

# United States Senate

WASHINGTON, DC 20510-0803

March 10<sup>th</sup>, 2015

The Honorable Tom Udall  
United States Senator  
Washington, D.C. 20510

The Honorable David Vitter  
United States Senator  
Washington, D.C. 20510

The Honorable James Inhofe  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Senator Udall, Senator Vitter, and Chairman Inhofe:

First, thank you for all of the work you and your staffs have done in reforming the Toxic Substances Control Act, which for nearly four decades has failed to adequately protect the public from harmful chemicals. Bipartisanship is hard to come by in the Senate these days, especially on issues that affect the environment, but because of your leadership, Democrats and Republicans have come together to improve a law that isn't working for business or consumers.

I'm writing today to let you know that, after much careful deliberation, I've decided to cosponsor the Frank R. Lautenberg Chemical Safety for the 21st Century Act. Over the past year, you have worked diligently to address many of the changes that I requested to improve the legislation to better protect public health and the environment. My goal has always been to advance legislation that balances the critical need to protect the public from certain harmful chemicals with a regulatory process that is manageable for the businesses that produce the many safe products that we rely on each day. As a result, the Frank R. Lautenberg Chemical Safety for the 21st Century Act is much more protective of public health and the environment than both current law and earlier drafts of the Udall-Vitter bill. In particular, I appreciate the inclusion of changes I requested that would:

- ensure that EPA makes all chemical safety decisions solely on considerations of the risk of a substance to human health and the environment;
- increase protection of vulnerable populations, such as children, pregnant women, the elderly, and workers, by recognizing that chemicals can affect these groups differently and requiring EPA to ensure their protection as well as that of the general population;
- establish that EPA has new authority to require companies to supply data on chemical risks and to order additional testing of chemicals where adequate information is lacking;

- require EPA to move quickly on chemical reviews, starting with the substances that we already know to be some of the most hazardous;
- give EPA adequate resources to implement and run a successful program at an aggressive pace, including a fair share from user fees paid by regulated industries; and,
- protect people against chemical exposures in the case of spills or other inadvertent releases, such as the one that occurred in West Virginia last year.

Despite all of this progress, our work is not yet done. My hope is that we can further improve the bill in several key areas before it is voted out of the Environment and Public Works Committee and approved by the full Senate. My enthusiasm to further advance the bill will depend on the extent to which we can resolve these remaining issues. For example, I believe more work is needed to 1) give states an appropriate role in working with EPA to oversee this program; 2) ensure states are not prevented from action on risky chemicals until EPA sets a national standard; and, 3) provide the public with the ability to ask whether EPA acted appropriately, based on complete information, on low priority designations.

#### **Shared State-Federal Responsibility for Implementation**

*States need to have some authority to enact and enforce laws and regulations that are identical to federal restrictions.* Nearly every federal environmental, product safety, and consumer law – the treatment of nationally chartered banks under federal financial laws being a good example – as well as many other federal laws, preserve some role for the states to play in working with the federal government to enforce them. The current TSCA statute includes this provision, but it's been eliminated in the new proposal. If we are limiting states from enacting their own rules and regulations in exchange for a federal standard, we should preserve for them some role in implementing these rules and regulations. This would help give the public confidence that regulatory decisions made under TSCA will be consistently implemented nationwide.

#### **Public Review of Major Federal Decisions on Low Priority Chemicals**

*The public should have some recourse when a decision is made to designate a chemical substance as a low priority based on incomplete or inappropriate information.* When EPA says a substance is a low priority, EPA is saying it is likely to be safe. However, it would be possible for a future administration to misuse the low priority process, counter to Congress' intent, leading to poor decisions. To promote confidence in the reformed TSCA process, the public should have the ability to review such decisions and ask whether EPA is acting with complete and appropriate information.

#### **Enabling States to Protect the Public from High Priority Substances Sooner**

*States should have the ability to take action to protect citizens for a High Priority chemical substance while EPA finalizes its assessment of the chemical's risks and understands the uses, exposures, vulnerable populations, and other key factors associated with those risks.* When EPA determines that a substance is a High Priority, it means that the agency believes that substance may pose an unreasonable risk. Yet it is at this point – when the decision is first made that a chemical might be a risk – that states are prevented from taking further action to mitigate potential risks. This is despite that fact that it could take years before EPA is able to finalize national regulations that mitigate the risk. It seems more appropriate to allow states to act in some manner to protect their citizens in the interim.

Again, I appreciate your bipartisan leadership and tireless efforts to date, and I am confident that these modifications can be made in a thoughtful and effective way that builds additional support for this much-needed bill. My staff and I look forward to continuing to work closely with you and your staffs to further improve and advance this legislation.

With best personal regards, I am

Sincerely yours,

A handwritten signature in blue ink that reads "Thomas R. Carper". The signature is written in a cursive style with a long, sweeping tail on the "er" at the end. A horizontal line is drawn underneath the signature.

United States Senator