecy protections for chemical companies and may limit the ability of doctors, nurses, first responders and public health departments to obtain vital information about a particular substance to identify and treat people who have been injured by these so-called "secret chemicals."

For these and other reasons the Chemical Safety Improvement Act is not acceptable in its current form. We look forward to working with you to pass legislation that makes public health a priority.

Sincerely,

Pamela K. Miller
Executive Director
Alaska Community Action on Toxics

Robyn O'Brien
Founder
AllergyKids Foundation

Linda Reinstein
President
Asbestos Disease Awareness Organization

Jay Feldman
Executive Director
Beyond Pesticides

Annie Sartor
Policy and Campaigns Coordinator
Breast Cancer Action

Jeanne Rizzo
President
Breast Cancer Fund

Catherine A. Porter
Policy Director
California Healthy Nail Salon Collaborative

Sean Moulton
Director, Open Government Policy
Center for Effective Government

Lois Gibbs
Executive Director
Center for Health, Environment & Justice

Barbara Warren
Executive Director
Citizens' Environmental Coalition

Davis Baltz
Precautionary Principle Project Director
Commonweal

Judy Braiman
President
Empire State Consumer Project

Ken Cook
President
Environmental Working Group

Lisa Archer
Director, Food and Technology Program
Friends of the Earth U.S.

Denny Larson
Executive Director
Global Community Monitor

Rick Hind
Legislative Director
Greenpeace

Gigi Lee Chang
Chief Executive Officer
Healthy Child, Healthy World

Lin Kaatz Chary
Indiana Toxics Action

Paul Ryder
Assistant Director
Ohio Citizen Action

Kristin S. Schafer
Policy & Communications Director
Pesticide Action Network

Eric Uram
Executive Director
Safeminds

Kathy Burns
Sciencecorps

Judi Shils
Executive Director
Teens Turning Green

Erin Switalski
Executive Director
Women's Voices for the Earth

June 12, 2013

Senator Barbara Boxer
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Boxer:

As organizations that have fought for decades to protect Californians from the dangers of toxic chemicals, we are writing to express our serious concerns about the Chemical Safety Improvement Act (CSIA) introduced by Senators David Vitter and the late Frank Lautenberg.

While the Toxic Substances Control Act (TSCA) is highly flawed and in desperate need of an overhaul, it is critical that any reform measure provide meaningful protection for our children, communities, workers and other vulnerable populations by fixing TCSA's problems without creating new loopholes and bureaucratic dead-ends. That is the spirit of the toxic chemicals policy reform movement that has gained such dramatic momentum in recent years among consumers, parents, state policy makers and environmentally minded companies. We are extremely disappointed that the Chemical Safety Improvement Act fails to provide the policy framework needed to secure the needed protections and could, if enacted, stymie progress and undermine the long-term push for reform.

Some of our concerns with the bill include a weak safety standard, which on its face allows for "reasonable" injuries to public health from toxic chemicals. The bill contains no clear deadlines for EPA action on or assessment of chemicals, few safeguards for vulnerable populations such as children and pregnant women, and no minimum testing requirements for old or new chemicals. We are also troubled that CSIA does not seem to provide fast action on and special protections from persistent, bioaccumulative and toxic chemicals and does not protect workers or communities disproportionately affected by chemical exposures.

Furthermore, the broad language on state-level preemption could tie California's hands and prevent the state from continuing to be a leader on toxic chemical issues. While the Clean Air Act, the Clean Water Act, TSCA and many other federal environmental laws allow states to take more aggressive action to protect their residents from potential environmental threats, any such action would be severely limited under the Chemical Safety Improvement Act. For these and other reasons, the Chemical Safety Improvement Act is not acceptable in its current form.

We urge you to do all you can to strengthen this draft bill as your committee examines the issue of TSCA reform. We realize that a spirit of compromise is always essential in developing major federal legislation. In the end, however, we must have legislation that explicitly emphasizes the imperative to protect the next generation and beyond from the daily onslaught of chemicals that are polluting our bodies and the planet.

We are deeply grateful for your ongoing commitment to protecting all Americans from dangerous chemicals in their food, air, drinking water, consumer products and workplaces. Your bold leadership on this issue is needed now more than ever.

Sincerely,

Janette Robinson Flint
Executive Director
Black Women for Wellness

Annie Sartor
Policy and Campaigns Coordinator
Breast Cancer Action

Jeanne Rizzo, RN
President
Breast Cancer Fund

Jane Williams
Executive Director
California Communities Against Toxics

Catherine Porter
Policy Director
California Healthy Nail Salon Collaborative

Michael Green
Executive Director
Center for Environmental Health

Bill Magavern
Policy Director
Coalition for Clean Air

James Wheaton
President and Legal Director
Environmental Law Foundation

Ken Cook
President
Environmental Working Group

Martha Dina Argüello
Executive Director
Physicians for Social Responsibility–Los Angeles

Ted Schettler
Science Director
Science and Environmental Health Network

Judi Shills
Executive Director
Teens Turning Green

Jora Trang
Interim Executive Director and Managing Attorney
Worksafe

cc: The Honorable Dianne Feinstein
The Honorable Henry Waxman, Rank Member, House Energy & Commerce Committee